

# **Environmental Offsets Bill 2014**

**Report No. 40**

**Agriculture, Resources and Environment Committee**

**May 2014**

## **Agriculture, Resources and Environment Committee**

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## **Acknowledgements**

The committee thanks submitters and the officers who briefed the committee on the Bill.

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## Abbreviations and definitions

BBOP	Business and Biodiversity Offsets Programme
CG	Coordinator-General
COAG	Council of Australian Government
CWS	Currumbin Wildlife Sanctuary
DBMP	Direct Benefit Management Plan
DEHP	Department of Environment and Heritage Protection
EIS	Environmental Impact Statement
EP Act	<i>Environmental Protection Act 1994</i> (Qld)
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cwth)
EPBC Offsets Policy	EPBC Act Environmental Offsets Policy (Cwth)(2012)
ESD	Environmentally sustainable development. Sometimes the term is used interchangeably with ecologically sustainable development.
IDAS	Integrated Development Assessment System
MLES	Matters of Local Environmental Significance
MNES	Matters of National Environmental Significance
MSES	Matters of State Environmental Significance
NC Act	<i>Nature Conservation Act 1992</i> (Qld)
NTQ	National Trust of Queensland
OQPC	Office of the Queensland Parliamentary Council
QBOP	Queensland Biodiversity Offsets Policy (2011) (Qld)
QGEOP	Queensland Government Environmental Offsets Policy (2008)
SDPWO Act	<i>State Development and Public Works Organisation Act 1971</i> (Qld)
SP Act	<i>Sustainable Planning Act 2009</i> (Qld)

Additionality	The principle of ‘additionality’ means that an offset delivers an outcome that is above and beyond any other measure that is already required. For example, an offset must provide additional protection to environmental values at risk, or additional management actions to improve environmental values.
Advanced offsets	Advanced environmental offsets are a supply of offsets for potential future use, transfer or sale. An example of an advanced offset is protection or improvement of habitat for the conservation of a protected matter before an impact is undertaken.
Biodiversity	Biodiversity is the natural diversity of native wildlife, together with the environmental conditions necessary for their survival. Biodiversity exists at different scales: regional diversity, ecosystem diversity, species diversity and genetic diversity. Biodiversity is not static, but constantly changing. It is increased by genetic change and evolutionary processes and reduced by processes such as habitat degradation, population decline and extinction.

Ecologically sustainable development (ESD)	To protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends ( <i>Environmental Protection Act 1999</i> ).
Environmental Offset	Offsets are measurable conservation outcomes of actions designed to counterbalance or compensate for significant residual adverse biodiversity impacts arising from project development after appropriate prevention and mitigation measures have been taken. The goal of offsets is to achieve no net loss and preferably a net gain of biodiversity on the ground with respect to species composition, habitat structure, ecosystem function and people's use and cultural values associated with environmental matters.
Financial settlement offset	A payment made by an authority holder to the relevant assessment authority (i.e. to the relevant local government if the offset relates to a matter of local environmental significance or to the department administering the Bill in all other circumstances) in lieu of directly delivering the offset.
Proponent-driven offset	An environmental offset which is undertaken by the authority holder, where the offset can be delivered either directly by the authority holder on its own land, or indirectly by someone else on behalf of the authority holder (for example, by contracting with a broker).
Queensland offsets framework	The framework governing the development, assessment and implementation of offsets, inclusive of the 'proposed' Act, regulation, offsets policy and guidelines.
Ramsar Convention	The Convention on Wetlands known as the 'Ramsar Convention' is an intergovernmental treaty adopted in the Iranian city of Ramsar in 1971. It provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. <a href="http://www.ramsar.org">www.ramsar.org</a>
Staged Offsets	Where a proponent may deliver the on-ground component of their offset requirement in stages in line with stages of a prescribed activity/development, but only when the condition of approval reflects the intent to stage offsets.



## Chair's foreword

This report presents the findings from the committee's inquiry into the Environmental Offsets Bill 2014 which was introduced on 13 February 2014 by Hon Andrew Powell MP, Minister for Environment and Heritage Protection.

The Bill provides for overdue and vitally important reforms to environmental offsetting in Queensland. Environmental offsetting provides environmentally beneficial activities to counterbalance the adverse impacts of development activities on the environment. Development is an unavoidable consequence of growth and progress, and it is essential that governments are able to achieve the best possible conservation outcomes where environmental damage occurs.

The Environmental Offsets Bill will provide for a vastly improved offsetting framework with a head of power contained in primary legislation for the first time, and streamlined requirements for offsets that are clearly set out in a single, state government policy that is supported by regulations and a suite of guidelines.

The Bill provides for a number of new features designed to provide proponents of developments with greater choice in how they provide offsets, as well as ensuring the best possible conservation outcomes for the environment and the communities affected by development impacts. It will also improve the monitoring and enforcement of environmental offset agreements, while making information about offsets open to public scrutiny. These changes will help ensure that promised conservation outcomes are actually achieved.

As is to be expected with a reform as significant as this Bill will achieve, submitters to our inquiry brought a number of points to our attention which we in turn have flagged in our report. The committee looks forward to the Minister's advice on these matters. We have also made a number of recommendations which we believe will address issues raised and help to ensure a sustainable approach to environmental offsetting in the future.

I congratulate the Minister for his courageous leadership in the development of this Bill and the new Queensland Environmental Offsets Policy. I also thank the officers of the Department of Environment and Heritage Protection for their diligence and assistance during our inquiry.

I commend the report to the House.

A handwritten signature in blue ink, appearing to read 'I. Rickuss'.

Ian Rickuss MP  
**Chair**

May 2014

## Recommendations

### **Recommendation 1** **12**

The committee recommends that the operation and performance of the Queensland Environmental Offsets Framework be reviewed within four years of its commencement, and that the outcomes of that review be reported to the House.

### **Recommendation 2** **14**

The committee recommends that the Queensland Offsets Policy lists the seven policy principles for offsets, and states that offsets must conform to these principles.

### **Recommendation 3** **17**

The committee recommends that offsets ratio cap be considered during the review of the operation and performance of the Queensland Environmental Offsets Framework recommended at Recommendation 1.

### **Recommendation: 4** **21**

The committee recommends that the Minister for Environment and Heritage Protection report to the House within two years of the Bill's commencement about the operation of clause 18 requirements in view of the concerns of industry groups about landowner agreements and staging, and any other issues related to sequencing of offset delivery.

### **Recommendation 5** **25**

The committee recommends, for consistency with the Commonwealth's approach to offsets, that clause 3 be amended to state that the main purpose of this Act is to *compensate* the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets, *after avoidance and mitigation measures are taken*.

### **Recommendation 6** **26**

The committee recommends that the Deputy Premier and Minister for State Development, Infrastructure and Planning, in consultation with the Minister for Environment and Heritage Protection, publish guidelines for environmental offsets that may apply to major coordinated projects under the *State Development and Public Works Organisation Act 1971*.

### **Recommendation 7** **30**

The committee recommends that clause 8 (1) be amended to clarify the meaning of 'significant' by including an additional point (c) that states 'where significant relates to an impact which is important, notable, or of consequence, having regard to its context or intensity'.

### **Recommendation 8** **32**

The committee recommends that the Bill be amended to include an overview of the prescribed activities, prescribed environmental matters and matters of environmental significance as an additional schedule.

### **Recommendation 9** **34**

The committee recommends that clause 11 be revised in order that the meaning of conservation outcome accords with the Commonwealth offsets policy as outlined below:



A **conservation outcome** is achieved by an environmental offset for a prescribed activity for a prescribed environmental matter if the offset is selected, designed and managed to:

- a) maintain or increase the viability of the impacted matter; and
- b) where maintaining the viability of a species increases the likelihood of its survival in the long term or reduces any threat of damage, destruction or extinction.

#### **Recommendation 10** **37**

The committee recommends that clause 14(2)(b) be amended to replace the word ‘cost-effective’ with ‘reasonable’, as follows:

*(b) all reasonable on-site mitigation measures for the prescribed activity have been, or will be, undertaken.*

#### **Recommendation 11** **43**

The committee recommends that clause 19 be amended to include statutory timeframes for both the proponent’s notice of election and the agency’s consideration and decision notification for offset delivery arrangements.

The amendment should specify that the timeframes of the Acts from which the development authority derives its jurisdiction apply in these situations.

#### **Recommendation 12** **48**

The committee recommends that clause 23 be amended by adding further wording which clearly connects the payment of a financial settlement to a conservation outcome.

#### **Recommendation 13** **49**

The committee recommends that the title of clause 41 be amended by replacing ‘inspector’ with ‘enforcement officer’ to be consistent with the rest of the Bill.

#### **Recommendation 14** **52**

The committee recommends that clause 83 be amended to include ‘strategic investment corridors’ and ‘direct benefit management plans’ as examples of the delivery of offsets.

#### **Recommendation 15** **54**

The committee recommends that Schedule 2 be amended by including definitions in the Bill for ‘strategic investment corridors’ and ‘direct benefit management plans’.

#### **Recommendation 16** **54**

The committee recommends that the Environmental Offsets Bill 2014 be passed with the amendments recommended in this report.

## Points for clarification

### Point for clarification regarding clause 14

37

The committee invites the Minister for Environment and Heritage Protection to clarify:

- a) the risks, if any, which are associated with raising the threshold from ‘any’ residual impact to ‘significant’ residual impact; and
- b) how cumulative residual impacts are monitored and managed under the current planning and development assessment framework.

### Point for clarification regarding clause 15

41

The committee invites the Minister for Environment and Heritage Protection to further explain how potential duplication between state and local government offsetting requirements may be reduced, and how this will ensure that local government offsets policies align with the Bill’s requirements.

### Points for clarification regarding clause 44

58

The committee invites the Minister for Environment and Heritage Protection to advise the House: what qualifications, skills or experience would qualify a person for appointment as an enforcement officer and, similarly, what would disqualify a person from being appointed; and which persons prescribed under a regulation he envisages would be appointed as enforcement officers in accordance with clause 44 (1)(e).

Given the department’s advice that it does not propose to appoint consenting persons as enforcement officers in accordance with clause 44(1) (e), the committee invites the Minister to assure the House that this provision should remain in the Bill.

## 1. Introduction

### Role of the committee

The Agriculture, Resources and Environment Committee is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.<sup>1</sup>

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles.<sup>2</sup>

In relation to the policy aspects of Bills, the committee considers the policy intent, approaches taken by departments to consulting with stakeholders and the effectiveness of that consultation. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

Fundamental legislative principles (FLPs) are defined in Section 4 of the [Legislative Standards Act 1992](#) as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

### The referral

On 13 February 2014, Hon Andrew Powell MP, Minister for Environment and Heritage Protection, introduced the Environmental Offsets Bill 2014. The Legislative Assembly referred the Bill to the committee for examination. The committee was given until 28 April 2014 to table its report to the Legislative Assembly, in accordance with SO 136(1).

On 6 May 2014, the House agreed that, notwithstanding Standing Order 136(3), the Environmental Offsets Bill be referred back to the committee to continue its consideration of the Bill in accordance with Chapter 23 of the Standing Orders, and to report to the House by 14 May 2014.

### The committee's processes

In its examination of the Bill, the committee:

- identified and consulted with likely stakeholders
- invited written submissions from stakeholder groups and members of the public. The committee accepted 51 written submissions. A list of submitters is at **Appendix A**.
- sought advice from the Department of Environment and Heritage Protection (DEHP) on the policy drivers for the amendments proposed, a summary of consultation undertaken, and details of the outcomes of that consultation
- sought expert advice on possible FLP issues with the Bill
- convened public briefings by officers from DEHP on 19 March and 2 April 2014
- held a public hearing to hear evidence from submitters and others on 2 April 2014, and
- sought further advice from DEHP on issues raised in submissions and at the public hearing.

The briefing officers and hearing witnesses who assisted the committee are listed at **Appendix B**.

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<sup>1</sup> Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.

<sup>2</sup> Section 93 of the *Parliament of Queensland Act 2001*.



## 2. Background information on key objectives of the Bill

### Policy objectives of the Bill

The Environmental Offsets Bill 2014 gives effect to the Government's proposed reforms to environmental offsets requirements in Queensland. It also contains unrelated reforms to the governance of the National Trust of Queensland, and addresses minor anomalies in other Acts.

According to the Explanatory Notes, the purposes of the Bill are to:

- introduce primary legislation (the *Environmental Offsets Act 2014*) that gives effect to a simplified framework for environmental offsets in Queensland, and amend other legislation to align environmental approval and offset provisions with those provided for within the Bill
- provide for governance reform of the National Trust of Queensland and Currumbin Wildlife Sanctuary to relinquish their statutory status and to transition to a single company (limited by guarantee) independent of government oversight through amendments to the *National Trust of Queensland Act 1963* and the *Currumbin Bird Sanctuary Act 1976*, and
- provide for minor amendments to the *Coastal Protection and Management Act 1995* and the *Environmental Protection Act 1994* to address specific unintended operational problems with the application of authorities and definitions under these Acts.

The following sections discuss DEHP's consultation processes for its development of the Bill. They also provide background information on environmental offsetting, current offsets requirements in Queensland, and on the National Trust of Queensland.

### Consultation by the department

In its advice to the committee, DEHP stated that it undertook "extensive and ongoing consultation on the review of Queensland's offset arrangements", including three formal rounds of consultation with targeted peak bodies, interest groups and interdepartmental officers who were identified as key users or proponents of environmental offsets in Queensland.<sup>3</sup>

A summary of the department's consultation with stakeholders, prepared using DEHP's advice to the committee, is at **Appendix C**.

### Environmental offsets

The Productivity Commission in its 2013 review of major project assessment processes described environmental offsets as:

*environmentally beneficial activities that counterbalance or compensate for the adverse impacts of a development on the environment.*<sup>4</sup>

The commission also noted that environmental offsets have been used in relation to air pollution, habitat and biodiversity, wetlands management, native vegetation and marine environments,<sup>5</sup> and that they have the potential to meet environmental and economic development objectives in tandem.<sup>6</sup>

<sup>3</sup> DEHP, 2014, *Correspondence*, 11 March.

<sup>4</sup> Productivity Commission, 2013, [Major Project Development Assessment Processes: Productivity Commission Research Report](#), November, p 214.

<sup>5</sup> Productivity Commission, 2013, p 228.

<sup>6</sup> Productivity Commission, 2013, p 227; Bull J.W., Suttle K.B., Gordon A., Singh N.J., Milner-Gulland E.J., 2013 '[Biodiversity offsets in theory and practice](#)', *Fauna & Flora International*, Oryx, 0(0), p.1.

Effective offsetting requires the creation of new habitat, improvement to habitat quality or the prevention of further habitat decline.<sup>7</sup>

The three elements common to most environmental offset policies are:

- environmental offsets provide substitution or replacement for unavoidable negative impacts of development on the environment
- biodiversity losses and gains are measurable and comparable, and
- the objective is no net loss of biodiversity.<sup>8</sup>

The idea of offsetting is not new. As noted Dr Hugh Lavery in his submission:

*Queensland has been offsetting since it positioned cities in some places and national parks in others.<sup>9</sup>*

### Objectives of environmental offsets

The most commonly cited objective of environmental offsets is 'no net loss' of biodiversity.<sup>10</sup> The objective of 'no net loss' is inherently linked to the issue of how to measure environmental impacts.

For there to be 'no net loss', environmental offsets must achieve an 'avoided loss' of equivalent value or replace lost habitat in a timely manner. An avoided loss depends upon the risk of loss or degradation of the offset site. If the site was protected under other legislation or there was no threat of loss to that site, then its protection as an environmental offset does not really constitute an environmental gain.<sup>11</sup> This reflects the concept of 'additionality' which requires an offset to improve, restore or secure environmental values over and above the status quo.<sup>12</sup>

The mitigation hierarchy is a common feature of environmental offsetting regimes. The hierarchy involves three stages:

- avoiding environmental harm
- minimising and mitigating unavoidable environmental impacts, and
- offsetting environmental impacts.<sup>13</sup>

Environmental offsets should be regarded as a last resort in the context of the mitigation hierarchy.

### Current requirements for environmental offsets in Queensland

In its preliminary information for the committee's inquiry, DEHP advised that environmental offsets were first introduced in Queensland in the 1980s as a measure to compensate for adverse impacts of proposed development on Queensland's most important environmental values, termed 'Matters of Environmental Significance'. The current offsets framework applies across multiple pieces of legislation, and is informed by multiple policies to support offset decision-making.

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<sup>7</sup> Maron, M., Dunn, P.K., McAlpine, C.A. & Apan, A., 2010, '[Can offsets really compensate for habitat removal? The case of the endangered red-tailed black-cockatoo](#)' *Journal of Applied Ecology* 348, p 349.

<sup>8</sup> Joseph W Bull et al, '[Biodiversity offsets in theory and practice](#)' (2013) *Fauna & Flora International*, Oryx, 1, p 3.

<sup>9</sup> Lavery, H., 2014, *Submission No.1*, p.1

<sup>10</sup> Martine Maron et al, '[Faustian bargains? Restoration realities in the context of biodiversity offset policies](#)', (2012) 155 *Biological Conservation* 141, p.142.

<sup>11</sup> Maron, M., Dunn, P.K., McAlpine, C.A. & Apan, A., 2010, p 349.; Australian Government, [Australian Government Response to the Senate Standing Committee on Environment, Communications and the Arts Committee Report: Operations of the Environment Protection and Biodiversity Conservation Act 1999 \(First, Second and Final Reports\)](#) (September 2011) p 6; Shelley Burgin, 'Biodiversity offsets: Lessons from the American experience' (2011) 35(3) *Australian Zoologist* 544, p 546.

<sup>12</sup> Productivity Commission, 2013, *Major Project Development Assessment Processes: Productivity Commission Research Report*, November, p.229.

<sup>13</sup> Productivity Commission, 2013, p.230; Fabien Quétier, F. and Lavorel, S., 2011, '[Assessing ecological equivalence in biodiversity offset schemes: Key issues and solutions](#)' *Biological Conservation* 1, p 1; Madsen, B., Carroll, N. and Moore Brands, K., 2010, [State of Biodiversity Markets Report: Offset and Compensation Programs Worldwide](#), p 5.

An offset may be required as a condition of development where it has been determined that impacts on a Matter of State Environmental Significance (MSES) cannot be sufficiently avoided or mitigated. This requirement may be imposed on an approval under any of the following legislation:

- *Sustainable Planning Act 2009 (SP Act)*
- *Marine Parks Act 2004*
- *Environmental Protection Act 1994 (EP Act)*
- *Nature Conservation Act 1992 (NC Act)*, and
- *State Development and Public Works Organisation Act 1971 (SDPWO Act)*

The offset requirements for State approvals are currently framed in five Queensland Government environmental offsets policies. The overarching principles for offsets are provided through the Queensland Government Environmental Offsets Policy (QGEOP). Four specific-issue policies operate under this policy:

- Queensland Biodiversity Offset Policy (QBOP)
- Policy for Vegetation Management Offsets
- Offsets for Net Gain of Koala Habitat in South East Queensland Policy, and
- Marine Fish Habitat Offset Policy.

The Commonwealth Government may apply offset conditions in Queensland when it is determined that a development impacts significantly on any Matter of National Environmental Significance (MNES) declared under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwth) (EPBC Act). Examples of MNES include species which are extinct in the wild or critically endangered, migratory species, Ramsar<sup>14</sup> wetlands, world heritage properties, such as the Great Barrier Reef and Fraser Island, and commonwealth marine parks. In these instances, and where it is determined that an offset is required as a condition of development, the Commonwealth would refer to the EPBC Act Environmental Offsets Policy.<sup>15</sup>

Matters of Local Environmental Significance (MLES) can be prescribed by local governments and embedded into local planning schemes made under the *Sustainable Planning Act 2009*.<sup>16</sup> Where local governments operate their own environmental offset policies, they may also impose offset conditions. For example, the Logan City Council (LCC) gives effect to offsets through its Planning Scheme Policy No. 8 (Environmental offsets),<sup>17</sup> whilst Brisbane City Council (BCC) recognises offsets under its Biodiversity Offset Code and Offsets Planning Scheme Policy.<sup>18</sup>

## National Trust of Queensland

The National Trust of Queensland (NTQ) is a membership-based community organisation that works to promote the natural, Indigenous and cultural heritage of Queensland. The NTQ is presently a statutory body under the provisions of the *National Trust of Queensland Act 1963*, and is governed by a Council comprising both elected and appointed members.

<sup>14</sup> The Convention on Wetlands known as the 'Ramsar Convention' is an intergovernmental treaty adopted in the Iranian city of Ramsar in 1971. It provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. [www.ramsar.org](http://www.ramsar.org)

<sup>15</sup> Department of Sustainability, Environment, Water, Population and Communities (Cwth), 2012, *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy*, October, <<http://www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-policy.pdf>> accessed 1.5.14>

<sup>16</sup> Note that local government planning schemes typically also reflect MSES established through the above mentioned Queensland Government offsets policies where relevant.

<sup>17</sup> Logan City Council, 2011, *Planning Scheme Policy No.8 (Environmental offsets)*, March, <[http://www.logan.qld.gov.au/\\_data/assets/pdf\\_file/0007/127087/PSP-8-Environmental-offsets.pdf](http://www.logan.qld.gov.au/_data/assets/pdf_file/0007/127087/PSP-8-Environmental-offsets.pdf)> accessed 1.5.14>.

<sup>18</sup> Brisbane City Council, 2014, *Biodiversity Offset Code*, <http://eplan.brisbane.qld.gov.au/CP/BiodiversityOffsetsCode> accessed 13.5.14.; Brisbane City Council, 2014, *SC6.22 Offsets planning scheme policy*, <http://eplan.brisbane.qld.gov.au/CP/OffsetsPSP> accessed 13.5.14>

The NTQ owns or operates a portfolio of 14 properties in several areas of Queensland including the James Cook Museum, Cooktown; Lyall's Store, Charters Towers; Wolston House, Wacol; and the Grandchester Railway Station, Rosewood.

Staff responsible for these properties report to the executive officer. The one exception is the Currumbin Wildlife Sanctuary (CWS) which operates under its own Act, the *Currumbin Bird Sanctuary Act 1976*. The CWS has its own management staff headed by a chief executive officer who, on matters relating to policy and property management, reports to a dedicated board.

### **Recommendations from the Webbe-Weller Review**

Amendments to the governance arrangements for NTQ and CWS were recommended by the Webbe-Weller Review, an independent review of Queensland Government boards, committees and statutory authorities conducted between July 2008 and March 2009. The aim of the Webbe-Weller Review was to: reduce bureaucracy and unnecessary red tape; improve the overall efficiency of government bodies; and maintain the integrity and security of necessary regulatory functions.<sup>19</sup>

The review report, *Brokering Balance: A Public Interest Map for Queensland Government Bodies*, contained 210 recommendations. In relation to NTQ and CWS, the report recommended:

*The National Trust of Queensland should become a non-government organisation instead of a government statutory body acting as a community organisation. It should no longer perform heritage listings; it should benefit from equivalent land tenure arrangements (by strict covenant) for the properties it currently owns and maintains; and it should be divested of responsibility for the Currumbin Wildlife Sanctuary.*

*The Currumbin Wildlife Sanctuary should be divested to community form or enabled to operate in its own right by suitable form within the Environment portfolio.*<sup>20</sup>

### **Part 20 Amendment of National Trust of Queensland Act 1963**

Part 20 of the Bill (clauses 124-127) amends the governance arrangements for the NTQ and CWS to give effect to the review report's recommendations. The department explained the proposed changes at a briefing for the committee held on 19 March 2014:

*These amendments implement a government commitment to allow the Currumbin Wildlife Sanctuary and the National Trust of Queensland to transition to a company limited by guarantee. Consequential amendments are also required to the Duties Act 2001 and the Queensland Heritage Act 1992 to reflect the new governance arrangements.*

*Once independent of government, the National Trust and Currumbin Wildlife Sanctuary will no longer be subject to an annual audit under the Queensland Auditor-General Act 2009.*

*Additionally, the requirement for the National Trust to submit an annual report to the Department of Environment and Heritage Protection will be removed, as will the requirement to seek ministerial support and Governor in Council approval for actions such as selling property. However, the National Trust will continue its work of promoting the current appreciation of Queensland's national and built heritage and the Currumbin Wildlife Sanctuary, the largest and most visited property of the trust, will also continue its not-for-profit operation.*<sup>21</sup>

Mr Stephen Sheaffe, President of NTQ, explained in his evidence at the public hearing on 2 April 2014 that many people believe that NTQ is government funded, though it actually receives no funding.

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<sup>19</sup> Webbe, S. and Weller, P. 2009, *Brokering Balance: a Public Interest Map for Queensland Government Bodies – Part B Report*, Department of Premier and Cabinet: Brisbane, March, pp.4-5.

<sup>20</sup> Webbe, S. and Weller, P. 2009, p.110.

<sup>21</sup> Shirreffs, L. 2014, *Public briefing transcript*, 19 March, p.6.



*We cannot apply for grant funding in Queensland because we are a statutory body. We approach investors and they say, 'No, you're a government body. You're a statutory body. Therefore, we're not going to give you any money.' So money is a big part of the reason why we seek to sever this tie with government and be created as a private organisation with the same charitable objects.*<sup>22</sup>

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<sup>22</sup> Sheaffe, S. 2014, *Draft public hearing transcript*, 2 April, p.28.



### 3. Examination of the Environmental Offsets Bill 2014

In its examination of the Bill, the committee considered a range of issues that were raised in written submissions and in evidence at the committee's public hearing on 2 April 2014. A summary of issues raised in submissions, with advice provided by DEHP<sup>23</sup> in response is at **Appendix D** of this report.

#### General offsets policy principles and framework

The written submissions and comments made at the public hearing generally showed strong support for the intent of the Bill to create a single and integrated environmental offsets framework. Submitters also acknowledged that the new framework would go some way towards reducing green tape, streamlining existing policies and reducing duplication across jurisdiction.

Cement, Concrete and Aggregates Australia (CCAA) in their submissions stated:

*CCAA is very supportive of the Queensland Government's effort to facilitate a coordinated offsets framework to reduce green tape, remove inconsistency between specific-issue offset policies, remove duplication of environmental assessments, and provide for strategic offset delivery. The current environmental offset policy is complex, and the management of offsets represents a significant regulatory burden on industry, leading to significant costs and delays to project development, without any significant environmental benefit.*<sup>24</sup>

The Urban Development Institute of Australia (UDIA) noted support for the Bill in their submission:

*The Institute is supportive of the overarching intent and premise of environmental offsets and acknowledges the consultation process which has been initiated by the Department of Environment and Heritage Protection.*<sup>25</sup>

Ms Berlanda Ezzy, Environmental Offsets Coordinator for AMEC Environment and Infrastructure (AMECE&I) noted at the public hearing on 2 April 2014:

*The first comment is one of support for what the government is seeking to do in terms of consolidating the five individual offsets policies we have at the moment at the state level into one consolidated policy. I think there is definitely merit in doing that because the current system is quite complex in terms of not only understanding which policy actually applies to your development but they are all slightly different in what they would allow you to do to meet your offset obligations.*<sup>26</sup>

However, whilst there was general endorsement for the intent of the Bill, submitters and witnesses raised a number of concerns with the Bill in relation to its general purpose and intent, efficacy in reaching its intended objective and whether all matters are adequately addressed.

Organisations such as the Queensland Conservation Council (QCC), Environmental Defenders Office Queensland (EDOQ), the Mackay Conservation Group (MCG) and others stated an outright disapproval for 'offsets' in general:

*As a general principle QCC does not support the concept of offsets as a means of compensating for environmental damage. Whilst there may be an argument for degraded landscapes being subject to an offsets regime, there is no justification for endangered, of concern or essential habitats being considered for an offset.*<sup>27</sup>

<sup>23</sup> DEHP, 2014, *Correspondence*, 14 April.

<sup>24</sup> Cement, Concrete and Aggregates Australia, 2014, *Submission No. 9*, p.1.

<sup>25</sup> Urban Development Institute of Australia, 2014, *Submission No. 18*, p.1.

<sup>26</sup> Ezzy, B. 2014, *Draft public hearing transcript*, 2 April, p. 21.

<sup>27</sup> Queensland Conservation Council, 2014, *Submission No. 21*, p. 2.

*It is an established fact that the natural environment is in a declining condition and that flora and fauna are subject to many threatening processes. As a conservation organisation, we strongly support ecological sustainable development principles striving to achieve a balance among ecological sustainable developments, society needs and biodiversity conservation. Against this background we are opposed to offsets as it is a mechanism to permit development in places where it should not occur.*<sup>28</sup>

*We are very concerned about the use of offsets to allow large scale inappropriate development and mines that might otherwise never be built and the legacy that will be left... We are also concerned about the underlying belief implicit in this Bill [that] an offset will actually work to prevent further biodiversity loss in their region.*<sup>29</sup>

Several submitters questioned the scientific basis and evidence upon which the Queensland offsets framework had been reviewed and developed, and noted that the Bill did not include any statutory evaluation and reporting requirements.

For example, Dr Martine Maron, Senior Lecturer in Environmental Management at the University of Queensland, stated at the public hearing on 2 April 2014:

*Offset policies around the world are not working very well. There are not really any examples of successful offset schemes that really achieve their objectives. When you look at the way they are designed, it is quite clear as to at least one of the reasons why that is the case. They are poorly designed. They are in fact often not even designed to achieve their headline objective.*<sup>30</sup>

The QCC stated in their submission:

*Queensland has had a number of offset programs in place for several years, yet the State has not provided evidence that it has achieved any success... assessment needs to be made and completed before the State even considers or proceeds with a new Environmental Offsets Bill.*<sup>31</sup>

Mr Des Boyland, Campaigns Manager for Wildlife Queensland (and representing the QCC) noted at the public hearing on 2 April 2014:

*Our organisations have many concerns about the Bill... The first aspect of particular concern is that it is our view that the case for offsets to achieve a positive conservation outcome has not been made. Despite having offsets arrangements in place for several years, there is no assessment available to the public on the performance of those offsets. This should have been the first thing done before any consideration of a new policy... 'Build it and they will come' does not necessarily work in nature.*<sup>32</sup>

The EDOQ submitted:

*Given that many scientists, researchers, conservation groups and the community hold much doubt that offsets actually work, there needs to be clear reporting on the effectiveness of the offsets (not just auditing) including the development impacts and how effective offset conditions have been in replacing the lost values. This could be achieved as a supplementary report to the quadrennial State of the Environment Report Qld.*<sup>33</sup>

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<sup>28</sup> Boyland, D. 2014, *Draft public hearing transcript*, 2 April, p.6.

<sup>29</sup> Mackay Conservation Group, 2014, *Submission No. 11*, p. 1.

<sup>30</sup> Maron, M. 2014, *Draft public hearing transcript*, 2 April, p.22.

<sup>31</sup> Queensland Conservation Council, 2014, *Submission No. 21*, p. 3.

<sup>32</sup> Boyland, D. 2014, *Draft public hearing transcript*, 2 April, p.7.

<sup>33</sup> Environmental Defenders Office Queensland, 2014, *Submission No. 40*, p.12.

AgForce and the Environment Institute of Australia and New Zealand – South East Queensland Division (EIANZ) noted in their submissions what they considered to be a bias in the proposed offsets framework towards the development industry:

*The framework at the moment seems to read as though it is for big business, for mining or construction or things like that. So we would like to see it tested on the ground for agriculture. We have had to provide offsets in the past, so they are well aware of the offsets process. We would just like to know that the framework that is being developed at the moment is not going to cause any implications for them in terms of being able to develop their land and not being able to provide the offset because it is out of their reach.*<sup>34</sup>

*The proposed Bill and Policy appears to the Institute to have been written in response to present difficulties in establishing and enhancing offsets (e.g. land use conflicts and limited knowledge regarding restoration science), without focusing on the likely outcomes of implementation. We are not convinced that offsets will achieve the desired goal of protecting biodiversity in many cases.*<sup>35</sup>

### DEHP Advice

In response to submitters' concerns about the performance of offsets, the department advised the committee:

*Environmental offsets are not a new initiative. Offsets are now an established component of impact assessment and management in Australia and around the globe.*

*The department undertook a consultative review of existing offsets policies and this identified inadequacies with the current offset regime including the ease with which offset outcomes can be reviewed. The Bill mandates that offset delivery plans for proponent driven offsets include provisions for monitoring and reporting. In addition, all offset decisions must be recorded in a publically available register.*

The committee asked the department to advise what monitoring and evaluation activities will be undertaken by the department to assess the effectiveness of offsets, and how the performance of offsets and the framework will be reported.

The department advised:

*In relation to [proponent driven offsets (including those delivered by third parties through agreement)], the requirements for an 'offset delivery plan', under clause 18(5)(c) include a requirement for the delivery plan to have transparent governance arrangements including being able to be readily measured, monitored, audited and enforced. Clauses 17 and 21 of the Bill require the proponent and persons acting on behalf of the proponent, to comply with the offset delivery plan.*

*The agency applying the legislation that calls up the offset will be required to monitor offset outcomes in accordance with these requirements. DEHP will do so where it is the agency's responsibility under the relevant assessment legislation. This will include conditions imposed by:*

- *DEHP under the Environmental Protection Act 1994 or Nature Conservation Act 1992; and*
- *DSDIP, for which EHP has been assigned compliance and enforcement responsibility in accordance with s255D(3) of the Sustainable Planning Act 2009.*

<sup>34</sup> Badenoch, T. 2014, *Draft public hearing transcript*, 2 April, p.13.

<sup>35</sup> Environment Institute of Australia and New Zealand, 2014, *Submission No. 14*, p. 1.

*In relation to [offsets delivered through the financial settlement account (including strategic investment corridors and DBMPs)], where the State has entered into a contractual arrangement for delivery of on-ground outcomes as a result of a financial settlement payment, DEHP will be responsible for monitoring the performance of the offset.<sup>36</sup>*

In relation to public reporting and evaluation of offsets programs and projects, DEHP advised:

*Reporting and monitoring of compliance with offset conditions will be addressed the same as any other condition of an authority. For conditions that DEHP administers, the reporting framework is the agency's Annual Compliance Plan.*

*EHP has been instructed by the Queensland Government that it will need to produce an annual publication of the acquittal of the state's environmental offset account receipts and allocations from financial settlement payments. This report will be provided to the Minister.<sup>37</sup>*

### **Committee Comment**

The committee notes the views expressed by stakeholders however believes that, notwithstanding the issues detailed further within this report, that the Bill represents an improvement to the current approach to offsets in so much as it reduces inconsistencies and duplication across multiple policies, introduces greater flexibility in offset delivery for industry and adopts a more strategic approach to offset management and monitoring. Accordingly, the committee is recommending the Bill be passed, subject to the amendments detailed further in the report.

The committee supports the view that the environment has particular ecological, economic, cultural and historic value to Queensland and that sustainable development will be important for preservation of these values for future generations. The offsets framework is one approach to ensure that economic growth and development can occur at the same time as affording Queensland's unique and vulnerable species and environments the protection required and expected by the community.

The committee has also noted research and evidence regarding past offset efforts which raise questions about the risks for biodiversity associated with offset delivery and hopes that the new framework will lead to improved conservation outcomes. However, as this Bill represents a fundamentally new approach to offset delivery and management in Queensland, the committee believes the operation and performance of the Queensland Environmental Offsets framework (inclusive of the Act, regulation, policy, guidelines and financial calculator) should be reviewed within a suitable timeframe following commencement of the Act.

The committee suggests that the review may also include scope to consider other matters at the discretion of the Minister such as relevant scientific evidence, outcomes of other reviews/inquiries (for example reviews conducted by the Productivity Commission, COAG, and/or the Senate, identification of opportunities for investment into strategic offset corridors and other research, and development of offsets markets.

### **Recommendation 1**

The committee recommends that the operation and performance of the Queensland Environmental Offsets Framework be reviewed within four years of its commencement, and that the outcomes of that review be reported to the House.

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<sup>36</sup> DEHP, 2014, *Correspondence*, 10 April.

<sup>37</sup> DEHP, 2014, *Correspondence*, 10 April.

## Best practice policy principles for environmental offsets

Several submitters raised concern that the new offsets framework (inclusive of the legislation and policy) did not adequately reflect generally accepted environmental principles such as ecologically sustainable development (Submissions 21, 32, 40), the 'avoid, mitigate and offset' decision hierarchy (Submissions 7, 19, 21, 29, 32, 37, 39, 40, 41) and the Business and Biodiversity Offsets Programme (BBOP) principles<sup>38</sup> currently reflected across Queensland's five existing offsets policies and in the EPBC Act offsets policy (Cwth) (Submissions 2, 13, 10, 15, 32, 40, 41).

For example, the Queensland Regional NRM Groups Collective Ltd stated in their submission:

*Every jurisdiction across Australia, and the world, which implements environmental offset frameworks, adopts a standard hierarchy for decision-making for assessment decisions. There is no provision or indication in the Bill to incorporate this standard for decision-making. While the guidance material which supports the Biodiversity State Interest in the State Planning Policy outlines the hierarchy in draft form, we believe it is sufficiently important to reference the hierarchy in the Bill to ensure there is no confusion.*<sup>39</sup>

The Alliance to Save the Hinchinbrook Inc (ASH) submitted that:

*... the Bill lacks any reference to principles crucial to offsets policy: no net loss, ESD<sup>40</sup>, precautionary principle, intergenerational equality, scientific certainty, biological diversity and ecological integrity [EPBC Act s3A] or other principles of the EPBC Act(2006).*<sup>41</sup>

Similarly, Noosa Council noted their concern as follows:

*Principles of Environmental Offsets are not stated in the Offsets Bill and need to be clearly articulated at all levels of legislation, policy and implementation guidelines. The principles stated in the current Queensland Biodiversity Offset Policy are recommended for inclusion in the Bill [as they are considered] particularly important for safeguarding protected areas.*<sup>42</sup>

## DEHP Advice

The department responded that:

*The offset framework uses the Commonwealth and existing Qld Biodiversity Offset Policy principles as a foundation but these have been streamlined. The offset principles are similar to [those suggested in submissions].*

*Under clauses 7 (what is an environmental offset), 8 (what is a significant residual impact) and 14 (imposing offset condition) – offsets remain a last resort option. However an offset cannot be used to authorise an activity that is not otherwise permitted.*

*The offset principles are [also] outlined in clause 11 (conservation outcome achieved by an environmental offset) and 18(4) and (5) of the Bill – the principles must be addressed in an offset delivery plan for the offset. This is the primary instrument under the Bill for ensuring the offset achieves a conservation outcome. The principles are also outlined in section 2.2 (size and scale of the offset) and 2.7 (characteristics of the offset site).*

*ESD, the precautionary principle and intergenerational equity are not referenced in the Bill, as this is more relevant to the impact assessment and approval process established under*

<sup>38</sup> The Business and Biodiversity Offsets Programme (BBOP) is a collaboration of over than 75 member organisations including companies, financial institutions, government agencies and civil society organisations, who work as part of an advisory group to research and developing best practice on biodiversity offsets and conservation banking worldwide.

<sup>39</sup> Queensland Regional NRM Groups Collective Ltd, 2014, *Submission No. 47*, p.3.

<sup>40</sup> ESD – environmentally/ecologically sustainable development.

<sup>41</sup> Alliance to Save the Hinchinbrook Inc, 2014, *Submission No. 32*, p.4.

<sup>42</sup> Noosa Council, 2014, *Submission No. 15*, p. 2.

*other legislation. This consideration occurs in determining whether an offset condition should be imposed under that legislation.*

## Discussion

The existing QGEOP contains seven key overarching principles that apply to the selection design and management of environmental offsets in Queensland. These are also reflected consistently across the four issue-specific offsets policies currently in effect and include:

1. *Offsets will not replace or undermine existing environmental standards or regulatory requirements, or be used to allow development in areas otherwise prohibited through legislation or policy;*
2. *Environmental impacts must first be avoided, then minimised, before considering the use of offsets for any remaining impact;*
3. *Offsets must achieve an equivalent or better environmental outcome;*
4. *Offsets must provide environmental values as similar as possible to those being lost;*
5. *Offset provisions should minimise the time-lag between the impact and delivery of the offset;*
6. *Offsets must provide additional protection to environmental values at risk, or additional management actions to improve environmental values; and*
7. *Offsets must be legally secured for the duration of the offset requirement.*<sup>43</sup>

Equally the Commonwealth's EPBC Offsets Policy reflects similar policy principles that are applied in determining the suitability of offsets.

## Committee Comment

The committee acknowledges concerns raised by stakeholders that offset policy principles are no longer explicitly listed in the Bill or draft Queensland Environmental Offsets Policy which may cause some ambiguity for industry developing and proposing offsets. The committee notes the department's advice that the Commonwealth and existing Queensland Biodiversity Offset Policy principles have been streamlined but are reflected generally across the Bill and the draft offsets policy. The committee is therefore confident that the expectation is that offsets continue to meet the same standards.

However the committee is of the view that transparency and certainty is important for all stakeholders and believes it would help proponents to clarify their obligations, and assist assessment agencies in their interpretation, if the policy principles were explicitly explained upfront in the Queensland Environmental Offsets Policy (new) including reference to:

- Offsets do not allow unacceptable developments to proceed;
- Environmental impacts must first be avoided and then mitigated (decision hierarchy);
- Offsets should aim to achieve an 'improve or maintain' outcome (ecological equivalence); and
- Offsets must be additional to what is already required (additionality).

## Recommendation 2

The committee recommends that the Queensland Offsets Policy lists the seven policy principles for offsets, and states that offsets must conform to these principles.

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<sup>43</sup> Environmental Protection Agency, 2008, *Queensland Government Environmental Offsets Policy*, pp.11-2.  
< <http://www.epa.qld.gov.au/publications?id=2501> accessed 12.5.14>



## Capped offset ratio

The Committee's attention was also drawn to the Queensland Government's policy decision to cap the extent of environmental offsets to impacts at a ratio of 1:4 as stated in the Queensland Environmental Offsets Discussion Paper:

*The framework ... gives the option of providing a financial settlement offset or a proponent driven offset - both of which will be capped at a maximum requirement of 1:4 (other than for protected area estate offsets).<sup>44</sup>*

Further at the public briefing Minister Powell explained:

*The decision to cap it [the financial offset calculator] at one to four was a policy decision of the government. The reason we have done that is because of the strategic approach being taken by this offset Bill... means that unlike the previous model where you ended up with ad hoc protected areas dotted here, there and everywhere around the state where there was significant concern whether the environmental impacts you were having could actually thrive, where there was therefore a suggestion that you go a lot higher potentially one to eight and so on, what we are achieving is a better outcome for the environment by taking that strategic approach which allows us to make a decision to cap it at one to four. What I will add is that... [the] one to four cap does not apply to matters of national environmental significance that is up to the Commonwealth to decide how they utilise the same calculator, nor does it apply to protected area estate.<sup>45</sup>*

The majority of comments by submitters expressed either general support for, or opposition to, the capped offset ratio. For example, Ms Hayter, Director of Environmental Policy at the Queensland resources Council (QRC) in her evidence stated:

*The introduction of the cap on the offset multiplier is a way to balance out and to encourage offsetting across the broader picture. Not everybody, of course, even in our sector, fully supports the concept of more than a one multiplier, but this does give the opportunity for balancing that out for everybody.<sup>46</sup>*

The Property Council of Australia (PCA) noted in their submission:

*The introduction of a capped multiplier of 1:4 (for prescribed environmental matters, other than protected areas) is a vast improvement on the original multipliers, and is supported by the Property Council. This limitation should be explicitly stated in the Bill, so that it applies to both the State and local governments. Further, it should apply to both proponent-driven offsets and financial contribution offsets.<sup>47</sup>*

The opposing view expressed in submissions and evidence presented at the public hearing was that restricting offset requirements to a ratio of 1:4 limits the opportunity for an offset to successfully deliver a conservation outcome relevant to the impacted matter.

For example, the EDOQ submitted:

*We make a single preliminary observation that a maximum capped ratio of 1:4 remains in the Policy. Nearly all conservation groups in Queensland oppose this maximum cap on the basis that it is not scientifically based. Its only purpose is to limit the liability of those who are responsible for significant impacts on Queensland's protected species in cases where the science warrants a higher ratio to be applied. It is concerning that this maximum cap remains*

<sup>44</sup> Department of Environment and Heritage Protection, 2013, *Queensland Government Environmental Offset Framework - Discussion Paper*, November, p.1.

<sup>45</sup> Powell, A. 2014, *Draft public briefing transcript*, 2 April, p. 4.

<sup>46</sup> Hayter, F. 2014, *Draft public hearing transcript*, 2 April, p. 1.

<sup>47</sup> Property Council of Australia, 2014, *Submission No. 22*, p. 2.

*in the Policy, despite not being a feature of the EPBC offsets policy (which the Bill seeks to replace) and that certainty for developers already exists with the use of the offsets calculator. EDO Qld continues to object to the maximum capped ratios.<sup>48</sup>*

Dr Maron commented:

*The question is one what to four what? We are talking in units of area. That does not necessarily make any sense whatsoever. You are talking about losing one hectare perhaps of habitat and you are talking about the ratio of that to the area over which you might do an offset action. This is a ratio of apples to oranges.... Actually what we are aiming for in an improve or maintain setting for offsets is a one to one ratio but it has to be one impact to one benefit. So we have to think more carefully about how we do this. That is one of the problems with using this arbitrary [capped ratio] approach.<sup>49</sup>*

The QCC noted in their submission that the state imposed maximum 1:4 direct offset ratio represents a significant difference in approach that may prevent the delivery of a conservation outcome:

*By capping the condition to a maximum ratio, the policy undermines its own intent.<sup>50</sup>*

At the committee's public hearing, Ms Rana Koroglu commented on behalf of the EDOQ:

*It [the capped ratio] is not something that appears in the Commonwealth offsets policy. It is a new concept. We consider that, if certainty is required, certainty comes through the use of the calculator which we do not necessarily support but that provides certainty to proponents. The one to four ratio: I am not aware of what scientific basis that has.<sup>51</sup>*

#### **DEHP Advice:**

In response to the concerns regarding the capped offset ratio, DEHP advised the committee that:

*The maximum size of the offset calculation is the government's policy position. The new offsets framework is designed to achieve a conservation outcome through strategic approaches to environmental offsets such as:*

- *the identification of strategic offset corridors*
- *the pooling of financial settlement payments, and*
- *the use of direct benefit management plans to address threatening processes to a prescribed matter and which can straddle multiple tenures.<sup>52</sup>*

Further, to the extent that the capped ratio may be inconsistent with the Commonwealth EPBC Act offsets policy, the department commented that:

*In the absence of Commonwealth accreditation of the State's offset and assessment framework, the Commonwealth will continue to assess and condition requirements for impacts on MNES.<sup>53</sup>*

#### **Committee Comment**

The Committee has noted the arguments made both for and against the capped ratio as well as the Minister's and department's statements explaining the basis for the capped ratio. The committee agrees that a more strategic approach to offset delivery will likely improve the overall outcome achieved from environmental offsets.

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<sup>48</sup> Environmental Defenders Office Queensland, 2014, *Submission No. 40*, p.1.

<sup>49</sup> Maron, M. 2014, *Draft public hearing transcript*, 2 April, p.22.

<sup>50</sup> Queensland Conservation Council, 2014, *Submission No. 21*, p. 5.

<sup>51</sup> Koroglu, R. 2014, *Draft public hearing transcript*, 2 April, p.8.

<sup>52</sup> DEHP, 2014, *Correspondence*, 14 April.

<sup>53</sup> DEHP, 2014, *Correspondence*, 14 April.

Given the criticism levelled at the ratio cap at 1:4, the committee is of the view that the cap should be reviewed in consultation with key stakeholders within an appropriate period following commencement of the Bill to ensure it provides for sufficient offset amounts to meet commitments. Accordingly the committee recommends that the cap which applies to offsets ratio be evaluated as part of the review of the operation and performance of the Queensland Environmental Offsets Framework recommended at Recommendation 1.

### Recommendation 3

The committee recommends that offsets ratio cap be considered during the review of the operation and performance of the Queensland Environmental Offsets Framework recommended at Recommendation 1.

## Rehabilitation as offsets

The Queensland Resources Council (QRC) highlighted in their submission that the resources sector was seeking specific provisions in the Bill and policy framework to allow for rehabilitation of land to constitute all or part of an offset. They noted that land rehabilitation is often a condition of approval for major projects and resource authorities, and argued that rehabilitation efforts should be considered when determining the size and scale of required offset. They also argued for the recognition of sites rehabilitated under previous authorities such that they could be used for future offset requirements.

*QRC has long argued that rehabilitation of an impact should be considered when assessing what the significant residual impact is of an activity. It has been the policy intent of the Queensland Government in the past to recognise (to some extent) that rehabilitation should reduce the offsetting obligation of a proponent... However, there is no recognition in the Bill, particularly in the context of significant residual impact, of the ability for the Department to consider rehabilitation as reducing the amount of land to which an offset may need to be provided.*

*Recognition of an offset on rehabilitated land that goes above and beyond the rehabilitation requirements would encourage proponents to leave the land on which the activity was taking place in a better condition than prior to the resource activity and has the potential to help overcome local community concerns with respect to the impact of resource activities, as well as driving better environmental outcomes overall.<sup>54</sup>*

### DEHP Advice

The department advised that:

*Whether or not a proposed rehabilitation program would mitigate impacts to the degree that there is no significant residual impact will be determined at the assessment phase and is outside the scope of the Bill.*

At the Public Briefing on 2 April, Mr Scott Buchannan, DEHP's Director of Biodiversity Implementation further elaborated:

*Essentially during the assessment process the rehabilitation program that would be put in place is part of the assessment of the mitigation of the impacts. If the rehabilitation is going to take a certain pathway, then it can count as mitigating the impacts, making sure that the impacts are minor in nature and temporary... Rehabilitation is part of what they need to do as part of their operational procedures. What we are offering is if their rehabilitation is of good enough quality it can be offered as an offset down the track for further opportunities,*

<sup>54</sup> Queensland Resources Council, 2014, *Submission No.5*, pp.14-5.

*but it should not be an offset for that project because it is part of what they are required to do.*<sup>55</sup>

**Committee Comment:**

The committee notes the position of the Queensland Resources Council that rehabilitation efforts be recognised within the offsets framework but agrees with the department that rehabilitation does not satisfy the requirement for additionality and constitutes what would ordinarily be an expectation of the proponent under existing legislation; that is, to firstly avoid, and then mitigate any adverse impacts before considering an offset. The requirement to rehabilitate *AND* offset adverse impacts resulting from development activity is a reasonable expectation which extends to all developments, not just those undertaken for resource and extractive purposes.

The committee also notes the advice provided by the department that the policy will establish a clear framework for the suitability of offset sites and, as such, rehabilitated sites may not always prove suitable locations for offset delivery to automatically warrant a rehabilitated site as a suitable offset site even when the rehabilitation efforts go ‘above and beyond’ what was required.

Therefore the committee does not support or recommend any additional provisions in relation to rehabilitation, and believes that the provisions made for legally securing offsets provides sufficient mechanisms to support the resource sector to establish offsets in advance of future projects.

## **Offset delivery sequencing issues**

Provisions in the Bill outline a new approach in relation to proponent driven offsets. These are offsets delivered and managed directly by the proponent or by a third party through agreement with the proponent, and which enables the commencement of disturbance activities prior to the offset site being legally secured.

Clause 18 (2) outlines that a proponent must not commence any activity to which offset conditions relate without first notifying the administering agency of their preferred delivery approach and agreeing with the agency about the delivery of the offset.

Subsection (3) requires any notice of election that involves a proponent-driven offset to be accompanied by an offset delivery plan.

*(3) A notice of election that involves a proponent-driven offset must be accompanied by a plan about how the authority holder will undertake the offset (an **offset delivery plan**).*

Subsection (4) describes what must be included in an offset delivery plan for a proponent-driven offset, including:

*(a) describe how an environmental offset will be undertaken and the conservation outcome will be achieved; and*

*(b) be signed by the authority holder and any entity that owns land on which the environmental offset will be undertaken;*

Subsection (5) describes other matters which must be addressed in the offset delivery plan.

Clauses 20 & 21 define and explain the requirements for proponent driven offsets.

Proponent driven offsets may be delivered directly by the proponent of a development (ie the holder of an environmental authority), or indirectly by another party such as an offset broker on behalf of the proponent. These offsets may be delivered on land owned by the proponent or on other land.

Clause 21 states that this section applies if, under an agreed delivery arrangement, an authority holder is to deliver an environmental offset in whole or in part by a proponent-driven offset.

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<sup>55</sup> Buchannan, S. 2014, *Draft Public briefing transcript*, 2 April, p.5.

Subsection (2) establishes an authority holder's requirement to comply with an agreed delivery arrangement, including the offset delivery plan, as a condition of the environmental authority as follows:

*(2) It is a condition of the authority that the authority holder must comply with the agreed delivery arrangement, including the agreed offset delivery plan.*

## Issues

Concern with these provisions within the Bill were brought to light across almost every submission received to the inquiry. Whilst the majority of submitters welcomed the additional options for offset delivery, there was a strong divergence of views in relation to the appropriate sequencing of offset delivery and commencement of disturbance activities.

Firstly, a number of submitters (Submissions 11, 12, 32, 37 and 40) argued that it was not sufficient to only require that an offset delivery plan and 'agreement' to deliver the offset be in place prior to development commencing. Their preference was for environmental offsetting activities to have at least started prior to development and disturbance activities.

For example, the Fraser Coast Branch of the Wildlife Preservation Society of Queensland (FCWPSQ) stated in their submission:

*Timing will be absolutely critical where another species depends on the ecosystem for its vital needs e.g. trees for koalas will need to be 20 years old before useable habitat will be created.*<sup>56</sup>

EDOQ proposed that the Bill be amended to require a proponent to legally secure the offset area prior to the commencement of the development activity.<sup>57</sup> EDOQ also noted there is an equivalent provision in clause 23 for financial settlement offsets that requires the payment upfront, and proposed that the same should be required of proponent-driven offsets to secure the area upfront to give certainty to DEHP and the community that the offset can and will be delivered prior to the area being destroyed.<sup>58</sup>

Agforce argued that offset should be delivered, or at least commenced, where the proponent has elected a financial settlement option (that is that the fund has commenced investment in a suitable site):

*The framework only requires that the size, impact and cost of the offset be calculated and a financial settlement agreement reached at which point a proponent may undertake the work that produces the impact requiring an offset. For an offset to be effective it must ensure there is an actual offset prior to impacts rather than just a monetary payment. In the absence of either of these there is a risk that an offset fund will be used to advance projects or development without the significant impacts actually being offset.*<sup>59</sup>

Other groups supported an approach which allowed offsets to be delivered after commencement of disturbance activities or delivered in stages coinciding with the point at which the impact occurs. However the QRC, CCAA, AMECE&I and others (Submissions 18, 22, 27 and 42) were concerned that the Bill did not meet their expectations in relation to offsets sequencing and staged offset delivery.

Specifically, submitters noted the difficulty and cost involved in reaching agreement with landholders at the pre-approval stage, and argued that the requirement at clause 18 (4)(b) for an offset delivery plan to 'include the agreement of the owner of the land on which it is proposed to deliver the offset' may limit the ability of proponents to stage the delivery of offsets:

<sup>56</sup> Fraser Coast Branch of the Wildlife Preservation Society of Queensland, 2014, *Submission No. 12*, p. 2.

<sup>57</sup> EDOQ, 2014, *Submission No. 40*, pp. 10-1.

<sup>58</sup> EDOQ, 2014, *Submission No. 40*, p. 11.

<sup>59</sup> AgForce, 2014, *Submission No. 49*, p. 7.

*AMEC[E&I] don't see an issue with preparing an offset agreement prior to approval being granted however would like to note that obtaining consent from the landowner and registered interests including any registered interests can take time therefore proponents should look to identify an offset site/s as soon as possible to ensure these consents are in place and do not delay the project if this option is adopted.<sup>60</sup>*

*Given the nature of certain resource activities, it is critical that the ability to stage offsets be recognised in the Bill rather than leaving it to the Regulation and draft Policy. Further to this, QRC is concerned that despite the assurance of DEHP that staging of offsets will continue to be available to proponents, section 18(4)(b) of the Bill would appear to constrain this requirement. It is worth noting that this section has potential ramifications for proponents beyond those seeking to stage their offsets, and could have implications for any proponent driven offset.<sup>61</sup>*

Related to the issue about staging, submitters requested clarification regarding the legal trigger point for financial settlement, noting that it was not sufficiently clear in the Bill when payment of the funds would be required in relation to the overall development approval process.

At the public hearing Mr MacLaine of the Urban Development Institute of Australia (UDIA) and Mr Mountford of the Property Council of Australia (PCA) told the committee:

*Mr MacLaine: Sometimes a project may be viable looking at it as a whole but, because of the amount of money going out the door early in the process for approvals, referrals, construction, all the investigations, difficulty in obtaining finance can stop a development going forward. In this space..., we have always said it would be beneficial for the development industry if that payment can occur at the latest possible point in the development process because it will help the process... Where that trigger point is where you become legally liable to make that payment—some work would need to be done to determine an appropriate trigger point. I guess our general point is that it should be as late as possible because that will ensure you still get the environmental offset, but development can proceed.<sup>62</sup>*

*Mr Mountford: Absolutely. I think a number of larger, particularly greenfield, projects will roll out in stages and the impact on the landscape will occur in stages as well... the ability to pay that offset at the latest possible point, being able to stage, is really important. One of the things that we picked up on in the Bill is that it may be difficult for that staging to occur where you are providing a pure financial offset as opposed to providing a land based offset. So we would be keen to make sure that the final Bill actually allows for that staging to occur both if you are providing a land based offset or buying into the financial calculator.<sup>63</sup>*

#### **DEHP Advice**

In relation to comments raised by numerous submitters about the requirements for proponents to legally secure the offset area prior to destroying the environmental matter, DEHP advised:

*Adequate safeguards are in place to address these issues.*

*Under clause 18(2) (election about delivery of offset condition) development must not commence until an offset delivery plan for the site is approved. An offset delivery plan must detail the timeframe for legally securing the area, and address as far as possible the risks of the offset failing to achieve the conservation outcome. Once approved, clause 21*

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<sup>60</sup> AMEC Environment & Infrastructure, 2014, *Submission No. 10*, p. 4.

<sup>61</sup> Queensland Resources Council, 2014, *Submission No. 5*, p. 9.

<sup>62</sup> MacLaine, D. 2014, *Draft public hearing transcript*, 2 April, pp. 19-20.

<sup>63</sup> Mountford, C. 2014, *Draft public hearing transcript*, 2 April, p. 20.

*(requirement for proponent-driven offset) requires the proponent to comply with approved delivery arrangements.*

*This clause ensures that the commencement of an activity that would result in a significant residual impact to a prescribed environmental matter would not be undertaken until it could be identified that a suitable environmental offset exists to accommodate for the loss incurred at the development site.*

In relation to staged offset delivery, the department advised:

*The delivery of staged offsets is not ruled out under the Bill however as section 2.4.1 of the environmental offsets policy indicates, the decision to authorise the staging of operations and the process for ongoing assessment requirements is outside the scope of the Bill – this matter is considered under the impact assessment and approval legislation.*

*An offset delivery plan applies to an identified offset site for each stage of the operations and therefore must be signed by the entity who owns the land.*

*As proponents will no longer be required to legally secure the site before works commence, development may now commence one year earlier.*

*An environmental offset agreement may apply to an offset for a single stage of the development.*

*EHP will seek further advice on these provisions.*

#### **Committee Comment:**

The committee acknowledges that there are opposing views in relation to clauses 18, 21 and 21 concerning the delivery and identification of an offset prior to commencement of a prescribed activity. The committee recognises the difficulty in trying to balance the need for efficiency and reduce costs for proponents whilst also being accountable for the offsetting of significant residual impacts associated with sustainable development.

The committee notes the department's advice that clause 18(5)(a)-(d) place significant onus on a project proponent to demonstrate their ability to deliver the offset and that other provisions within the Bill will hold proponents accountable to the delivery of the offset as a condition of their approval.

Notwithstanding the above comments, the committee also notes concerns raised by industry regarding clause 18 (4)(b) and the potential implications arising for the ability of industry to 'stage' the delivery of their offset obligations.

While the requirement to identify a suitable offset site and obtain the owner's agreement may cause some delays for proponents, the committee acknowledges the department's advice that this provision ensures a proponent is able to identify a suitable site without the need to legally secure that site prior to commencement of disturbance activities. The committee believes this to be an appropriate safeguard but, due to the concerns of industry about the practicality of this requirement recommends that the Minister report to the House after two years of implementation about how this process is working.

#### **Recommendation: 4**

The committee recommends that the Minister for Environment and Heritage Protection report to the House within two years of the Bill's commencement about the operation of clause 18 requirements in view of the concerns of industry groups about landowner agreements and staging, and any other issues related to sequencing of offset delivery.





## 4. Key provisions of the Bill

The following sections discuss key provisions of the Bill the committee wishes to bring to the attention of the House.

### Clause 3 Purpose and achievement

Clause 3 (1) states that:

*The main purpose of this Act is to counterbalance the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets.*

#### Issues

A number of submitters raised issues with the wording of clause 3, on the basis that this purpose may imply a lower standard of environmental and conservation outcome, particularly in the event of legal challenge.

For example the Wide Bay Burnett Environmental Council noted:

*There are serious concerns regarding the phrasing of the purpose of the Act, in that this definition could ultimately result in the loss of environmental values for a prescribed environmental matter given the legal status of such a definition and the application of it via broad and sometimes contrary interpretations.*<sup>64</sup>

ASH stated submitted that:

*... 'Counterbalance' is not the same as 'compensation' (EPBC Act) and cannot require the same standard of performance (in offset equivalence).*<sup>65</sup>

The EDOQ proposed in their submission that:

*... the objects of the Bill be amended to refer to the principles of ESD and referring to 'compensation' rather than 'counterbalancing' significant residual impacts to bring the Bill more in line with Commonwealth terminology.*<sup>66</sup>

#### DEHP Advice

In response, the department advised the committee that:

*The bill has been drafted in accordance with government policy for environmental offsets and is consistent with the Commonwealth approach... The Australian Macquarie Dictionary defines compensate 'to counterbalance'.*<sup>67</sup>

#### Discussion

The importance of the purpose of an Act is explained in section 14A of the *Acts Interpretation Act 1954*:

#### **14A Interpretation best achieving Act's purpose**

*(1) In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.*

<sup>64</sup> Wide Bay Burnett Environmental Council, 2014, *Submission No. 41*, p. 2.

<sup>65</sup> Alliance to Save the Hinchinbrook Inc, 2014, *Submission No. 32*, p.4.

<sup>66</sup> Environmental Defenders Office Queensland, 2014, *Submission No. 40*, p.14.

<sup>67</sup> DEHP, *Correspondence*, 14 April.

From dictionary definitions for ‘compensate’ and ‘counterbalance’, it is clear that the word ‘compensate’ may imply recognition of loss, damage or suffering and makes allowance for benefit or gain equal to and/or greater than the impact. This is as opposed to counterbalance which provides for an outcome that is of equal weight, force or influence and/or to produce equilibrium and does not necessarily give recognition to the status of loss or harm.

Further, review of other offsets policies identified that most policies include an aspirational goal of achieving a net benefit for biodiversity, or at least include an implicit minimum requirement for achievement of ‘no net loss’. The interchangeable use of the terms ‘compensate’ and ‘counterbalance’ was also noted. For example:

- For the purposes of the EPBC Act, the Commonwealth defines an offset as being:  
*... a conservation action that is intended to compensate for the negative environmental impacts of an action, such as development.*<sup>68</sup>  
 Or  
*...measures that compensate for the residual adverse impacts of an action on the environment, after avoidance and mitigation measures are taken..*<sup>69</sup>
- The Draft NSW Biodiversity Offsets Policy defines offsets as ‘measures that provide benefits to biodiversity to compensate for adverse impacts of an action. They assist in achieving long-term conservation outcomes while providing development proponents with the ability to undertake actions that have unavoidable impacts on biodiversity.’<sup>70</sup>
- BBOP define an offset as ‘measurable conservation outcomes resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development after appropriate prevention and mitigation measures have been taken. The goal of offsets is to achieve no net loss and preferably a net gain of biodiversity on the ground with respect to species composition, habitat structure and ecosystem function and people’s use and cultural values associated with biodiversity.’<sup>71</sup>
- Rio Tinto defines offsets as ‘conservation actions designed to compensate for the unavoidable residual impacts on biodiversity’.<sup>72</sup>

### Committee Comment

Given the intent of the new offsets framework is to deliver stronger environmental outcomes and to provide surety to industry as to their offset obligations, the committee considers there is merit in amending clause 3 to align the purpose of the offsets legislation with other jurisdictions and to give recognition to key principles such as ‘no net loss’ and the ‘minimise, avoid, mitigate’ decision hierarchy, as articulated across various sections of the Draft Queensland Environmental Offsets Policy.

<sup>68</sup> Department of Sustainability, Environment, Water, Population and Communities (Cwth), 2013, Q&A: Offsets under national environment law, p. 1. <<http://www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-faq.pdf>> Accessed 13.5.14>

<sup>69</sup> Department of Sustainability, Environment, Water, Population and Communities (Cwth), 2012, *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy*, October, <<http://www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-policy.pdf>> accessed 1.5.14>

<sup>70</sup> Department of the Environment (NSW), 2014, *Draft NSW Biodiversity Offsets Policy for Major Developments*, p.4.

<sup>71</sup> Forest Trends Association, 2012, Business and Biodiversity Offsets Programme - *Guidance Notes to Standard on Biodiversity Offsets*, pp.1-2. <[www.forest-trends.org](http://www.forest-trends.org)> accessed 13.5.14>

<sup>72</sup> Rio Tinto Ltd, 2008, *Rio Tinto and biodiversity – Biodiversity offset design*, p.1.

**Recommendation 5**

The committee recommends, for consistency with the Commonwealth's approach to offsets, that clause 3 be amended to state that the main purpose of this Act is to *compensate* the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets, *after avoidance and mitigation measures are taken*.

**Clause 5 Relationship to other acts**

Under clause 5, the new environmental offsets framework will be binding on all agencies, but is not intended to override the functions or powers of the Coordinator-General (CG) in relation to environmental impact assessment and significant project approval. Further this clause provides that where there is inconsistency between a deemed condition under the Act and a condition issued by the CG, then the latter will prevail.

**Issues**

Submitters raised concern that the exemption was not consistent with the intent of the Bill to improve certainty for industry and transparency of decision making on development applications. For example the QRC submitted that:

*QRC has expressed our concern previously to the government that the exclusion of the Coordinator-General from the scope of the Bill appears to contradict the intent of the Bill in providing 'one touch point' for the provision of offsets in Queensland.... QRC has always advocated that industry supports certainty of process not certainty of outcome, and with no guidance as to how the Coordinator-General will condition offsets, QRC believes that the most certain, transparent and accountable means of conditioning offsets in Queensland is to ensure that all decision makers in Queensland are bound by the Bill.<sup>73</sup>*

Submitters were also concerned that, by virtue of this provision, major development projects with the potential to cause significant environmental impact may not be subject to the same level of environmental standards and compliance requirements as other projects.

The Queensland Murray-Darling Committee Inc. (QMDC) submitted:

*QMDC is most concerned by the Bill's lack of jurisdiction over the Coordinator-General's decisions on the biggest development projects in Queensland. Clause 5 effectively means these projects will have no standards on how offsets are to be applied to their development. This is of concern because when read in the context that there is no statutory judicial review of the Coordinator-General's decisions and conditions, this potentially allows major large scale environmental harm to occur without mitigation.<sup>74</sup>*

EDOQ noted their concern for the CG exemption in their submission as follows:

*This means that the Coordinated-General, who effectively approves the biggest (and often the most environmentally risky projects) in Queensland, is not bound to consider the offsets policy, nor any of the outcomes sought to be achieved by the bill, including being satisfied that all 'cost effective' mitigation measures have been undertaken. Offsets approved by the Coordinator-General are not required to produce conservation outcomes, nor ecological equivalence, nor effective counterbalance, nor any standard at all. The question is then what standards should the Coordinator General apply in delivering environmental outcomes through offsets.<sup>75</sup>*

<sup>73</sup> Queensland Resources Council, 2014, *Submission No. 5*, pp. 8-9.

<sup>74</sup> Queensland Murray-Darling Committee Inc., 2014, *Submission No. 16*, p. 30.

<sup>75</sup> Environmental Defenders Office Queensland, 2014, *Submission No. 40*, p. 4.

## DEHP Advice

The department advised that clause 8(3) does not represent a change of policy but rather clarifies the discretion that currently extends to the CG under the current offsets framework. This provision is not contrary to provisions across existing planning and development legislation which provide similar exemptions for the CG in executing their functions and powers under the SDPWO Act.

For example Part 4 section 14 of the SP Act states:

*(3) Subsection (1) does not apply to the functions and powers of the Coordinator-General under the State Development and Public Works Organisation Act 1971.*

However, the CG is not prevented from applying the principles and requirements of the Bill and associated policy to applications assessed under the State Development and Public Works Organisation Act.

It is not necessarily the case that the CG will not uphold the principles under the offsets policies; in some cases the CG has made decisions which impose greater offset obligations than required under the existing Queensland policies.

Further, in so much as Queensland Environmental Impact Statement (EIS) provisions have been accredited under the current 'assessment bilateral agreement', the CG assessment and decisions relating to MNES are made in accordance with the EPBC Act and EPBC Offsets Policy. It is also established under the SP Act that any stated conditions relevant to a development approval which is a coordinated project, must include, and cannot be inconsistent with, the CG's conditions.

## Committee Comment

Based on the advice provided by the department, the committee is satisfied that clause 5 does not extend any greater power to the Coordinator-General than currently exists and further notes that the Coordinator-General, as assessment manager under the assessment bilateral agreement, is bound to uphold the principles and standards established under the *Environmental Protection and Biodiversity Act 1999 (Cwth)* for the assessment of Matters of National Environmental Significance.

However, the committee takes on board the issues raised by submitters in relation to concerns over transparency and consistency, and suggests that the Deputy Premier and Minister for State Development, Infrastructure and Planning consider the development of guidelines for environmental offsets which may apply to major coordinated projects assessed by the Coordinator-General under the *State Development and Public Works Organisation Act 1971*.

## Recommendation 6

The committee recommends that the Deputy Premier and Minister for State Development, Infrastructure and Planning, in consultation with the Minister for Environment and Heritage Protection, publish guidelines for environmental offsets that may apply to major coordinated projects under the *State Development and Public Works Organisation Act 1971*.

## Clause 7 What is an offset condition and an environmental offset

Clause 7 defines the meaning of 'offset condition' and 'environmental offset' for the purposes of the Bill.<sup>76</sup>

Clause 7 (2) and (3) states:

*(2) An **environmental offset** is an activity undertaken to counterbalance a significant residual impact of a prescribed activity on a prescribed environmental matter.*

<sup>76</sup> Environmental Offsets Bill 2014, *Explanatory Notes*.

*(3) However, an environmental offset for a prescribed environmental matter that is a protected area, other than a nature refuge, may include the delivery of any activity that provides a social, cultural, economic or environmental benefit to any protected area.'*

## Issue

Submitters queried whether the wording of clause 7(3) would allow conservation activities with no direct environmental benefit to the impacted area to qualify as an environmental offset.

The Mackay Conservation Group (MCG) argued in their submission:

*The requirement for environmental benefit should be mandatory... giving equal weight in legislation to social, cultural, or economic values with environmental in places of high environmental conservation value does not meet the objectives of such legislation i.e. primarily to prevent a decline in biodiversity.<sup>77</sup>*

Noosa Council also noted concern in their submission:

*Including social, cultural and economic benefits with an environmental offset could substantially change the overall principles and intent of the Environment Offset Bill and Environmental legislation.<sup>78</sup>*

## DEHP Advice

*Clause 7(3) of the Bill relates to impacts on a protected area but not other matters of environmental significance within the protected area (such as threatened species and ecosystems).*

*Consistent with government policy, clause 7(3) allows offsets for impacts on the protected area (but not the matters in the area) to be used to deliver environmental, social, cultural or economic benefits for any protected area in Queensland.*

*Offsets for other matters in the protected area must maintain the viability of the matter impacted.*

Further advice from the department clarified that this clause is consistent with requirements for protected areas under Sections 17-23 of the *Nature Conservation Act 1992* (NCA) which provide for the management and conservation of 'the natural and cultural and other values' of the declared protected areas.

For example section 17 of the NC Act provides:

### **17 Management principles of national parks**

*(1) A national park is to be managed to—*

*(a) provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values; and*

*(b) present the area's cultural and natural resources and their values; and*

*(c) ensure that the only use of the area is nature-based and ecologically sustainable; and*

*(d) provide opportunities for educational and recreational activities in a way consistent with the area's natural and cultural resources and values; and*

*(e) provide opportunities for ecotourism in a way consistent with the area's natural and cultural resources and values.*

<sup>77</sup> Mackay Conservation Group, 2014, *Submission No. 11*, p. 3.

<sup>78</sup> Noosa Council, 2014, *Submission No. 15*, p. 4.

The department also noted that some of the protected areas are used for economic activities such as guided tours, or provide social benefits such as recreational areas or walking paths and therefore any proposed development that impacted those associated social, cultural or economic benefits would need to consider replacing those values through an offset.

**Committee Comment:**

The committee acknowledges the concerns raised by submitters in relation to the definition of an environmental offset but, based on the departments advice, agrees that the allowance for social, cultural or economic benefits associated with offsets in protected areas is appropriate given the nature of the declarations for these areas.

Accordingly, the committee does not recommend any amendments to the Bill in relation to offsets in protected areas. The committee encourages the department to ensure that the Queensland Environmental Offsets Policy and associated guidelines clearly outline the circumstances where offsets may include the delivery of an activity that provides a social, cultural, economic or environmental benefit.

## Clause 8 What is a significant residual impact

Clause 8 provides a definition for 'significant residual impact' in relation to protected areas, legally secured offset areas and other matters of environmental significance.<sup>79</sup>

Specifically the Bill states that:

*(1) Generally, a **significant residual impact** is an adverse impact, whether direct or indirect, of a prescribed activity on all or part of a prescribed environmental matter that—*

*(a) remains, or will or is likely to remain, (whether temporarily or permanently) despite on-site mitigation measures for the prescribed activity; and*

*(b) is, or will or is likely to be, significant.*

## Issues

More than half the written submissions raised concerns about the meaning and interpretation of 'significant residual impact'. In particular they were concerned for the level of subjectivity that can be applied to the assessment of 'significant' and questioned if this was sufficiently clear and precise to afford project proponents certainty and transparency in the assessment process.

The Fitzroy Basin Association Inc (FBA) stated in their submission:

*There is no definition as to the term 'significant', presumably leaving this open to authority holders (e.g. developers or resource companies), to demonstrate if their activity will be 'significant' or not. FBA submits that this is unacceptable, and that the term 'significant' must be defined more precisely before it can be used as a measure to determine impacts in relation to an offset.<sup>80</sup>*

AMECE&I submitted:

*If further guidance is not provided then it will be a very subjective process and one that is likely to be debated between proponent and assessment manager, but also increase the likelihood that inconsistent decisions will be made. This could also provide an avenue for legal challenges from community groups.<sup>81</sup>*

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<sup>79</sup> Environmental Offsets Bill 2014, *Explanatory Notes*, p.12.

<sup>80</sup> Fitzroy Basin Association Inc., 2014, *Submission No. 4*, p. 1.

<sup>81</sup> AMEC Environment & Infrastructure, 2014, *Submission No. 10*, p. 2

The Australian Petroleum Production and Exploration Association (APPEA) noted in their submission:

*While APPEA appreciates that there is no 'one size fits all' approach to determining significance, there needs to be more guidance around the meaning of 'significant' so that proponents have certainty in how the approvals process will be administered.<sup>82</sup>*

Similarly the Local Government Association of Queensland (LGAQ) submitted:

*The LGAQ understands that a significant impact may vary depending on the type of environmentally significant matter and notes that there is no clear definition to guide proponents on its interpretation within the Bill. We have discussed this with the Department and commend their action of developing guidance material to assist proponents in identifying the level of impact associated with their respective activity.<sup>83</sup>*

### DEHP Advice

The department advised the committee that the use of the term 'significant residual impact' in the Bill is consistent with the Commonwealth's EPBC Offsets Policy definition:

*Whether or not an activity is likely to have a significant residual impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts. As the natural environment is complex, there is no one-size-fits-all answer in determining the significance or otherwise of an activity.*

*As with the Commonwealth, the State will develop guidelines to assist proponents to identify whether or not a proposed impact will be significant for the impacted matter. The guideline will not be inconsistent with the Commonwealth guideline.<sup>84</sup>*

The Minister further explained at the public briefing that:

*I understand that there has been some concern raised in submissions about the lack of detail in the Bill on what significant environmental matters are and what constitutes a significant residual impact. These matters are best covered by supporting regulations and guidelines so they can be updated where circumstances change such as accreditation and matters of national significance by the Commonwealth or new learnings about the significance of impacts.<sup>85</sup>*

### Discussion

The *Legislative Standards Act 1992* (Qld) provides for legislation to be drafted to comply with fundamental legislative principles, these being principles relating to legislation that underlie a parliamentary democracy based on the rule of law (s.4). One such principle is that laws must have sufficient regard to the rights and liberties of individuals. Whether a law does have sufficient regard to the rights and liberties of individuals depends on a number of factors set out in s 4(3).

Pursuant to s 4(3)(k) whether legislation has sufficient regard to the rights and liberties of individuals can depend on whether the legislation is unambiguous and drafted in a sufficiently clear and precise way.

When it comes to terms in legislation, the Office of the Queensland Parliamentary Council (OQPC) Handbook, *'Principles of good legislation: Clear meaning'* states:

<sup>82</sup> Australian Petroleum Production and Exploration Association, 2014, *Submission No. 27*, p. 3.

<sup>83</sup> Local Government Association of Queensland, 2014, *Submission No. 43*, p.1.

<sup>84</sup> DEHP, *Correspondence*, 14 April.

<sup>85</sup> Powell, A., 2014, *Draft public briefing transcript*, 2 April, p.2.

*It is important that statutory definitions be drafted precisely. The principles of statutory interpretation require that words be given the meaning which English speakers would ordinarily understand them to bear in the context in which they are used [para 39].*

The OQPC Handbook, 'Principles of good legislation: Clear meaning', [para 47] also notes that definitions that are drawn very broadly, or very narrowly, may be ambiguous.

Whilst the term 'significant residual impact' is given meaning in clause 8 of the Bill, the word 'significant' is not specifically defined in the Bill or in the AIA, and it is this term which is considered central and crucial to the proposed legislation and which as raised by submitters is ambiguous.

The Commonwealth EPBC Act 'Significant Impact Guidelines' describe a significant impact as:

*...an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts.<sup>86</sup>*

#### **Committee Comment:**

The committee acknowledges the concerns raised in relation to the definition of 'significant residual impact' as currently reflected in the Bill. Whilst the use of this term is consistent with the Commonwealth EPBC Act and Policy, the committee believes this definition is fundamental to the interpretation and operation of the Bill.

Therefore the committee believes that the inclusion of a broad definition for the term 'significant' within the Bill would help to clarify the circumstances where offsets may be required. This, in conjunction with the proposed 'significant residual impact' assessment guidelines which the department has noted are to be published alongside the regulation and policy, will provide the level of detail to help interpretation of the Bill and assessment of offset proposals.

#### **Recommendation 7**

The committee recommends that clause 8 (1) be amended to clarify the meaning of 'significant' by including an additional point (c) that states 'where significant relates to an impact which is important, notable, or of consequence, having regard to its context or intensity'.

### **Clauses 9 & 10 What is a prescribed activity, prescribed environmental matter and matter of environmental significance**

Clause 9 provides a definition for 'prescribed activity' whilst clause 10 establishes the definition of 'prescribed environmental matter' and 'matter of environmental significance' which is used in the context of environmental offsets under this Bill.<sup>87</sup>

Subsection (1) provides a regulation making power to prescribe matters of environmental significance dealt with under commonwealth, state and local government statutory instruments. Clause 10 also places limits on the matters that may be prescribed as matters of national environmental significance under the regulations.<sup>88</sup>

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<sup>86</sup> Department of Sustainability, Environment, Water, Population and Communities (Cwth), 2013, *Matters of National Environmental Significance: Significant impact guidelines 1.1 (Environment Protection and Biodiversity Conservation Act 1999)* p.2.

<sup>87</sup> Environmental Offsets Bill 2014, *Explanatory Notes*, p.13.

<sup>88</sup> *Explanatory Notes*, p.13.



## Issues

The primary concern for submitters was that ‘prescribed activities’, ‘prescribed environmental matters’ and ‘matters of environmental significance’, which are essential to the interpretation and operation of the Act, will not be listed or detailed within the Act but rather left as matters to be prescribed under regulation.

For example, APPEA submitted:

*APPEA considers that the meaning of 'prescribed activity' should not be left entirely to the regulation, as this is a key cornerstone of the operation of the Bill. State and Commonwealth policies acknowledge that certain types of activities can appropriately be exempt from offset requirements.<sup>89</sup>*

The QRC stated in their submission:

*QRC believes that the Bill fails to reflect the EPBC Act to the true extent, where the EPBC Act defines the specific Matters of National Environmental Significance (MNES). As such QRC believes that the Bill should define MNES, rather than the regulation, thereby providing stakeholders with certainty as to what matters may be captured by the Bill.<sup>90</sup>*

A number of submitters also raised concern that there may be insufficient limitations placed on the ability for local government to prescribe local matters of environmental significance and that it was not clear as to the authority or process under which MLES could be declared by local governments (Submissions 5, 10, 39 and 44).

## DEHP Advice

The department advised that:

*The definition [for prescribed activity] addresses those activities that are subject to consideration of offset requirements under existing legislation.*

*EHP has published a draft list of prescribed activities and prescribed environmental matters on the departments website.*

In relation to issues raised concerning MLES, the department advised:

*The requirements for Local government to develop planning instruments – the instruments which would include offset requirements – are provided under the Sustainable Planning Act 2009.*

*The Queensland Government is reviewing what guidance should be provided under the planning framework, including the statutory guideline for making and amending planning schemes to ensure that local government offset policies align with the Bills requirements.*

## Committee Comment:

The committee acknowledges the department’s advice that the prescribed activities, prescribed environmental matters and matters of environmental significance are to be detailed in the regulation, that being the preferred approach of the government in order to provide flexibility to make changes as circumstances change or new science becomes available. The committee also notes that these matters have been made available on the website for the purposes of consultation.

However the committee notes that there was strong support across stakeholder groups for greater clarity and legal precedence to be given to these terms. Accordingly the committee recommends that

<sup>89</sup> Australian Petroleum Production and Exploration Association, 2014, *Submission No. 27*, p. 3.

<sup>90</sup> Queensland Resources Council, 2014, *Submission No. 5*, p.7.

the department consider including an overview of the prescribed activities, prescribed environmental matters and matters of environmental significance in a schedule attached to the primary legislation.

### Recommendation 8

The committee recommends that the Bill be amended to include an overview of the prescribed activities, prescribed environmental matters and matters of environmental significance as an additional schedule.

## Clause 11 Conservation outcome achieved by environmental offset

Clause 11 introduces the term ‘conservation outcome’ which, according to the explanatory notes, is the defining term for measuring environmental offset success.<sup>91</sup>

### Issues

Clause 11 states that:

*A **conservation outcome** is achieved by an environmental offset for a prescribed activity for a prescribed environmental matter if the offset is selected, designed and managed to maintain the viability of the matter.*

There are a number of concerns for the appropriateness and efficacy of the definition for conservation outcome included in the Bill. Primarily, submitters were concerned that the meaning was not sufficient to provide the required level of protection for important environmental matters as it did not reflect established environmental principles such as ‘environmental equivalence’ and ‘no net loss’.

*This definition does not refer in any way to the requirement for the magnitude of the impact and the benefit to be at least the same. Indeed, even if no actual conservation outcome resulted at all from the actions described here, by this novel re-definition of the term, a ‘conservation outcome’ could be claimed.<sup>92</sup>*

*The principles of ‘no net loss’ and ‘ecological equivalence’ are well-established, embedded in the current Qld Biodiversity Offsets Policy, and have been requested by conservation groups to be maintained. A stronger definition of conservation outcome that includes these principles will deliver a stronger result for the species that are being significantly impacted by development. As a minimum requirement, environment offsets must be required and generate a like for like ecological equivalence, and deliver a net environmental positive gain.<sup>93</sup>*

Submitters raised issue with the wording in the definition which suggested a conservation outcome could be achieved by a proponent demonstrating they had ‘selected, designed and managed’ the offset which, as Dr Maron pointed out at the public hearing, defines a conservation outcome in terms of inputs rather than outputs.

*... there are some very vague definitions in the Bill. I noticed in particular that the term ‘an environmental outcome’ is being redefined to actually mean an input, and I would suggest that an outcome should actually mean an outcome. In particular, an environmental outcome should be an additional benefit, additional to what would have happened in the*

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<sup>91</sup> Environmental Offsets Bill 2014, *Explanatory Notes*, p.13.

<sup>92</sup> Maron, M., 2014, *Submission No. 2*, p. 2.

<sup>93</sup> Environmental Defenders Officer Queensland, 2014, *Submission No. 40*, p. 7.

*absence of the offset action, that is equivalent to the loss. So there are some issues with definition.*<sup>94</sup>

Further submitters queried the interpretation of 'viability' for an environmental matter and sought further guidance on how this is to be defined for the purposes of the Act.

*The term "viability" is not defined in the Bill or State Offsets Policy... NELA expresses concern that "viability" may set a lower threshold than the preferred improve or maintain principle. NELA recommends that the term viability be defined in the Bill... to support the 'improve or maintain' principle.*<sup>95</sup>

*Additionally, 'viability' is given no legal definition in the Bill. The Macquarie Concise Dictionary (3rd edition 1999) defines 'viable' as "capable of living, practicable, workable or able to live or grow." This definition is concerning as it simply refers to 'capable' of living or growing, not actually living or growing.*<sup>96</sup>

### DEHP Advice

The department provided the following comments in response to the concerns raised above:

*Clauses of the Bill do not operate independently of each other and the effect of parts 1 to 9 of the Bill ensure that the quantum of impact is considered and acted upon in delivering an environmental offset.*

*The main purpose of the Bill is to counterbalance the significant residual impact of particular activities on prescribed environmental matters through the use of environmental offsets*

*Any conservation outcome, in relation to an environmental offset, is achieved by maintaining the viability of the prescribed environmental matter. The term 'maintain the viability' has been provided within primary legislation to make certain the environmental outcome that is to be achieved.*

*Both terms are used to describe how an environmental offset delivered in accordance with the Bill, will achieve its main purpose; to counterbalance the significant residual impacts of particular activities on prescribed environmental matters.*

*The provision is designed to 'maintain' the viability – this is not the same as a 'net gain' outcome. The viability of a threatened species population or ecosystem extent needs to be considered to ensure its future survival. A viable population, for example, must have an adequate population, age structure and retain enough genetic variability to ensure long term survival. Maintaining the viability of a species increases the likelihood of its survival in the long term. In the context of the offsets policy, the viability of the matter impacted must be maintained, a principle shared with the Commonwealth EPBC.*

### Discussion

The approach to conservation outcome in the Bill appears to depart from the current Queensland policy and policies in other jurisdictions to the extent that it excludes principles of equivalence and/or environmental gain. For example:

- The current QGEOP states that offsets must 'achieve an equivalent or better environmental outcome'<sup>97</sup>

<sup>94</sup> Maron, M. 2014, *Draft Public Hearing Transcript*, 2 April p.23.

<sup>95</sup> National Environmental Law Association, 2014, *Submission No. 30*, pp.2-3.

<sup>96</sup> Environmental Defenders Office Queensland, 2014, *Submission No. 40*, p. 7.

<sup>97</sup> Environmental Protection Agency, 2008, *Queensland Government Environmental Offsets Policy*, p. 11.

- The Commonwealth EPBC Offsets Policy states that offsets must ‘deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment that is protected by national environmental law and affected by the proposed action’, and defines conservation gain as ‘the benefit that a direct offset delivers to the protected matter, which maintains or increases its viability or reduces any threats of damage, destruction or extinction’<sup>98</sup>
- Under the NSW Biobanking framework, Policy Principle 3 states that ‘Offsets must be targeted to the biodiversity values being lost or to higher conservation priorities’<sup>99</sup>
- Victoria’s Native Vegetation Offsets Framework requires that offsets ‘provide a gain to Victoria’s biodiversity that is equivalent to the loss to Victoria’s biodiversity’,<sup>100</sup> and
- The Western Australia Environmental Offsets Policy requires that offsets be ‘designed to achieve long-term outcomes, building upon existing conservation programs and initiatives’.<sup>101</sup>

#### Committee Comment:

The Committee acknowledges the concerns raised about the definition of conservation outcome in the Bill, including the use of the term ‘viability’. The committee notes that the Commonwealth EPBC Act Offsets Policy appears to use a much broader definition for ‘conservation outcome’.

Accordingly, the committee believes that there is merit in adopting the same terminology reflected in the EPBC Act and, therefore, recommends that clause 11 be amended such that it is clear for industry what obligations are associated with conservation outcomes. The committee is also of the view that ‘viability’ should be defined in the Bill to give context to the expectations and responsibilities of proponents when developing offset proposals.

#### Recommendation 9

The committee recommends that clause 11 be revised in order that the meaning of conservation outcome accords with the Commonwealth offsets policy as outlined below:

*A **conservation outcome** is achieved by an environmental offset for a prescribed activity for a prescribed environmental matter if the offset is selected, designed and managed to:*

- a) maintain or increase the viability of the impacted matter; and*
- b) where maintaining the viability of a species increases the likelihood of its survival in the long term or reduces any threat of damage, destruction or extinction.*

#### Clause 14 Imposing offset requirements

Clause 14 limits the imposition of offset conditions by administering agencies and introduces a ‘test of significance’ to apply when considering the environmental impacts of a development. Clause 14 also empowers administering agencies to have regard to any relevant offset condition that has been imposed on the applicant under another authority held by the applicant for the same prescribed environmental matter.<sup>102</sup>

<sup>98</sup> Department of Sustainability, Environment, Water, Population and Communities (Cwth), 2012, *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy*, pp.8-17.

<sup>99</sup> Office of Environment and Heritage NSW Government, 2014, *‘Biodiversity Offsets Policy for Major Projects’*, p. 8.

<sup>100</sup> Department of Environment and Primary Industries (Vic), 2014, *‘Permitted clearing of native vegetation - Biodiversity assessment handbook’*, p. 19.

<sup>101</sup> Western Australian Government, 2011, *‘WA Environmental Offsets Policy’*, p. 1.

<sup>102</sup> Environmental Offsets Bill 2014, Explanatory Notes, p. 14.

Clause 14 (2) of the Bill provides that an offset condition may only be imposed if the administering agency is satisfied that:

- (a) the prescribed activity will, or is likely to have, a significant residual impact on the prescribed environmental matter; and*
- (b) all cost-effective on-site mitigation measures for the prescribed activity have been, or will be, undertaken.*

As noted in the explanatory notes, ‘the test increases the current threshold of impacts from any impact to one that is significant’.<sup>103</sup> Stakeholders held opposing views in relation to the introduction of the significant residual impact threshold.

## Issues

Subject to issues expressed regarding the definition of significant, some stakeholders supported the new approach, including the CCAA, the QRC and AMECE&I:

*CCAA also supports, in principle, the ability to apply offsets only where significant impacts to a matter of environmental significance will occur, however, notes that further clarification is required on the definition of “significant”.*<sup>104</sup>

*QRC’s overarching position with respect to offsetting for development projects is that an offset should only be required where there is a significant residual impact which cannot be avoided, minimised or mitigated.... QRC is pleased to see that the Queensland Government has adopted this risk-based methodology in the development of the Bill, by introducing a ‘significant residual impact’ threshold for the conditioning of offsets.*<sup>105</sup>

*AMEC support the introduction of a “significance” test noting that it “will be beneficial and provide greater consistency with environmental impact assessments under the Environment Protection and Biodiversity Conservation Act 1999. In our experience a number of proponents were required to provide environmental offsets for very minor impacts.”*<sup>106</sup>

However other submitters expressed concern that the ‘test of significance’ did not adequately recognise the cumulative impacts across developments which may result in the loss of biodiversity over time.

For example, Dr Maron argued in her submission:

*Only significant impacts are to be offset. Yet cumulative, incremental impacts are important drivers of biodiversity declines...the proposed approach will reduce the types and amounts of impacts that require offsets, and cap offsets that do occur at a low level. Thus, it appears most likely that environmental outcomes will be worsened by these changes.*<sup>107</sup>

The EIANZ submitted:

*Careful thought should be given to the implications of defining significant impact. It is possible that ‘insignificant’ impacts assessed for a number of proposals separately, may cumulatively make up a significant impact.*<sup>108</sup>

The National Parks Association of Queensland stated in their submission:

*It [restriction to significant residual impacts] fails to address cumulative impacts that potentially occur to prescribed environmental matters from multiple development activities*

<sup>103</sup> Environmental Offsets Bill 2014, Explanatory Notes p. 2.

<sup>104</sup> Cement, Concrete and Aggregates Australia, 2014, *Submission No. 9*, p. 1.

<sup>105</sup> Queensland Resources Council, 2014, *Submission No. 5*, pp. 3-5.

<sup>106</sup> AMEC Environment and Infrastructure, 2014, *Submission No. 10*, p. 2.

<sup>107</sup> Maron, M., 2014, *Submission No. 2*, p. 2.

<sup>108</sup> EIANZ, 2014, *Submission No. 14*, p. 1.

*within the same bioregion. Cumulative impacts need to be included in the definition of significant residual impacts... Offsets should also be required for all development activities that cause adverse environmental impacts to occur.*<sup>109</sup>

A number of submitters (Submissions 13, 16, 35, 40, 46) also expressed a view that clause 14 (2) did not adequately reflect the avoid and mitigate hierarchy, whilst the QMDC<sup>110</sup> and EDOQ<sup>111</sup> raised issue with the appropriateness of the wording 'cost-effective', noting that this diverged from current statutory planning provisions and the EPBC Offsets Policy which instead use the term 'reasonable' in this context.

### DEHP Advice

In relation to the relationship between significant residual impacts and cumulative impacts, the department commented that:

*Significant residual impacts are assessed against individual matters and can vary, particularly when comparing management areas (National Parks) with strictly ecological matters. To address the specificity of impacts on individual Matters of State Environmental Significance (MSES), the Government is drafting a Significant Impact Guideline. This guideline will outline some of the broad definitions used to assess significant impacts as well as precise criteria that can be applied to impacts on individual matters, to determine significant residual impact.*

*Consideration of 'cumulative' impacts is the role of the assessment process – to the extent that the relevant legislation (e.g. Sustainable Planning Act, Environmental Protection Act, etc) allows consideration of these impacts. The role of the Offsets Bill is to provide the foundation for offsets, once the decision has been made that an offset is required for the assessed impact.*

In relation to the term 'cost-effective', the department commented that:

*The Bill is drafted consistent with the government's policy position. Inclusion of the wording 'cost effective' in clause 14(2)(b) reflects provisions in current legislation - s346A(2) of the Sustainable Planning Act 2009, and s207(1)(c) of the Environmental Protection Act 1994.*

### Discussion

The Commonwealth's EPBC Offsets Policy provides that:

*Offsets will not be considered until all reasonable avoidance and mitigation measures are considered, or acceptable reasons are provided as to why avoidance or mitigation of impacts is not reasonably achievable.*<sup>112</sup>

Equally the current QGEOP states that (policy principle 2):

*To the extent reasonably possible, environmental impacts should be avoided (e.g. through careful project design and location) and minimised (e.g. through selective clearing of vegetation) before considering an offset.*<sup>113</sup>

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<sup>109</sup> National Parks Association of Queensland, 2014, *Submission No. 13*, p. 2.

<sup>110</sup> Queensland Murray-Darling Committee Inc., 2014, *Submission No. 16*, p. 32.

<sup>111</sup> Environmental Defenders Office Queensland, 2014, *Submission No. 40*, pp. 3-4.

<sup>112</sup> Department of Sustainability, Environment, Water, Population and Communities (Cwth), 2012, *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy*, October, p.7. <<http://www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-policy.pdf>> accessed 1.5.14>

<sup>113</sup> Environmental Protection Agency, 2008, *Queensland Government Environmental Offsets Policy*, p. 11.

Whilst the term 'reasonable' is likely to raise interpretation and subjectivity issues, by definition it allows scope for issues broader than just cost to be considered when determining the appropriateness of avoidance and mitigation measures proposed or undertaken.

For example, the Oxford Dictionary defines 'reasonable' as an action that is:

*'fair, practical and sensible', 'acceptable and appropriate in a particular situation' or '(of prices) not too expensive'.<sup>114</sup>*

#### **Committee Comment:**

The committee notes the concerns raised by submitters in relation to the introduction of a 'test of significance' to apply when considering the environmental impacts of a development. In particular the committee shares concerns relating to how cumulative residual impacts associated with multiple developments where an offset has not been required will be monitored under the new approach.

The committee therefore invites the Minister to explain how the Department of Environment and Heritage Protection monitors and assesses cumulative residual impacts under the planning legislation, and to provide assurances to the House that the 'test of significance' will not diminish the extent to which Queensland's biodiversity is managed and maintained.

The committee also considers there is merit in amending clause 14(2)(b) to remove the reference to 'cost-effective', and replacing it with 'reasonable', consistent with the terminology used by the commonwealth.

#### **Point for clarification regarding clause 14**

The committee invites the Minister for Environment and Heritage Protection to clarify:

- a) the risks, if any, which are associated with raising the threshold from 'any' residual impact to 'significant' residual impact; and
- b) how cumulative residual impacts are monitored and managed under the current planning and development assessment framework.

#### **Recommendation 10**

The committee recommends that clause 14(2)(b) be amended to replace the word 'cost-effective' with 'reasonable', as follows:

*(b) all reasonable on-site mitigation measures for the prescribed activity have been, or will be, undertaken.*

### **Clause 15 restriction on the imposition of offset conditions**

As noted in the Explanatory Notes:

*Currently, the environmental impacts of a particular development can be assessed multiple times by separate levels of government, each imposing substantially different offset requirements. This inconsistently has led to significant delays and additional costs to industry.<sup>115</sup>*

Accordingly, one of the primary aims of the Bill is to remove duplication of environmental assessment across jurisdictions. This is addressed through clause 15 which restricts the decision to impose or not to impose an environmental offset condition mandating that there can only be one

<sup>114</sup> Oxford University Press, 2014, *Oxford Advanced Learner's Dictionary*. < <http://www.oxfordlearnersdictionaries.com/> accessed 13.5.14>

<sup>115</sup> Environmental Offsets Bill 2014, *Explanatory Notes*, pp. 2-3.

offset requirement for the same matter for the one activity.<sup>116</sup> Therefore the intention is that where the Commonwealth requires an offset, the state will not require an offset for the same matter and, similarly, local government may not require an offset where the state requires an offset.

An example of this working in practice was provided by Minister Powell at the public hearing:

*What has occurred in the past is that there are a number of animals on both [Commonwealth and State threatened species] lists, and so what potentially could have occurred is the Commonwealth required an offset for that animal and then the state did as well. What also potentially happened was that the local government had made a decision that there was a potential block of land that also might have housed that species that they felt was particularly important, so they might have required an offset as well. What we are saying is that if it is protected under the federal list, it is a matter of national environmental significance and that is the end of the story; that is the one offset that is required... In simpler terms, there is one offset required per species. Then potentially, just so you know also, you might find a number of species within the one area. One offset, the highest offset, would be required for that area because often if you are able to offset some biodiversity for one species, you are offsetting it for all of the species as well.*<sup>117</sup>

## Issues

Clause 15 was one of the more contentious clauses of the Bill attracting significant comment from submitters to the inquiry for a variety of reasons.

Whilst there was strong support for the intention of this clause, submitters including Rio Tinto Coal Australia (RTCA), UDIA, CCAA, National Environmental Law Association (NELA) and others raised concerns that the clause may not be effective in achieving its objective, as it did not account for the typical sequencing of approvals across levels of government and also assumed a level of integration of assessment processes across levels of government that submitters content does not exist.

*While these provisions represent an improvement on the current situation, the Bill makes an assumption that either the approvals are obtained in a particular order or there is a degree of integration in approval processes at the Commonwealth, State and Local levels which does not currently exist.*<sup>118</sup>

*While some duplication has been resolved in the Bill, particularly between the State and Federal Governments, three offsets programs still exist. Of particular concern, is the lack of oversight of inconsistent and often overly onerous local government planning scheme offsets policies by the State Government.*<sup>119</sup>

A number of submitters queried what effect the Bill would have in the event that Commonwealth accreditation is not granted, and expressed concern that the Queensland environmental offsets framework differs from the federal policy on a number of fundamental areas which increases the risk that accreditation will not be secured. As noted by the Property Council:

*While the Property Council supports this limitation, the removal of duplication will fail to take effect if the bilateral agreement is not in place, or if approvals are obtained from a local government, prior to seeking State or Federal approvals... The PCA submits that a mechanism needs to be included in the Bill to deal with these situations.*<sup>120</sup>

A number of submitters did not support the proposed restrictions on multiple levels of government being able to impose offsets conditions for the same or similar environmental matter. For example,

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<sup>116</sup> Environmental Offsets Bill 2014, *Explanatory Notes*, p. 14.

<sup>117</sup> Powell, A. 2014, *Draft public briefing transcript*, 2 April, p. 9.

<sup>118</sup> Rio Tinto Coal Australia P/L, 2014, *Submission No. 42*, p. 2.

<sup>119</sup> Urban Development Institute of Australia, 2014, *Submission No. 18*, p. 1.

<sup>120</sup> Property Council of Australia, 2014, *Submission No. 22*, p. 3.



MCG, FCWPSQ and others (Submissions 21, 32, 34, 40 and 41) argued that in order to provide the best protection for the impacted matter it should be possible for all levels of government to impose an offset condition where they identify an interest, and particularly where the significant impact is considered not to have been adequately avoided, mitigated or offset. MCG submitted:

*If the precautionary principle is to be observed the offset that provides the best level of protection for impacted prescribed matters should be selected no matter what level of government it comes from. This is because in some cases a local government may have ore on ground knowledge than the Australian government. What is most desirable is that all levels of government cooperate to ensure the best outcome for the environment and knowledge and expertise at the local, state and federal level is pooled to ensure that happens.*<sup>121</sup>

Local governments also expressed concern that the clause 15 reduces the ability of local governments to protect environmental matters important at the local level or apply local knowledge to the offset conditions and decision making process. Local governments argued that they are often better placed than federal or state assessment authorities to determine the value and condition of environment matters, to assess the level of impact of proposed development and to impose offset conditions. The Brisbane City Council submitted:

*Council wishes to emphasise the importance of ensuring the environmental offsets legislation, regulation and all associated policies do not restrict the ability to adequately protect matters of local environmental significance.... Matters of local environmental significance, as determined by a local authority can be different from matters of State or Commonwealth significance, but the offset condition is beyond power, if it can be said to "relate to substantially the same impact in substantially the same area". Coupled with subsection (2), this means that an insufficiently stringent condition by another level of government, about a matter of little concern to that level of government, and only tangentially "related" to an area, could exclude Council's power to impose an offset condition to address a matter of local environmental significance. Due to the way the provisions are worded, challenges would have to be made and determined after the condition was imposed, which would add to the cost and delay in finalising development applications. It would be preferable to recast these sections. Instead of dealing with the power to impose the condition, the provisions should allow for any inconsistency or duplication between conditions to be resolved, by providing for any one condition to be read subject to any other that affords best mitigation of the impact.*<sup>122</sup>

#### **DEHP Advice:**

The department advised:

*Several measures are provided under the Bill to minimise duplication.*

*For example, clause 14(3) provides that an administering agency can have regard to a condition already imposed.*

*Duplication will also be reduced through the prescription of matters of environmental matters under the Act. Commonwealth matters will not be listed under the Bill unless the environmental offset framework is accredited by the Commonwealth.*

*The Queensland Government will also oversee the listing of matters of local environmental significant in local planning instruments under the Sustainable Planning Act.*

<sup>121</sup> Mackay Conservation Group, 2014, *Submission No. 11*, p. 6.

<sup>122</sup> Brisbane City Council, 2014, *Submission No. 46*, p. 5.

*In relation to alignment with conditions imposed later by a higher-level of Government, this can be administratively addressed through drafting conditions that will 'fall away' to the extent that they duplicate or are inconsistent with conditions imposed by the higher-level of Government.*

*The department notes concerns regarding local government offset requirements.*

*The Queensland Government is reviewing what guidance should be provided under the planning framework, including the statutory guideline for making and amending planning schemes, to ensure that local government offset policies align with the Bill's requirements.*

*The department notes QELA concerns regarding the listing of prescribed environmental matters under the Act.*

*The listing of MLES under local planning instruments will be overseen by the State through planning powers under the Sustainable Planning Act 2009.*

The committee also invited the department to comment on the current level of integration between levels of government for development and environmental assessment, and the extent to which consultation is required between jurisdictions.

The department advised that, depending on the legislation, under existing procedures it is possible for applications to be considered by local government prior to state government assessment, or state government prior to the Commonwealth government.<sup>123</sup> For example:

*Under the Sustainable Planning Act; a concurrent State and local government assessment process is established for State assessable development involving clearing (Vegetation Management Act), non-resource environmentally relevant activities (Environmental Protection Act) and coastal development (Coastal Protection and Management Act) - this is called the Integrated Development Assessment System (IDAS). Local government require an applicant to refer a State assessable application to the State and, following assessment, local government is required to include conditions in approvals as directed by the State, including offset requirements.*

*Assessments brought in under the State Development & Public Works Organisation Act effectively stops the SPA process and enables the Coordinator-General to direct another State or local government decision-maker to include conditions of approval, including offset conditions.*

*Under the Commonwealth decision-making processes (the EPBC Act) can operate independently of State legislative mechanisms. While the existing 'assessment bilateral agreement ensures that projects subject to EIS processes under the EP Act, SDPWO Act or SPA provides for a single 'assessment' process, the actual decisions are made independently by the Commonwealth and relevant State authority.*

*Where there is an activity that requires an approval under SPA and under other legislation that is not part of the IDAS, then there is a potential for independent consideration of impacts. For example: a local government may assess a development application under the Sustainable Planning Act 2009. Once that approval has been issued, the proponent may then make an application of the clearing of protected plants under the Nature Conservation Act 1992.<sup>124</sup>*

In relation to consultation requirements between levels of government, the department advised that where both local and state government are assessing an application under the integrated development assessment system (IDAS) and under the same legislation, both levels of government

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<sup>123</sup> DEHP, 2014, *Correspondence*, 10 April.

<sup>124</sup> DEHP, 2014, *Correspondence*, 10 April.

coordinate on the delivery of the final approval, and preparation of the decision notice for the applicant. Where local government and state government are assessing under different legislation and therefore outside of IDAS, there is no requirement for consultation.<sup>125</sup>

For large projects assessed by the Commonwealth as a 'controlled action' under the EPBC Act, and also a 'coordinated project' assessed by the State under the SDPWO Act, the applications are commonly submitted at the same or a similar time to commence the lengthy approval process. In these cases, each jurisdiction makes its own decision in relation to the proposal (noting that due to the current 'assessment bilateral agreement' the State undertakes the assessment process on behalf of the Commonwealth and refers recommendations to the Commonwealth, and currently about 45 per cent of Queensland development proposals come within the purview of the current agreement).<sup>126</sup>

#### Committee Comment

The committee supports the intent of this provision to reduce circumstances where more than one jurisdiction can assess and impose offset requirements for the same or similar matters, but notes that a number of stakeholders, including those with significant expertise in the area of development, argue that this provision may not meet its intended objective.

Whilst the committee is confident that Commonwealth accreditation is likely and therefore will address issues between Commonwealth and the State government, as the department by their own admission has not yet determined what guidance will be provided under the local planning instruments in relation to local government offset requirements, the committee is concerned that it may still be possible that duplication and inconsistencies will continue between state and local government.

#### Point for clarification regarding clause 15

The committee invites the Minister for Environment and Heritage Protection to further explain how potential duplication between state and local government offsetting requirements may be reduced, and how this will ensure that local government offsets policies align with the Bill's requirements.

### Clause 19 Reaching agreement about delivery

Clause 19 establishes a process for reaching, deciding and amending agreements about the delivery of an environmental offset condition.<sup>127</sup>

#### Issues

Submitters raised a number of concerns about clause 19.

RTCA<sup>128</sup>, NELA<sup>129</sup> and UDIA<sup>130</sup> noted that there are no timeframes stated in the Bill for the administering agency to give the authority holder notice that it agrees or disagrees with the proposed delivery method. There was strong support for inclusion of statutory timeframes for offset assessment and approval processes within the Bill.

They also raised concerns about the absence of mechanisms within the Bill for dealing with disputes.

<sup>125</sup> DEHP, 2014, *Correspondence*, 10 April.

<sup>126</sup> DEHP, 2014, *Correspondence*, 10 April.

<sup>127</sup> Environmental Offsets Bill 2014, *Explanatory Notes*, p. 16.

<sup>128</sup> Rio Tinto Coal P/L, 2014, *Submission No. 42*, p. 2.

<sup>129</sup> National Environmental Law Association, 2014, *Submission No. 30*, p. 3.

<sup>130</sup> Urban Development Institute of Australia, 2014, *Submission No. 18*, p. 2.

As noted by UDIA:

*As it currently stands, this process where the administering authority has to approve the offset delivery plan and method ... has the potential to significantly delay the start of a project.*<sup>131</sup>

The submission from BCC raised similar concerns about the absence of a dispute resolution mechanism in the Bill, and noted that this could add new complexities to the development assessment process. BCC proposed that this provision should be reconsidered, particularly in light of efforts by the Queensland and local governments to streamline development assessment processes. Further, BCC requested that clear provisions are included in the Bill such that no work is to commence on the development site until all offset obligations are agreed and accepted.<sup>132</sup>

The PCA also raised concern about the absence of clear dispute resolution mechanisms and stated that a process for the fair, efficient and effective resolution of dispute is imperative to ensure developments are not unnecessarily delayed.<sup>133</sup> The PCA has requested immediate consultation (by the department) on the proposed dispute resolution process prior to the release/gazettal of the regulations.<sup>134</sup> Similar concerns were raised by the Queensland Environmental Law Association (QELA).<sup>135</sup>

### DEHP Advice

In relation to offset agreement timeframes:

*The decision about whether to impose an offset condition must be made within the timeframes specified under the impact assessment and approval legislation. Part 5 of the Bill (imposing offset conditions) must be considered within those timeframes.*

*Part 6 of the Bill (requirements about offset conditions) applies after the approval has been issued where an environmental offset condition has been imposed. It is therefore not governed by the above assessment timeframes.*

*[Therefore] as an offset delivery plan is predominantly assessed and approved after the issue of the approval, there are currently no appeal provisions applying to those processes or decisions (within other Acts). The Bill addresses this issue by providing, dispute resolution process for those decisions including an inability to reach agreement within a stated reasonable time.*

In relation to dispute resolution processes, the department advised:

*Currently an offset delivery plan is predominantly assessed and approved after the issue of the approval and there are no appeal provisions applying to those processes or decisions. The Bill addresses this issue by providing that a regulation may provide for dispute resolution processes (clause 19(6))*

*The dispute resolution process for an offset in relation to a prescribed activity will be the same dispute resolution process normally applies to those activities. As there are a range of different mechanisms in use under the impact assessment and approval legislation, they will be detailed in the regulations.*

While not opposed to an offset agreement being prepared prior to the granting of approvals, AMECE&I suggested that proponents should look to identify offset sites as soon as practicable, and obtain the consent of landowners and other registered interests, to ensure these consents are in

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<sup>131</sup> Urban Development Institute of Australia, 2014, *Submission No. 18*, p.2.

<sup>132</sup> Brisbane City Council, 2014, *Submission No. 46*, p. 6.

<sup>133</sup> Property Council of Australia, 2014, *Submission No. 22*, p. 4.

<sup>134</sup> Property Council of Australia, 2014, *Submission No. 22*, p. 4.

<sup>135</sup> Queensland Environmental Law Association, 2014, *Submission No. 23*, p. 5.

place and do not delay the project if this option is adopted. AMECE&I also requested clarification of the length of time that a proponent will be granted to legally secure the offset and have the offset management plan finalised after the project's commencement.<sup>136</sup>

#### Committee Comment

The committee acknowledges the concerns raised by submitters about the absence of an explicit timeframe in clause 19 for the agency to respond to the authority holder about their elected offset delivery method. Clause 19 (3) refers instead to a response being provided '...within a stated reasonable time'. The committee believes the Bill should include statutory timeframes for both the proponent's notice of election and the agency's consideration and decision notification for offset delivery arrangements. These timeframes should be the timeframes of the Acts from which the development authority derives its jurisdiction.

#### Recommendation 11

The committee recommends that clause 19 be amended to include statutory timeframes for both the proponent's notice of election and the agency's consideration and decision notification for offset delivery arrangements.

The amendment should specify that the timeframes of the Acts from which the development authority derives its jurisdiction apply in these situations.

### Clauses 22 & 23 – Financial settlement offsets

Clauses 22 and 23 define and explain the requirements for financial settlement offsets. The Explanatory Notes state that a financial offset is a payment made by an authority holder to the department or a local government of an amount required by the administering agency that granted the authority. A financial offset is not a proponent-driven offset but may be delivered in addition to a proponent-driven offset.<sup>137</sup> This approach removes the proponent's obligation of delivering, managing and monitoring an environmental offset over time, allowing proponents to proceed with their activity.<sup>138</sup>

Key details about the calculation of financial offsets are to be detailed in the regulations that will follow the Bill. Clause 23 (3) states that:

*In deciding the amount to be required as a financial settlement offset, the administering agency must calculate the amount in the way prescribed under a regulation.*

#### Issues

The regulations were not available, and the draft financial calculator was only available to stakeholders for review during the consultation for the Bill 'on request' and on a 'confidential basis'. This has prevented stakeholders from testing the financial calculator and checking the financial settlement amounts that it produces. According to the department, the calculator has been modelled on the Commonwealth's EPBC Act offsets calculator and will be used to determine the amount payable under the financial settlement option. Among those that did test the calculator, the Property Council of Australia has questioned whether it will achieve its stated objectives:

*After being provided the opportunity to interrogate the financial calculator (on a confidential basis), the Property Council believes the financial calculator will fail to meet the Policy's objective to '... benefit authority holders by making offsets more cost effective.' (Policy, page 12). The PCA believes this raises a number of issues for the overall offsets*

<sup>136</sup> AMEC Environment & Infrastructure, 2014, *Submission No. 10*, pp.4-5.

<sup>137</sup> Environmental Offsets Bill 2014, *Explanatory Notes*, pp.16-7.

<sup>138</sup> *Explanatory Notes*, p.2.

*framework including limiting the funding available to the Government to deliver strategic Corridors, and result in the financial settlement option being cost-prohibitive therefore encouraging the current ad hoc situation of proponent delivered offsets.*<sup>139</sup>

The Brisbane City Council questioned the viability of a single financial calculator for the state given the existence of significant regional variations in land costs:

*It is a significant concern for Council if financial offset contributions are limited or capped in the regulation. A state-wide financial calculation formula is not suitable for all Queensland local governments. In South East Queensland, land and other resourcing costs are substantially higher than in rural parts of Queensland. Council requests that any related regulation and policy provisions allow local governments to charge reasonable costs to facilitate the delivery of on-ground offset works (which reflect local land prices and operational costs). Council does not support any environmental offsets approach that requires ratepayer funds to be used to 'top-up' inadequate financial contributions. The administration of local level environmental offsets must be a cost neutral process for local governments.*<sup>140</sup>

Submitters expressed often opposing views on the provisions in the Bill dealing with financial settlement offsets.

The Cape York Land Council Aboriginal Corporation (CYLCAC) supported the concept of a financial settlement offset.<sup>141</sup> The Queensland Resources Council congratulated the government on providing proponents with the flexibility to deliver offsets through 100 per cent financial means.<sup>142</sup> The QRC stated in its submission:

*Despite some stakeholders arguing that this will not result in positive environmental outcomes, QRC believes that the financial offset option actually allows the government and organisations who are skilled at undertaking offsets to drive the delivery of offsets, rather than requiring proponents who are not in the business of offsetting to have to deliver outcomes.*

Other submitters including the Queensland Conservation Council, the Fraser Coast Branch of the Wildlife Preservation Society of Queensland (FCWPSQ), the Queensland Murray-Darling Committee and the Sea Turtle Foundation (STF) strongly opposed the financial settlement offset option.

Other submitters such as the Fitzroy basin Association (FBA), SEQ Catchments, AMECE&I, UDIA and NELA sought to clarify or resolve technical concerns with the wording of the Bill and to understand how financial offsets would work in practice in the absence of detailed explanations in the Bill.

SEQ Catchments raised concern that the connection/correlation between impacted matter and conservation outcome for a financial settlement offset is not clear in the Bill. They note that while the different components to the financial settlement offset are clear and include a register (Clause 89), fund (Clause 82 and 83) and the offset agreement (Clauses 25, 26 & 27), there does not appear to be any provision in the Bill which links all the components to ensure a connection between the significant residual impact and the offset delivery. They submit that the Bill may benefit from a provision which clearly connects the payment of a financial settlement to a conservation outcome. NELA and the Save the Turtle Foundation expressed similar concerns.

The UDIA raised a further issue regarding the legal trigger point for financial settlement:

*While the Institute accepts that the payment needs to be made prior to the impact, payment should be required as late in the development process as possible. The Bill does not*

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<sup>139</sup> Property Council of Australia, 2014, *Submission No. 22*.

<sup>140</sup> Brisbane City Council, 2014, *Submission No. 46*, p.3.

<sup>141</sup> Cape York Land Council Aboriginal Council, 2014, *Submission No. 32*, p.2.

<sup>142</sup> Queensland Resources Council, 2014, *Submission No. 5*.

*offer any further guidance on this issue nor clarify which projects (either by scale or type) may be eligible for multiple staged offsets.*<sup>143</sup>

Other submitters provided conditional support recognising that the financial settlement was welcomed by industry but needed to be viable, affordable and comparable to the actual cost of delivering an environmental offset. Other points raised by submitters include:

- the units for offsets are not specified in the Bill<sup>144</sup>
- concerns that the key issues pertaining to surface and groundwater quality, quantity and ecology cannot be adequately addressed by financial offset arrangements<sup>145</sup>
- the offsets requirements under the draft State Government calculator are significantly greater than those currently being applied by the Commonwealth Government's Department of the Environment for controlled actions<sup>146</sup>
- the method of calculating a financial contribution to be paid by authority holders is not specified in the Bill<sup>147</sup>
- the lack of a clear connection between impacted matter and conservation outcomes<sup>148</sup>
- financial compensation for environmental damage should go into the affected community or ecosystem<sup>149</sup>
- financial offsets should not be used to justify or balance environmental damage<sup>150</sup>
- the absence in the Bill of parameters for what type of offset is acceptable in which situations<sup>151</sup>
- landholder compensation components are far below the current market value<sup>152</sup>
- administration costs appear well in excess of best practice<sup>153</sup>
- the once-only financial settlement amount may be insufficient to cover the costs to deliver conservation outcomes<sup>154</sup>
- the critically important regulation and financial calculator have not been released<sup>155</sup>
- financial settlement offsets will fail to provide stronger environmental outcomes and will lack the required detail/principles to ensure appropriate use of funds that deliver environmental outcomes directly relevant to the impact<sup>156</sup>
- apparent inconsistencies between the terminology used in the Bill and that used in the draft environmental offsets policy<sup>157</sup>

<sup>143</sup> Urban Development Institute of Australia, 2014, *Submission No. 18*, p.3.

<sup>144</sup> Fitzroy Basin Association Inc, 2014, *Submission No.4*.

<sup>145</sup> Queensland Murray Darling Committee, 2014, *Submission No. 16*.

<sup>146</sup> Urban Development Institute of Australia, 2014, *Submission No.18*, p.2.

<sup>147</sup> Fitzroy Basin Association Inc, 2014, *Submission No. 4*; SEQ Catchments, 2014, *Submission No. 7*; AMEC Environment and Infrastructure, 2014, *Submission No. 10*.

<sup>148</sup> SEQ Catchments, 2014, *Submission No. 7*.

<sup>149</sup> Sea Turtle Foundation, 2014, *Submission No. 29*.

<sup>150</sup> Sea Turtle Foundation, 2014.

<sup>151</sup> Sea Turtle Foundation, 2014.

<sup>152</sup> AMEC Environment & Infrastructure, 2014, *Submission No. 10*.

<sup>153</sup> AMEC Environment & Infrastructure, 2014.

<sup>154</sup> AMEC Environment & Infrastructure, 2014.

<sup>155</sup> Urban Development Institute of Australia, 2014, *Submission No. 18*.

<sup>156</sup> Queensland Murray-Darling Committee, 2014, *Submission No. 16*.

<sup>157</sup> AMEC Environment & Infrastructure, 2014.

- the recognition, as valid offsets, of financial contributions to research or other environmental rehabilitation not related to the vegetation to be destroyed,<sup>158</sup> and
- the ongoing obligations and accountabilities of parties electing the financial contribution option.<sup>159</sup>

To address these concerns, submitters proposed that:

- a set of criteria and expected outcomes regarding government investment of monies paid to the offset trust fund should be developed and made freely available<sup>160</sup>
- a provision be included in the Bill (either in cl. 23 or cl.25) which clearly connects the payment of a financial settlement to a conservation outcome<sup>161</sup>
- s23(3) be amended to include the financial offset formula in the Bill,<sup>162</sup> and
- financial contributions in lieu of environmental offsets should not qualify as valid unless they contribute to the conservation of the endangered ecosystem.<sup>163</sup>

#### DEHP advice

On the matters raised by submitters, DEHP advised:

*The Bill provides the head of power for the financial payment formula to be prescribed by regulation. This is necessary because of the detailed nature of the calculation.*

*A guideline on the use of the calculator will also be publicly available.*

*Clause 7 (what is an offset), 11(conservation outcome), and 83 (object of offset account) of the Bill require offsets delivered using financial settlement offset payments to maintain the viability of the matters of environmental significance impacted by prescribed development.*

*The total payment required includes a landholder incentive payment, administrative costs and the cost of delivering the offset on the site by the landholder.*

*A scientifically-based approach was used to calculate the offset obligation that takes into account regional differences, variation in the quality of environmental matters on the impacted and offset site and the ability to co-locate some matters on an offset site.*

*Costs were based on advice from practicing offset brokers, natural resource management bodies and recognised experts in the field of environmental offsets and land restoration.*

*Financial settlement offset payments can be pooled and delivered through single offsets rather than multiple smaller offsets. Savings arising from this strategy can be used to support delivery of other offsets.*

*Offsets delivered using financial settlement offsets will be primarily land-based offsets (i.e. 'direct' offsets) rather than related to scientific research or education programs (i.e. 'indirect' offsets).*

*The policy requires that no more than ten per cent of the offset can consist of indirect offsets unless otherwise agreed.*

*Financial payments have been provided to allow flexibility in the delivery of offsets, and will result in the State taking responsibility for the delivery of a conservation outcome.*

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<sup>158</sup> Fraser Coast Branch of the Wildlife Preservation Society, 2014, *Submission No. 12*.

<sup>159</sup> Gladstone Ports Corporation, 2014, *Submission No. 45*.

<sup>160</sup> Fitzroy Basin Association Inc, 2014, *Submission No.4*.

<sup>161</sup> SEQ Catchments, 2014, *Submission No. 7*; National Environmental Law Association, 2014, *Submission No. 30*.

<sup>162</sup> Queensland Resources Council, 2014, *Submission No. 5*.

<sup>163</sup> Wildlife Preservation Society of Queensland, Bundaberg Branch, 2014, *Submission No. 37*.



*Through “strategic offset investment corridors” and “Direct Benefit Management Plans”, the Government can direct offsets to locations that will deliver the greatest environmental outcome.*

*The object of the offset account is to provide for the delivery of environmental offsets. An environmental offset is further defined within clause 7. An environmental offset provided using the funds in the financial settlement account must equate to an activity that will counterbalance the significant residual impact of a prescribed environmental matter.*

*Once a proponent has made the payment the proponent’s role in the delivery of the offset ends and development can commence.*

*Under the Bill, proponent driven offsets will be subject to the same requirements in terms of size of offset obligation and demonstrated management actions as those estimated using the financial calculator. In some cases, due to project specifics such as the impacted site being very low quality habitat, it may be cheaper for a proponent to undertake the offset required, that flexibility remains. The Bill provides for offsets to be delivered in a number of ways:*

- *Financial settlement offset;*
- *Proponent-driven offset; or*
- *A combination of proponent-driven offset and financial settlement offset.*

*In relation to a financial settlement, the Government must consider the risks in fulfilling its obligations for offsets that are acquitted through a financial payment, as offsets delivered through this approach may be more difficult than average.*

*The administration fee floor price of \$50,000 was identified following extensive consultation with industry representatives and modelling of state government land management transaction costs. This modelling showed that for larger offsets the relative costs tend to be less overall when compared to smaller offset areas, as a number of costs are fixed regardless of the size of the offset required. For example the legal costs associated with securing an area are generally the same whether the area is a 10 ha plot or a 100 ha plot.*

*In addition, this figure also factors in the costs of maintaining an offset program over a period of 20 years including monitoring the offset, together with a range of ongoing legal and administrative costs associated with an offset provider taking on the responsibility of providing the offset.*

#### **Committee Comment**

The committee acknowledges the concerns expressed by submitters about the provisions in clauses 22 & 23 to provide for financial settlement offsets in lieu of direct environmental offsets. Similarly, the committee recommends that the Bill be amended to provide a clear and unambiguous cap on the proportion of offsets that may be delivered through scientific research or education programs. The draft policy requires that no more than 10 per cent of the offset can consist of indirect offsets unless otherwise agreed. The committee believes the Bill would be strengthened if this key qualification is included in the Bill.

The committee notes that the department in its advice on submissions has omitted to address concerns raised by the Queensland Murray-Darling Committee about the use of financial offsets to address impacts on surface and groundwater quality, quantity and ecology. The committee invites the Minister to respond to these issues. Similarly the department has omitted to respond to points made by the Queensland Conservation Council that suggests financial offsets may lead to developments not previously feasible in areas where direct offsets weren’t viable. The committee invites the Minister to respond to this point.

In its advice to the committee the department advised that the Government can direct offsets to locations that will deliver the greatest environmental outcome through ‘strategic offset investment

corridors' and 'Direct Benefit Management Plans'. The committee invites the Minister to clarify any distinction between 'conservation outcomes' and 'environmental outcomes' in respect of environmental offsets.

The committee notes the potential positive effects of financial settlement offsets. In our view, providing proponents with the option of paying a financial settlement offset to the department or local government instead of funding the delivery and management of the environmental offset directly is an important feature of the Bill.

The committee notes concerns raised by local governments and entities such as Ergon and Powerlink about consultation by the department about strategic offset investment corridors. The committee invites the Minister to assure the House that the department will always consult with local governments and other entities such as Ergon and Powerlink whose existing infrastructure may be affected, prior to designating strategic offset investment corridors.

#### **Points for clarification regarding clauses 22 & 23:**

The committee invites the Minister for Environment and Heritage Protection to assure Honourable members that the regulations and guidelines to be prepared by the Department of Environment and Heritage Protection for environmental offsets will be released to stakeholders for comment as soon as practicable.

While noting the department's advice that locations other than around the impact area that offer better environmental outcomes may be considered for offsets, the committee invites the Minister to provide assurances that the department will ensure that environmental offsets will generally be undertaken in close proximity to the impact area, and generally in the same local government area.

The committee invites the Minister to assure the House that the department will consult with local governments and other entities such as Ergon and Powerlink whose existing infrastructure may be affected, prior to designating strategic offset investment corridors.

#### **Recommendation 12**

The committee recommends that clause 23 be amended by adding further wording which clearly connects the payment of a financial settlement to a conservation outcome.

### **Clause 32 Amending or revoking declaration**

Clause 32 provides for the regulation to provide the chief executive with the power to amend, revoke and remake the declaration of environmental offset protection area.

#### **Issues**

EDOQ, STF and ASH opposed revocation of declarations on environmental grounds, and therefore questioned the need for clause 32.

EDOQ submitted that the objectives of an ecologically equivalent offset area are rarely achieved unless the area is protected from further development:

*Very limited exceptions might apply to this necessary rule. The contemplation of significant impacts on areas already legally secured as offsets areas, is problematic. Often there are unavoidable delays in conservation gains being achieved, e.g. it may take up to nine years for newly planted vegetation in grassy eucalypt woodlands to restore previous ecosystem values and for sea grasses, the time lags for full recovery to achieve particular ecosystem functions can be anywhere between 10-50 years.*<sup>164</sup>

<sup>164</sup> Environmental Defenders Office Queensland, 2014, *Submission No.40*, p.11.

For these reasons, EDOQ proposed that clause 32(c) be omitted:

*At the very least, consult with conservation groups about clear criteria in the Bill (not the regulations) regarding what circumstances a revocation would be warranted. The Bill should reflect the general rule is that offset areas need to be fully protected from development and very limited exceptions might apply to this necessary rule.*<sup>165</sup>

#### **DEHP advice**

On the points raised by EDOQ, ASH and STF, DEHP advised:

*Regulations providing for the revocation of offset protection areas are currently being considered.*

*The State's approach will be consistent with the Commonwealth approach – the offset must be secured for the life of the impact. A legally secured offset area may be revoked where this requirement is met.*

*The legal security mechanism may also need to be revoked where approved development will hamper or prevent an offset being delivered. Consistent with Commonwealth requirements, however, where a prescribed activity is conducted on a legally secured offset area, an offset must be provided for both the impacts arising from the original development as well as for impacts on other matters of environmental significance on the site.*

## **Clause 41 Functions of inspectors**

Clause 41 provides for the functions of inspectors to investigate, monitor and enforce compliance.

#### **Issues**

In their submission, the QRC noted that there is no reference to an 'inspector' elsewhere in the Bill except clause 41. The QRC believe that clause 41 should be a reference to an 'enforcement officer', and recommended that clause 41 be amended to replace the reference to 'inspector' with 'enforcement officer'.

#### **DEHP advice**

The department has noted the issues raised and confirmed in subsequent discussions that the reference to inspector is an error.

#### **Committee Comment**

The reference to 'inspector' in the title of clause 41 appears to be an error.

The committee recommends that this clause be amended to replace 'inspector' with 'enforcement officer' to be consistent with the rest of the Bill be replaced

#### **Recommendation 13**

The committee recommends that the title of clause 41 be amended by replacing 'inspector' with 'enforcement officer' to be consistent with the rest of the Bill.

## **Clauses 81-86 Amounts received as financial settlement offsets etc. – Division 1 Amounts received by the department**

Clauses 81-86 provide for the establishment of the Financial Offset Account for holding financial settlement offset payments received by the department, and the rules governing payments from this

<sup>165</sup> Environmental Defenders Office Queensland, 2014, *Submission No.40*, p.11.

account for administration and related purposes in connection with the delivery of offsets by the department.

### Issues

A number of submitters raised issues about these provisions of the Bill. The committee brings to the attention of the House the following issues that were not resolved by the department's advice.

AMECE&I noted the potential for a conflict of interest given that the government agency which is responsible for approving a development (e.g. EP Act) and deciding on the extent of the offset payment, is also the one to receive and manage those funds. They stressed the need for clear governance arrangements as to how the funds will be managed and allocated to ensure against perceived and actual conflicts of interest.

Other concerns raised by AMECE&I in relation to the offset account included: the timeframes in which the government is proposing to distribute funds and finalise offsets; the use of the offset funds for administration by the department; and whether the amount the department can use for administration will be capped.

FCWPSQ submitted that financial contributions should be held in trust open to public scrutiny and used only for conserving endangered ecosystems.<sup>166</sup>

AMECE&I recommended an independent board of advisors be established including people from industry, conservation, community and government sectors to provide advice on the most appropriate use of the funds and oversee management and distribution of the funds.

In their submission, the MCG noted that best international practice for offsets (ICMM and IUCN independent report on biodiversity offsets, January 2013<sup>167</sup>) precludes the use of payments for direct offsets, and questioned why the Queensland Government has adopted this within their framework. The report notes that the in-lieu fees and payments to central government conservation funds fall outside a 'no net loss' definition of biodiversity offsets.<sup>168</sup>

The MCG also raised concern that in the past offset payments may have been used for purposes other than for providing a direct outcome for the impacted matter, and sought clarification as to: what precludes a local government from using offset payments for purposes other than offsets; who will be auditing local government offset spending; and are the penalties (to the local government) for non-compliance.

The QRC submitted that offset payments should be secured in a trust fund or, if this is not the case, there should be more protections afforded to the payments (particularly given the size of the payments) than is provided for under clause 84, which allows for the money to be deposited with other departmental monies and essentially 'earmarked' for offsets.

QRC recommends that if clause 82 is not amended to create an offsets trust fund, then clause 84 of the Bill be amended so that the financial offset payments must be held in a separate account from the department's other monies.

In regard to clause 85 of the Bill, QRC proposes that it be amended to ensure that the different components of the financial offset payment are used to the express purpose for which they were provided e.g. administrative payment is only used for administrative costs, and clause 85(a) be amended to specifically define the scope of acceptable expenses that can be incurred by the Department in the delivery of an environmental offset.

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<sup>166</sup> Fraser Coast Branch of the Wildlife Preservation Society, 2014, *Submission No. 12*.

<sup>167</sup> International Council on Mining and Metals and the International Union for Conservation of Nature, 2013, *Independent report on biodiversity offsets*. The report is available from the International Union for Conservation of Nature website at [http://cmsdata.iucn.org/downloads/icmm\\_biodiversity\\_offsets\\_rpt.pdf](http://cmsdata.iucn.org/downloads/icmm_biodiversity_offsets_rpt.pdf)

<sup>168</sup> International Council on Mining and Metals and the International Union for Conservation of Nature, 2013, *Independent report on biodiversity offsets*, p.27.

Rio Tinto noted in their submission the absence of any reference in the Bill to 'strategic investment corridors' or 'direct benefit management plans', though the draft policy makes provision for them.<sup>169</sup>

### DEHP advice

At the briefing on 19 March 2014, DEHP advised:

*Conservation and land management groups have raised concerns that offsets are not being directed towards the matters that have been impacted. Sections 7 and 11 of the Bill make it clear that there must be a nexus between the matter being impacted and the offset to ensure a conservation outcome is achieved; that is, the viability of the matter is maintained.*<sup>170</sup>

On the points raised by AMECE&I, DEHP advised:

*The department notes AMEC concerns regarding the administration of the financial settlement offset payments.*

*The Bill states in clause 84 (3) that the funds will be “controlled receipts” under the Financial Accountability Act 2009 which will ensure that the funds are “carried over” financial years. The department will also implement best practice governance policies and provide transparent reporting and auditing of the funds to ensure that the most appropriate environmental outcome is delivered for the impacted matter in a timely manner.*

*Payments received will be pooled – this may deliver some administrative savings allowing surplus funds to support the delivery of other offsets.*

On issues raised by the Mackay Conservation Group, DEHP advised:

*Monitoring of local government offset is facilitated through section 89 of the Bill.*

*Local government agencies must make the register available for inspection and an administering agency must, if requested by the chief executive give information held on the register to the chief executive.*

On the issues raised by QRC, DEHP advised:

*Clause 81- 86 provide adequate security for the funds – the funds may only be used to counterbalance impacts arising from prescribed activities and the funds will not form part of consolidated revenue.*

*Clause 86 (2) provides an opportunity to have other money, not just proponent money, to counterbalance impacted matters. For example, if another entity wanted to assist the provision of an offset outside of a legislative requirement this could be done with the Bill still providing security that all money (proponent derived money & other money) must be acquitted on counterbalancing impacted matters.*

*The offset account will not have funds for other departmental priorities outside of offsets in the offset account.*

*Clause 85 outlines how financial settlement offset payments may be used while providing flexibility to deal with the requirements of each individual program.*

On the points raised by RTCA, DEHP advised:

*The department notes RTCA’s concerns regarding the strategic investment corridors and direct benefit management plans.*

<sup>169</sup> Rio Tinto P/L, 2014, *Submission No. 42*, p.2.

<sup>170</sup> Shirreffs. L., 2014, *Draft public briefing transcript*, 19 March, p.4.

*While the Bill does not specifically mention those mechanisms, they may be adopted by proponents in the selection of the offset site and preparation of their offset delivery plan to meet the requirements of clauses 11 and 18 of the Bill.*

*Under clause 19 of the Bill administering agencies must have regard the environmental offsets policy when making a decision to approve an offset and the policy also provides for the use of those mechanisms.*

#### **Committee Comment**

Given that 'strategic investment corridors' and 'direct benefit management plans' are likely to be important to the gains to be achieved through the environmental offset framework, the committee believes the Bill would be improved by including them as examples under cl.83 'Object of offset account'.

#### **Recommendation 14**

The committee recommends that clause 83 be amended to include 'strategic investment corridors' and 'direct benefit management plans' as examples of the delivery of offsets.

### **Clause 92 Regulation-making power**

Clause 92 provides the Governor in Council with the power to make a regulation under the Act. This power includes, but is not limited to, penalties for contravention of a provision of a regulation of not more than 20 penalty units, fees payable under the Act, and details relating to the identification and establishment of advanced offsets.

#### **Issues**

Submitters raised concern that the Bill does not make adequate provisions to ensure a robust framework for advanced offsets.

As stated under clause 92 the Governor in Council may make regulations which deal with the following matters:

- (a) prescribe fees payable under this Act;*
- (b) provide for an area of land to be identified by an owner to be used for the purposes of an environmental offset in the future (an advanced offset) and for the use of advanced offsets, including, for example, by providing for trade in relation to advanced offsets;*
- (c) require or permit other amounts to be paid out of the offset account;*
- (d) impose a penalty for contravention of a provision of a regulation of no more than 20 penalty units.*

NELA and RTCA queried the absence of further detail in the Bill about advanced offsets other than to provide that a regulation may provide for these mechanisms, including their use and trade.

In his submission, Dr Hugh Lavery impressed on the committee the importance of providing in the Bill for private sector involvement in advanced offsets and 'environmental banking':

*The vast majority of good (fertile, productive) lands in Queensland are privately managed. The private sector must be engaged in appropriate land management if the environment of this State is to be sustained. Any offset policy in the private sector must allow for trading - the 'language' of that sector. 'Environmental banking' in North America has proved that this can work successfully, to greater ecological and economic benefit. Legislation is required (mainly for financial reasons, because site selection and net environmental gain measures have been established for Queensland). North American advice is unanimously for 'stand-alone' banking legislation - to avoid replication across all relevant legislation,*

*because environmental components (e.g. carbon, sulphur, endangered species, wetlands) are too complex to isolate and thus avoid financial 'double-dipping', and because single industry focus likewise ignores inter-relationships (e.g. mining, only 0.09% of the surface area of the State).<sup>171</sup>*

The RTCA also comments that the draft policy provides limited further information about advanced offsets (at Appendix Five), and that it is clearly difficult to comment on advanced offsets in the absence of draft regulations.<sup>172</sup>

### **DEHP advice**

In response to the points raised by NELA and RTCA, DEHP advised:

*Reference to advanced offsets in the Bill provides the head of power for the regulations to provide more detail on advanced offsets*

*The regulation will be made available before finalisation of the framework.*

In response to Dr Lavery's comments, DEHP advised:

*The Department thanks Dr Lavery for his submission and the department notes his views.*

*The Bill does not rule out a trading scheme for advanced offsets in the future.*

*Regulations will be prepared to provide a basis for advanced offsets and will include registration of the advanced offset. This will facilitate their use and, as a result, potential trading.*

## **Schedule 2 Dictionary**

Schedule 2 contains definitions for various terms used in the Act.

### **Issues**

QRC believes that there are a number of concepts that are missing a definition in Schedule 2 including: 'indirect offset', 'temporary offset' and 'advanced offset'.

### **DEHP advice**

The department noted the points made by QRC in its advice on the submissions.

In response to a request for further advice on the inclusion of definitions within the Bill, the department advised:

*In general the drafting convention for definitions used in Queensland is as follows:*

- *If the term is not defined in the legislation, the term takes its ordinary meaning (dictionary meaning)*
- *Only terms used in the legislation should be defined in the legislation.*
- *A word or expression may be defined if it is necessary to give certainty to its meaning, or to limit or extend its ordinary meaning.*
- *If a term is only used in a single section, the definition for the term is placed in that section.*
- *If a term is used in more than one section the definition is placed in schedule.*
- *A definition in a single section can be applied to the same term used elsewhere in the Bill if the definition in the schedule refers to the definition in the section.*

<sup>171</sup> Lavery, H., 2014, *Submission No.1*, pp.1-2.

<sup>172</sup> Rio Tinto Coal Australia P/L, 2014, *Submission No. 42*, p.2.

*In relation to advanced offset – there is already a tag definition in clause 92(2)(b) of the Bill. It is an area of land identified by an owner to be used for the purposes of an environmental offset in the future. The term is not placed in the schedule because it is only used once in the Bill.*

#### **Committee Comment**

The committee notes the terms proposed by QRC to be included in the Schedule. Based on the advice provided by the department in relation to legislative drafting principles, the committee is satisfied that there is no need to include definitions for 'advanced offsets', 'temporary offsets', 'counterbalance', and residual impact' in Schedule 2 of the Bill.

However in light of the committee's previous recommendation that cl.83 be amended to include 'strategic investment corridors' and 'direct benefit management plans' (Recommendation 14), the committee suggests that these terms be included in the Dictionary at Schedule 2.

#### **Recommendation 15**

The committee recommends that Schedule 2 be amended by including definitions in the Bill for 'strategic investment corridors' and 'direct benefit management plans'.

### **Should the Bill be Passed?**

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. After examining the form and policy intent of the Bill, the committee determined that the Bill should be passed.

#### **Recommendation 16**

The committee recommends that the Environmental Offsets Bill 2014 be passed with the amendments recommended in this report.



## 5. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee sought advice from the Department of Environment and Heritage Protection (DEHP) in relation to a number of possible fundamental legislative principles issues. The following sections discuss the issues raised by the committee and the advice provided by the department.

### Right and liberties of individuals

#### **Section 4(3) *Legislative Standards Act 1992* – Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?**

**Clause 44** provides that the ‘chief executive’ by instrument in writing can appoint any of the following persons as an enforcement officer:

- a public service employee
- an Australian Public Service (APS) employee under the *Public Service Act 1999* (Cwth)
- a police officer
- with the individual’s consent, another individual, or
- other persons prescribed under a regulation.

An enforcement officer can be appointed on any condition stated in a regulation pursuant to clause 45(1)(c).

Section 4(3)(c) of the *Legislative Standards Act 1992* provides that legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons. Generally, powers should be delegated only to appropriately qualified officers or employees of the administering department. The *Acts Interpretation Act 1954*, section 27A contains extensive provisions dealing with delegations.

In this instance, clause 44 delegates power from the chief executive to a number of persons including state and commonwealth public servants, police officers, ‘other persons as prescribed under a regulation’ and other individuals, with their consent.

#### **Request for advice: references to the ‘chief executive’**

The committee asked DEHP to clarify that references to the ‘chief executive’, except where otherwise stated, refer to the Chief Executive of the Department of Environment and Heritage Protection.

#### **DEHP advice**

*The Committee requested clarification in relation to references to chief executive in section 44 of the Bill.*

*All references to the ‘chief executive’ refer to the Chief Executive of the Department of Environment and Heritage Protection except where otherwise stated.*

*Enforcement officers may be appointed under the Bill to enforce compliance with environmental offset agreements associated with the delivery of offsets within the environmental offset protection areas (the proposed new option for legally securing an offset area) or offsets using funds from financial settlement offsets.*

*These are new powers that will be exercised exclusively by the Department of Environment and Heritage Protection. Local government will also be provided enforcement powers associated with environmental offset agreements for offsets funded using local government financial settlement offset payments.*

*Deemed conditions outlined in Part 6 of the Bill will be enforced by inspectors appointed under the legislation that administers the approvals for prescribed activities (e.g. inspectors appointed under section 445 of the Environmental Protection Act 1994 for non-compliance with environmental offset conditions imposed on environmental authorities).*

#### **Committee comment**

The committee notes that references in the Bill to the 'chief executive' refer to the chief executive of the Department of Environment and Heritage Protection, except where otherwise specified.

#### **Request for advice: Criteria for appointment or disqualifying of enforcement officers**

The committee asked DEHP to advise what qualifications, skills or experience would qualify a person for appointment as an enforcement officer, as provided by clause 44, and similarly what would disqualify a person from being appointed.

#### **DEHP advice**

*The Committee has requested advice regarding the appropriateness, qualifications, skills and experience that would qualify a person for appointment as an enforcement officer, as provided by clause 44 and similarly what would disqualify a person from being appointed.*

*The appointment of enforcement officers under the Bill will be undertaken in accordance the department's procedural guidelines for the appointment of such persons. Under the guideline, an authorised person may only be appointed if the person is qualified because they have the expertise or experience necessary to perform the responsibilities that are required to be performed by the authorised person or they have satisfactorily finished approved training.*

*An appointment ends when the person ceases to be employed by the agency or are no longer considered by their manager as suitable. For example, an authorised officer may no longer be considered suitable when their role no longer relates to the enforcement officer responsibilities or where they have been subject to relevant disciplinary action or criminal prosecution.*

#### **Committee comment**

The committee thanks the department for its advice that the appointment of enforcement officers will conform to the department's procedural guidelines. In the absence of advice on what qualifications, skills or experience would qualify a person for appointment as an enforcement officer, as provided by clause 44, and similarly what would disqualify a person from being appointed, the committee invites the Minister to provide this information for the information of the House.

#### **Request for advice: regulation making power in relation to enforcement officers**

The committee asked DEHP to advise the persons prescribed under a regulation whom it envisages would be appointed as enforcement officers.

#### **DEHP advice**

*The Committee has sought advice regarding which persons prescribed under a regulation could be appointed as enforcement officers*

*The ability to prescribe, by regulation, other classes of person who may be appointed as enforcement officers is consistent with similar provisions under other Queensland legislation. However, there is no proposed use of this power at this time.*

**Committee comment**

The committee thanks the department for its advice that there is the ability to prescribe, by regulation, classes of persons who may be appointed as enforcement officers. The committee also notes the department's advice that it does not propose to use this provision at this time.

The committee believes it would assist honourable members in their consideration of clause 44 to understand the department's intentions. For example, the committee is interested to understand which particular classes of persons the department might seek to appoint as enforcement officers. We expect that intricacies of environmental science and environmental offsets would require enforcement officers with particular qualifications and skill sets. The committee invites the Minister to comment on these points.

Given that the department has advised it does not propose to use the power to appoint persons prescribed under a regulation (clause 44(1)(e)), the committee invites the Minister to assure the House that the provision should stand part of the Bill.

**Request for advice: making determinations about appointment of authorised officers**

The committee asked DEHP to advise, in the absence of provisions in the Bill that would explicitly qualify this authority to appoint an enforcement officer, how the chief executive and, in respect to clause 44(2), the chief executive of a local government, would determine the appropriateness of the person to be appointed.

**DEHP advice**

*Clause 44 (3) states that only qualified persons with skills and experience could be appointed to the role of enforcement officers. It would be against the purpose of the Act to appoint a person without the skills and experience needed to perform the duties of an enforcement officer. The chief executive; administering the Environmental Offsets Bill or of the relevant local government; is therefore bound to appoint a person with the capacity, qualifications and relevant experience to carry out the required duties.*

*Appointments to the Queensland Public Service are, and must be, carried out in accordance with the Public Service Act 2008. In particular section 28 of that act states:*

*In applying the merit principle to a person, the following must be taken into account—*

*(a) the extent to which the person has abilities, aptitude, skills, qualifications, knowledge, experience and personal qualities relevant to the carrying out of the duties in question;*

*(b) if relevant—*

*(i) the way in which the person carried out any previous employment or occupational duties; and*

*(ii) the extent to which the person has potential for development.*

*In terms of clause 44 (2) this provision is complementary to existing legislation binding local government.*

*Local government agencies operate in accordance with the Local Government Act 2009, or City of Brisbane Act 2010, where each act contains provisions relevant to the appointment of authorised persons who may undertake a specific role for the relevant local government agency. These provisions expressly state that a person is qualified to be an authorised person if the person has the competencies necessary to perform the responsibilities that are required to be performed by the authorised person. The relevant sections are contained within Part 6 of the Local Government Act 2009 and Part 5 of the City of Brisbane Act 2010.*

**Committee comment**

The committee notes and is satisfied by the department's advice.

### **Request for advice: the appointment of other consenting individuals as enforcement officers**

The committee asked DEHP to explain the circumstances in which it envisages that a consenting individual would be appointed as an enforcement officer who is neither a public service employee, an APS employee, a police officer nor a person prescribed under a regulation.

#### **DEHP advice**

*The Committee has asked the department to explain the circumstances in which it envisages that a consenting individual would be appointed as an authorised officer who is neither a public service officer, an APS (in full) employee, a police officer nor a person prescribed under a regulation.*

*The ability to appoint consenting individuals as authorised persons under the Act is a compliance cost reduction option that would allow the chief executive of the Department of Environment and Heritage Protection to appoint local government employees and other employees of statutory bodies as enforcement officers – these employees are not “public service officers”.*

*While there is no proposed use of this provision at this time, this option may be relevant in the future for the monitoring of offset delivery in remote locations (such as Cape York Peninsula) or in situations where both a State and local government offset is being delivered on a single site.*

*Under clause 44(3) of the Bill, only consenting persons who are also appropriately qualified may be appointed.*

#### **Committee comment**

The committee notes the department’s advice that there is no proposed use of the provision at this time to appoint a consenting individual as an enforcement officer [cl. 44(1)(d)] who is neither a public service employee, an APS employee, a police officer nor a person prescribed under a regulation.

If the provision is not necessary at this time, the committee questions whether it should be included in the Bill. We therefore seek the Minister’s advice on this point.

#### **Points for clarification regarding clause 44**

The committee invites the Minister for Environment and Heritage Protection to advise the House: what qualifications, skills or experience would qualify a person for appointment as an enforcement officer and, similarly, what would disqualify a person from being appointed; and which persons prescribed under a regulation he envisages would be appointed as enforcement officers in accordance with clause 44 (1)(e).

Given the department’s advice that it does not propose to appoint consenting persons as enforcement officers in accordance with clause 44(1) (e), the committee invites the Minister to assure the House that this provision should remain in the Bill.

### **Request for advice: delegations of administrative power**

The committee sought assurances that the delegation of administrative power proposed in clause 44 has sufficient regard to the rights and liberties of individuals.

#### **DEHP advice**

*The department has worked closely with the Office of the Queensland Parliamentary Counsel to ensure enforcement powers provided under the Bill have sufficient regard to the rights and liberties of individuals.*

*Consistent with current legislative standards, the rights and liberties of individuals will be protected in relation to the appointment of enforcement officers and exercise of their powers under the Act by:*

- *requiring enforcement officers to be appropriately qualified;*
- *requiring the production and display of the enforcement officer's identification card before powers are exercised;*
- *limiting the enforcement powers to only those necessary – more draconian powers such as the power to seize property and stop vehicles are not provided to enforcement officers under the Bill;*
- *ensuring the exercise of powers are subject to adequate notice in the circumstances;*
- *restricting the power to enter places, other than public places during opening hours, to circumstances where consent of the occupier is given or a warrant has been issued;*
- *providing exemptions from offence provisions associated with the exercise of enforcement officer powers where a person has a reasonable excuse;*
- *requiring enforcement officers when exercising powers under the Act to avoid inconvenience to other persons and minimise damage to property; and*
- *providing a power for seek compensation if a person incurs loss because of the exercise of enforcement officer powers.*

#### **Committee comment**

The committee notes the protections for the rights and liberties of individuals that have been incorporated in the Bill.

#### **Section 4(3)(g) *Legislative Standards Act 1992* – Does the Bill adversely affect the rights and liberties, or impose obligations retrospectively?**

Several clauses of the Bill, namely 95, 114, 119, 123, 131, 139 & 144, contain provisions amending the *Environmental Protection Act 1994*, the *Fisheries Act 1994*, the *Marine Parks Act 2004*, the *Nature Conservation Act 1992*, the *Sustainable Planning Act 2009* and the *Vegetation Management Act 1999*, allowing for the retrospective operation of a transitional regulation. These clauses say:

*A regulation (a **transitional regulation**) may make provision of a saving or transitional nature for which—*

*A transitional regulation may have retrospective operation to a day not earlier than the day of the commencement.*

In accordance with the *Legislative Standards Act 1992*, section 4(3)(g), legislation should not adversely affect rights and liberties, or impose obligations retrospectively. In order to justify retrospective legislation strong argument is required that there will be no adverse effects on the rights and liberties of individuals, or the imposition of obligations. A Bill should not contain any provision that adversely and retrospectively affects rights or liberties, or retrospectively imposes obligations without strong justification.

In evaluating legislation with retrospective effect the Scrutiny of Legislation Committee (SLC) had regard to whether the retrospective application was beneficial to persons other than the government; and whether individuals had relied on the legislation and have a legitimate expectation under the legislation before the retrospective clauses commence. Further, the SLC recognised that

there are occasions on which curative retrospective legislation is justified in order to clarify a situation or correct unintended legislative consequences.<sup>173</sup>

### **Request for advice: retrospective operation of transitional regulations**

The committee asked DEHP to explain the circumstances where transitional regulations may require retrospective operation.

Given the number and scope of the acts affected by the retrospective transitional provisions and consequently the increased scope for people to be affected, the committee also sought assurances from DEHP that the retrospective provisions will not impinge on, or adversely affect, the rights and liberties of individuals.

### **DEHP advice**

*Several clauses of the Bill, namely 95, 114, 119, 123, 131, 139 & 144, contain provisions amending the Environmental Protection Act 1994, the Fisheries Act 1994, the Marine Parks Act 2004, the Nature Conservation Act 1992, the Sustainable Planning Act 2009 and the Vegetation Management Act 1999, allowing for the retrospective operation of a transitional regulation.*

*There are no transitional regulations proposed to date. While the Bill allows for retrospective application of the regulations, they may only affect operations that occur after the commencement of the Bill and not for not more than 1 year after its commencement.*

*The power to make transitional regulations will allow the Government to deal with unforeseen issues of a transitional or savings nature that emerge within one year of the commencement of the Bill. This will allow unforeseen issues to be addressed by temporary regulations while amendments to primary legislation are being progressed to provide a more permanent solution to those issues.*

### **Committee comment**

The committee notes and is satisfied by the department's advice.

### **Institution of Parliament**

**Scrutiny of Legislative Assembly – Section 4(4)(b) *Legislative Standards Act 1992*. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly?**

#### **a) Appropriate delegation of legislative power**

Several clauses (including clauses 9, 10, 12, 18, 19, 25, 28, 32, 44, 45 & 89) of the Bill allow for matters to be carried out, and terms defined, by regulation. Many of these matters have direct relevance to the interpretation and implementation of the Act.

In particular, the reliance on regulations can be seen at clauses 9 and 10 which provide for what constitutes a 'prescribed activity' and a 'prescribed environmental matter' respectively.

Clause 9 says:

#### ***What is a prescribed activity***

***A prescribed activity is an activity—***

***(a) the subject of an authority under another Act; and***

***(b) for which an offset condition may be imposed under the other Act on the authority; and***

***(c) that is prescribed under a regulation.***

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<sup>173</sup> Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p. 56.

Clause 10(1) says:

*A **prescribed environmental matter** is any of the following matters prescribed under a regulation to be a prescribed environmental matter*

A further example is at clause 12 which provides for what constitutes an environmental offsets policy. Clause 12(1) says:

***What is an environmental offsets policy***

*An **environmental offsets policy** is a document prescribed under a regulation to be an environmental offsets policy.*

This is acknowledged in the Bill's Explanatory Notes which concede that the aforementioned clauses could be classed as Henry VIII provisions:

*The Bill allows for matters of environmental significance and permit categories that will be subject to the Act to be defined in the regulations. This approach is necessary in order to confirm that not all permit categories will require offsets and not all impacted values will be addressed by an offset. The listing of matters and activities in the regulation rather in the Act reflects the dynamic nature of the permit system in Queensland, most of which is subject to review.<sup>174</sup>*

The *Legislative Standards Act 1992* provides that a Bill should only authorise the amendment of an Act by another Act.<sup>175</sup> A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a Henry VIII clause.

The former Scrutiny of Legislation Committee's (SCL) approach to Henry VIII clauses was that if an Act is purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the SCL would voice its opposition by requesting that Parliament disallow the part of the instrument that breaches the FLP requiring legislation to have sufficient regard for the institution of Parliament.<sup>176</sup>

The SLC considered the possible use of Henry VIII clauses in the following limited circumstances:

- to facilitate immediate executive action
- to facilitate the effective application of innovative legislation
- to facilitate transitional arrangements, and
- to facilitate the application of national scheme legislation.<sup>177</sup>

The OQPC Notebook explains that the existence of these circumstances does not automatically justify the use of Henry VIII clauses, and, if the Henry VIII clause does not fall within any of the above situations, the SLC classified the clause as 'generally objectionable'.<sup>178</sup>

#### **Request for advice:**

Notwithstanding the reasons given in the Explanatory Notes, the committee asked DEHP to explain why the 'prescribed activities' and 'prescribed environmental matters' to which an offset condition (and hence the Act) will apply are not included in the primary legislation.

<sup>174</sup> Environmental Offsets Bill 2014, *Explanatory Notes*, p.8.

<sup>175</sup> *Legislative Standards Act 1992*, section 4(4)(c).

<sup>176</sup> Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p. 159.

<sup>177</sup> Office of the Queensland Parliamentary Counsel, 2008, p.159.

<sup>178</sup> Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p.159; Scrutiny of Legislation Committee, 2006, *Alert Digest 2006/10*, p. 6; Scrutiny of legislation Committee, 2008, *Alert Digest 2001/8*, p.28.

The committee also asked the department to comment more generally on the rationale for, and appropriateness of, using regulations and statutory policies to achieve the Bill's objectives.

Due to the significance of the regulation and associated statutory policies to the interpretation and implementation of the Act, as provided for within the Bill, the committee asked DEHP to advise when it is likely that the regulations and offsets policy will come into effect, should the Bill be passed.

#### **DEHP advice**

*The Committee has asked the department to provide:*

- an explanation of why the 'prescribed activities' and 'prescribed environmental matters' to which an offset condition will apply are not included in the primary legislation;*
- the rationale for, and appropriateness of, using regulations and statutory policy to achieve the Bill's objectives; and*
- an indication of when the regulations and offsets policy will come into effect, should the Bill be passed.*

*The listing to the prescribed activities and prescribed environmental matters in the regulations rather than the Bill was a policy decision of the current Government. As the explanatory notes indicate, these regulations will confirm that not all permit categories will require offsets and not all impacted values will be addressed by an offset – these regulations are designed to reduce existing red tape. This rationale also applies to the listing of the policy by regulation.*

*Many of the regulation-making powers are included to accommodate any future requirements of the Commonwealth government associated with accreditation of the State's environmental offset framework. While the extent of the adjustments required (if any) is unknown at this stage, the following regulation-making powers have been included to provide the flexibility to:*

- list matters of national environmental significance (clause 10(3));*
- update the offset policy (clause 12(1));*
- expand the requirements to be met by offset delivery plans for proponent-driven offsets (clause 18(4));*
- expand the matters that must be considered in approving an offset proposal (clause 19(1));*
- expand the matters that must be addressed in an environmental offset agreement (clause 25(3) and (4));*
- expand the matters that must be recorded in the offset register (clause 89 (1)).*

*Clause 19(6) provides a head of power to include by regulation, dispute resolution processes for key decisions under the Bill such as decisions about the type of offset that must be delivered. Given that individual rights and liberties may be affected by those decisions the regulation-making power was recommended by the Office of the Queensland Parliamentary Counsel to address associated fundamental legislation principles.*

*Several dispute resolution processes may need to be provided under the regulations for those decisions to reflect the different alternative dispute resolution and merit review processes currently in use under the impact assessment legislation.*

*Clause 23 provides the head of power to prescribe, by regulation, how administering agencies must calculate the amount to be paid for a financial settlement offset. The listing of the financial settlement offset calculator in the regulations is justified given the level of*



*detail involved in the calculation and[its] need to be flexible enough to respond to market and environmental conditions to inform achievement of the Bill's purpose.*

*The total payment required includes a landholder incentive payment, administrative costs and the cost of delivering the offset on the site by the landholder. A scientifically-based approach is used to calculate the offset obligation that takes into account regional differences, variation in the quality of environmental matters on the impacted and offset site and the ability to co-locate some matters on an offset site. Costs are based on advice from practicing offset brokers, natural resource management bodies and recognized experts in the field of environmental offsets and land restoration.*

*Clause 28 provides the head of power to list, by regulation, other mechanisms for legally securing offset areas in the future. Impacts arising from such regulations are likely to be positive – the outcome is to provide greater choice to landholders willing to deliver offsets on their lands.*

*Clause 29 of the Bill requires the consent of the chief executive under the Forestry Act 1959 where the declaration of an environmental offset protection area may affect interests under that Act such as State forests, forest entitlement areas and timber reserves. Clause 29 also provides the head of power to extend, by regulation, this requirement to other interests managed under the Forestry Act 1959 subject to further consultation with the Department of Agriculture, Fisheries and Forestry during the drafting of the regulations.*

*Clause 32 of the Bill allows the process for amending and revoking an environmental offset protection area to be stated in the regulations. This approach was taken in order to provide an ability to consider and address issues that emerged during the drafting of the provisions such as the requirements associated with dispute resolution and the removal of such areas in order to facilitate development that is in the public interest.*

*Under the Government's Six Month Action Plan, should the Bill be passed, implementation of the new environmental offset framework (including the offset policy and regulations) is scheduled for 1 July 2014.*

#### **Committee comment**

The committee notes and is satisfied by the department's advice.

#### **b) Matters relating to fees, penalties and other court decisions**

Clause 72 of the Bill provides that a person may claim compensation if he or she incurs loss or expense because of the actions of an enforcement officer. Specifically, clause 72(6) provides that a regulation may prescribe matters that a court must take into account when determining compensation.

Clause 72 (6) says:

*A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.*

Clause 92 of the Bill provides for a regulation making power pursuant to the Act. At clause 92(2) a regulation may prescribe fees payable under the Act and impose a penalty for contravention of a provision of a regulation of no more than 20 penalty units.

Clause 92 states:

#### **Regulation-making power**

*(1) The Governor in Council may make regulations under this Act.*

*(2) A regulation may do any of the following—*

*(a) prescribe fees payable under this Act;*

- (b) provide for an area of land to be identified by an owner to be used for the purposes of an environmental offset in the future (an **advanced offset**) and for the use of advanced offsets, including, for example, by providing for trade in relation to advanced offsets;*
- (c) require or permit other amounts to be paid out of the offset account;*
- (d) impose a penalty for contravention of a provision of a regulation of no more than 20 penalty units.*

Section 4(5)(c) of the *Legislative Standards Act 1992* provides that subordinate legislation should contain only matters appropriate to that level of legislation. Although an Act may legally empower the making of particular subordinate legislation, there remains the issue of whether the making of particular subordinate legislation under the power is appropriate. For example, an Act's empowering provision may be broadly expressed so that not every item of subordinate legislation that could be made under it is necessarily appropriate to subordinate legislation in every circumstance that arises.<sup>179</sup>

The greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater will be the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament in subordinate legislation.<sup>180</sup>

In this instance clause 72 provides that a regulation can prescribe matters that a court may or must take into account when considering an order for compensation. Clause 92 allows for penalties and fees payable by way of regulation. It is arguable that given the importance of these provisions they should be contained in the primary Act and not a regulation.

#### **Request for advice:**

The committee asked DEHP to advise the rationale for using a regulation for these seemingly important matters, rather than having them appear in the primary legislation.

#### **DEHP advice**

*The committee has requested an outline of the rationale for using a regulation making power in relation to fees, penalties and court decisions.*

*While the clause 92(2) of the Bill allows fees to be prescribed by regulation, there are no fees proposed at this time. This provision is included as a reflection of current drafting practice.*

*Similarly, clause 72(6) allows a regulation to prescribe matters that may, or must, be taken into account by the court when considering whether it is just to order compensation for loss arising as a result of the exercise of an enforcement officer's power. This provision is consistent with current drafting practice. There are no regulations proposed at this time for this subject matter.*

*While clause 92 allows regulations to impose a maximum penalty of not more than 20 penalty units for offences under the regulations, the inclusion of this provision functions to limit the maximum penalties for future offences (there are no offences proposed at this time). Penalties above this limit are considered to be serious offences and therefore must be located within the Bill – as recommended by the former Scrutiny Committee.*

#### **Committee comment**

The committee notes and is satisfied by the department's advice.

<sup>179</sup> Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p.165.

<sup>180</sup> Office of the Queensland Parliamentary Counsel, 2008, p.145.

**Proposed new or amended offence provisions**

The Bill contains several new and amended offence provisions as set out in clauses 36, 50, 65(1), 67(1), 69(1), 73(1), 74(1) and 75. It is also noted that several of the new penalty sections will not apply if a 'reasonable excuse' is given by a person.

For example, Clause 67(1) states:

*(1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.*

*Maximum penalty – 50 penalty units*

**Request for advice:**

The committee asked the department to explain with examples what would constitute a 'reasonable excuse' for non-compliance, who would make the determination that an excuse offered is 'reasonable', and whether there are precedents for providing for non-compliance in this way in other Queensland acts.

**DEHP's advice:**

*The committee has requested additional explanation (with examples) outlining what would constitute a "reasonable excuse" for non-compliance, who would make the determination that an excuse offered is "reasonable", and whether there are precedents for providing non-compliance in this way in other Queensland acts.*

*What is a reasonable excuse depends on the circumstances of the particular case and on the purpose of the provision to which the defence of "reasonable excuse" is an exception.*

*An example of a reasonable excuse is where the person had no control over preventing the offence or the offence was committed through no fault of the person.*

*Clauses 65 (offence to contravene help requirement) and 69 (offence to contravene information requirement) of the Bill further define reasonable excuse to include failing to comply with a requirement if complying might tend to incriminate the individual or expose the individual to a penalty. This is standard drafting practice designed to safeguard existing individual privileges against self-incrimination.*

*Where the reasonable excuse is a defence, the prosecution must demonstrate, as an element of their defence, that the person did not have a reasonable excuse.*

*The provision of reasonable excuse as a defence reflects current Queensland drafting practice where there is nothing about the offence which would suggest the defence is inappropriate. Such defences are designed to ensure that the rights and liberties of individuals are protected and reflect recommendations of the former Scrutiny Committee.*

**Committee comment**

The committee notes and is satisfied by the department's advice.



## Appendix A – List of submitters

- 1 - Dr Hugh Lavery
- 2 - Dr Martine Maron
- 3 - Mr Frank Ekin
- 4 - Fitzroy Basin Association Inc.
- 5 - Queensland Resources Council
- 6 - Ergon Energy Corporation Limited
- 7 - SEQ Catchments Limited
- 8 - Association of Mining and Exploration Companies
- 9 - Cement, Concrete and Aggregates Australia
- 10 - AMEC Environment & Infrastructure Pty Ltd.
- 11 - Mackay Conservation Group
- 12 - Wildlife Preservation Society of Queensland (Fraser Coast Branch)
- 13 - National Parks Association of Queensland
- 14 - Environment Institute of Australia and New Zealand - South East Queensland Division
- 15 - Noosa Council
- 16 - Queensland Murray-Darling Committee Inc.
- 17 - Queensland Ports Association
- 18 - Urban Development Institute of Australia (Queensland)
- 19 - Queensland Tourism Industry Council
- 20 - Mr Chris Walker
- 21 - Queensland Conservation Council
- 22 - Property Council of Australia (Queensland Division)
- 23 - Queensland Environmental Law Association Inc.
- 24 - Logan City Council
- 25 - Confidential
- 26 - Council of Mayors (South East Queensland)
- 27 - Australian Petroleum Production & Exploration Association
- 28 - Energex Limited
- 29 - Sea Turtle Foundation
- 30 - National Environmental Law Association
- 31 - Logan and Albert Conservation Association
- 32 - Alliance to Save Hinchinbrook Inc.
- 33 - Cape York Land Council Aboriginal Corporation
- 34 - Capricorn Conservation Council
- 35 - Confidential

- 36 - Powerlink Queensland
- 37 - Wildlife Preservation Society of Queensland (Bundaberg Branch)
- 38 - Gold Coast and Hinterland Environment Council
- 39 - Council of the City of Gold Coast
- 40 - Environmental Defenders Office Queensland
- 41 - Wide Bay Burnett Environment Council Inc.
- 42 - Rio Tinto Coal Australia Pty Limited
- 43 - Local Government Association of Queensland Ltd.
- 44 - Confidential
- 45 - Gladstone Ports Corporation Limited
- 46 - Brisbane City Council
- 47 - Queensland Regional Natural Resource Management Groups Collective Ltd.
- 48 - Confidential
- 49 - AgForce Queensland
- 50 - Canegrowers
- 51 - Australian Prawn Farmers Association

## **Appendix B – Briefing officers**

### **Briefing officers from the Department of Environment and Heritage Protection at the public briefing held 19 March 2014**

Mr Jonathan Black, Director-General

Mr Mark Allen, Senior Planning Officer, Environmental Policy and Planning

Ms Vanessa Coverdale, Principal Policy Director, Ecosystem Outcomes

Mr Peter Hutchison, Executive Director, Environment and Water Quality

Ms Leslie Shirreffs, Executive Director, Ecosystem Outcomes

### **Briefing officers from the Department of Environment and Heritage Protection at the public briefing held on 2 April 2014**

Hon Andrew Powell MP, Minister for Environment and Heritage Protection

Mr Mark Allen, Senior Planning Officer, Environmental Policy and Planning

Mr Scott Buchanan, Director, Ecosystem Outcomes

Ms Vanessa Coverdale, Principal Policy Officer, Ecosystem Outcomes

Mr Craig Hempel, Principal Project Officer, Ecosystem Outcomes

Mr Peter Hutchison, Executive Director, Environment and Water Quality

### **Witnesses at the public hearing held on 2 April 2014**

Ms Nicole Garland, Adviser, Environmental Policy, Queensland Resources Council

Ms Frances Hayter, Director, Environmental Policy, Queensland Resources Council

Mr Des Boyland, Campaigns Manager, Wildlife Queensland (on behalf of Queensland Conservation Council)

Ms Rana Koroglu, Solicitor, Environmental Defenders Office Queensland

Miss Olivia Williamson, Queensland Environmental Law Association

Ms Tamara Badenoch, Policy and Project Officer, AgForce Queensland

Mr Paul McDonald, Manager, Special Projects, SEQ Catchments

Mr Simon Warner, Chief Executive Officer, SEQ Catchments

Ms Erica Gould, Principal Adviser, Regional and City Strategy, Brisbane City Council

Mr John Jordan, Manager, Natural Environment, Water and Sustainability Branch, Brisbane City Council

Mr James McDonnell, Manager, Environment and Sustainability, Logan City Council

## Appendix C – Consultation by DEHP

### First round of consultation: 2012-13

DEHP held twenty-three meetings and workshops with key groups between mid-July and mid-December 2012. Key stakeholders engaged throughout the consultation process included:

- the resources sector (Queensland Resources Council, Association of Mining and Exploration Companies, Australian Petroleum Production and Exploration Association)
- extractive sector (Cement Concrete and Aggregates Australia)
- conservation sector
- NRM Bodies
- Queensland electricity entities
- Local Government Association of Queensland
- South East Queensland local governments
- Urban and property developers (Urban Development Institute of Queensland, Property Council of Australia), and
- existing private offset brokerage companies.

Discussions were also held with representatives of the Commonwealth Government, Queensland Ports Association, Great Barrier Reef Marine Park Authority and landholders -particularly rural landholders in the Galilee Basin area as part of a strategic offset investment corridor trial for the area.<sup>181</sup>

### Second round of consultation: December 2012 – June 2013

Thirty-five meetings and workshops were held between December 2012 and June 2013 with the key groups listed in the table below.

#### Consultation schedule<sup>182</sup>

Organisation	Date
Council Of Mayors South East Queensland (COMSEQ) – Progressing SEQ Offsets Working Group	12 December 2012
Local Government Association Queensland	6 January 2013
Earthtrade	18 January 2013
Environment Round Table	7 February 2013
Association of Mining and Exploration Companies	21 Jan & 5 March 2013
Ecofund	21 Feb & 6 March 2013
Energex	5 & 6 March 2013
Queensland Resources Council	7 & 15 March; 11 April & 10 May 2013

<sup>181</sup> DEHP, 2014, *Correspondence*, 11 March.

<sup>182</sup> DEHP, 2014, *Correspondence*, 11 March.



Organisation	Date
Australian Petroleum Production and Exploration Association	7, 15 & 19 March; 12 & 19 April 2013
Santos	7 March 2013
University of Queensland	11 & 26 February 2013
Cement Concrete and Aggregates Australia	9 April 2013
Association of Mining and Exploration Companies	10 April 2013
South East Queensland Councils, Council Of Mayors South East Queensland, Local Government Association of Queensland	11 April 2013
Ergon, Energex, Powerlink	15 April 2013
BHP	15 April 2013
NRM Collective	16 April 2013
Salva Resources	16 April 2013
Urban Development Institute of Australia, Property Council of Australia	17 April 2013
Offset Brokers – Greening Australia, Ecofund, Queensland Trust for Nature, SEQ Catchments, Ecological, AMEC	17 April 2013
Energex	18 April 2013
Conservation Groups - Queensland Conservation Council, WWF, Sunshine Coast Environment Council, Rainforest Conservation Society, Capricorn Conservation Council, Brisbane Region Environment Council, The Wilderness Society	18 April 2013
Gold Coast City Council	19 April 2013
Moreton Bay Regional Council	19 April 2013
Queensland Port Association	6 March & 2 May 2013
Property Council of Australia	9 May & 3 June 2013

### Third round of consultation: November 2013 – January 2014

The department held further consultation workshops from late-November 2013 to early-January 2014, and accepted industry submissions until early January 2014. A consultation schedule is provided below.

#### Consultation schedule<sup>183</sup>

Organisation	Date
Local Government Association of Queensland	29 November 2013
Urban Development Institute of Australia & Property Council of Australia	2 December 2013
Queensland Resources Council	2 December 2013
Brokers	3 December 2013

<sup>183</sup> DEHP, 2014, *Correspondence*, 11 March.

Organisation	Date
Council of Mayors SEQ - Offsets working group	5 December 2013
NRM collective	6 December 2013
Australian Petroleum Production and Exploration Association	6 December 2013
Conservation groups	9 December 2013
Gold Coast City Council	10 December 2013
Aurizon	11 December 2013
Association of Mining and Exploration Companies	11 December 2013
Cement, Concrete & Aggregates Australia	12 December 2013
Power entities	12 December 2013
Council of Mayors SEQ	13 December 2013
Australian Petroleum Production and Exploration Association	13 December 2013
AgForce	16 December 2013
Urban Development Institute of Australia	16 December 2013
Power entities	9 January 2014
Aurizon	13 January 2014
Great Barrier Reef Marine Park Authority	24 January 2014
Commonwealth Department of Environment and Heritage	29 January 2014

## Appendix D – Summary of submissions

This summary compiled by committee staff includes advice provided by the Department of Environment and Heritage Protection on issues raised by submitters.

Clause/Issue	Sub. #	Key Points	Departmental response
General comments about Bill and Policy Framework			
In principle support	5, 9, 14, 18, 22, 42, 43, 49, 50	Submissions noted in-principle support for the offsets framework and intent of the Bill, noting merit in objectives of streamlining, simplifying and reducing green tape.	The department thanks [submitters] for their support for the proposed approach under the Bill.
Opposition	11, 14, 16, 21, 25, 29, 31, 34, 38, 37, 36, 40	<p>General opposition to the use of 'offsets' and suggest questionable evidence which supports the notion that offset are successful in delivering conservation outcomes.</p> <p>The QCC and Gecko noted that Queensland has had a number of offset programs in place for several years, and that the State has not provided evidence of the success or otherwise of these programs. They submitted that an assessment needs to be made and completed before the State considers or proceeds with a new Environmental Offsets Bill.</p> <p>Submitted that Queensland should consider the outcome of the Productivity Commissions review and the Commonwealth Senate Inquiry before passing the Bill.</p>	<p>The department notes the views of submitters.</p> <p>Offsets are now an established component of impact assessment and management around the globe however an offset cannot be used to approve development that it is otherwise not permitted.</p> <p>The department undertook a consultative review of existing offsets policies and this identified inadequacies with the current offset regime including the ease with which offset outcomes can be reviewed. The Bill mandates that offset delivery plans for proponent driven offsets include provisions for monitoring and reporting. In addition, all offset decisions must be recorded in a publically available register.</p> <p>The department will review the outcomes of the Productivity Commissions review and Senate Inquiry when available in light of the Queensland offsets framework.</p>
Allowance for offsets trading	1	Suggests that the offsets framework must allow for trading. Legislation is required (mainly for financial reasons, because site selection and net environmental gain measures have been established for Queensland).	<p>The Department thanks Dr Lavery for his submission and the department notes his views.</p> <p>The Bill does not rule out a trading scheme for advanced offsets in the future. Regulations will be prepared to provide a basis for advanced offsets and will include registration of the advanced offset. This will facilitate their use and, as a result, potential trading.</p>
Marine offsets	5, 20, 30	Submissions noted that there are important distinctions between land-based offsetting and marine offsets, and in this context suggest there may be a need for a different approach for marine offsets.	<p>The department acknowledges the fundamental differences between marine and terrestrial ecosystems and the complexities associated with marine offsets.</p> <p>Consistent with government policy, offsets for impacts on marine-based matters of environmental significance must deliver a conservation outcome for the same value impacted regardless of whether the offset site is located</p>

Clause/Issue	Sub. #	Key Points	Departmental response
			<p>on land or in the marine environment. A one-size-fits-all-approach is not applied to these areas – a separate marine offset calculator has been developed for impacts on these areas.</p> <p>To simplify the selection and delivery of marine offsets, the department is preparing a guideline for determining significant impacts, a separate financial settlement calculation method, direct benefit management plans and a marine and estuarine habitat classification and mapping system.</p>
Capped offset ratio/multiplier	2, 5, 19, 21, 22, 40	<p>QRC, QTIC supports the concept and introduction of the capped offset multiplier/ratio</p> <p>Dr Maron, QCC and EDOQ noted objections to the capped ratio and argued that this departed significantly from the Commonwealth's EPBC Act policy approach.</p>	<p>The department thanks QRC and QTIC for their support of the proposed policy approach.</p> <p>The department notes concerns regarding the capped ratio of 1:4. However, this cap reflects the government's policy position. The new offsets framework is designed to achieve a conservation outcome through strategic approaches to environmental offsets such as:</p> <ul style="list-style-type: none"> <li>- the identification of strategic offset corridors</li> <li>- the pooling of financial settlement payments; and</li> <li>- the use of direct benefit management plans to address threatening processes to a prescribed matter and which can straddle multiple tenures.</li> </ul> <p>In the absence of Commonwealth accreditation of the State's offset and assessment framework, the Commonwealth will continue to assess and condition requirements for impacts on MNES. In addition, in order to avoid duplication, the EPBC offsets policy will take precedence over the State's policy where triggered matters are the same.</p> <p>If however accreditation is provided, the State would assess and condition MNES requirements in accordance with the agreed accreditation arrangements.</p>
Inconsistency and Duplication between Commonwealth and State offsets	7, 21, 29, 37, 45	<p>Submissions raised concern that policy differences between the EPBC Act offsets policy and scope, and the scope of the Queensland Government framework may result in a continuing need for duplication of processes, which is contrary to the objective of the Bill.</p>	<p>The Department notes the concerns of submitters.</p> <p>The assessment framework is outside the scope of this review. The matters and activities triggered for assessment are a policy decision of the government.</p> <p>Queensland's new environmental offsets policy avoids duplication with Commonwealth EPBC offsets requirements, by restricting the ability for the State to impose an environmental offset condition if the Commonwealth has already placed an environmental offset condition for the same matter in the</p>

Clause/Issue	Sub. #	Key Points	Departmental response
Offset brokers and industry accreditation	10, 11	Supports the introduction of some manner of accreditation for <i>offset providers, such as an approved panel of providers</i> .	same area. However it cannot limit the Commonwealth's offset requirements.  The appointment of offset brokers must comply with existing State procurement policy and the department's governance framework – the skills, qualification and experience of offset brokers must be assessed before their appointment
Principles of Environmental Offsets	5, 14, 15, 16, 22, 40	Noted the absence of Principles of Environmental Offsets in the Offsets Bill and recommend that principles stated in the current Queensland Biodiversity Offset Policy are included in the Bill. Principles include: <ul style="list-style-type: none"> <li>- No net loss/net benefit</li> <li>- 'like for like' ecological equivalence</li> <li>- 'avoid, mitigate, offset decision hierarchy</li> </ul> <p>QRC noted that they supported the concept of 'no net loss', as opposed to a 'net environmental benefit'</p>	The department notes concerns in relation to offset delivery principles. The offset framework uses the Commonwealth and existing Qld Biodiversity Offset Policy principles as a foundation but that these have been streamlined. The offset principles are outlined in clause 11 (conservation outcome achieved by an environmental offset) and 18(4) and (5) of the Bill – the principles must be addressed in an offset delivery plan for the offset. This is the primary instrument under the Bill for ensuring the offset achieves a conservation outcome. The principles are also outlined in section 2.2 (size and scale of the offset) and 2.7 (characteristics of the offset site). The concept of ecological equivalence will be included in guidelines currently being prepared by the agency. The department noted QRC's views. The proposed offset framework supports a conservation outcome for the impacted matter that maintains the viability of the matter, relative to the status quo (i.e. what would have happened had the development and the offset not occurred). This is essentially a 'no net loss' approach.
Principles of ESD	21	The QCC noted that despite all Australian Governments, including the Queensland Government, being committed to the principles of ecological sustainability, the Department of State Development, Infrastructure and Planning (DSDIP)... have removed ESD Principles from the Draft Planning for Queensland's Development Bill and the Queensland State Planning Policy. The QCC raised concern that "this move sends a very strong and clear signal that DSDIP does not understand or support the Principles of ESD". (Sub 21 pp.3)	This submission is outside the scope of the Bill.
Local government issues	24, 42, 44	The current position on offsets is unacceptable on the basis that: <ul style="list-style-type: none"> <li>- any current local government policy is a 'transition' policy and would need to change</li> <li>- utilising a condition based assessment means that a developer is unable to determine the offset consequence of their proposal at the time of undertaking due</li> </ul>	The department notes concerns in relation to local government transitional policies. The revised framework provides for a local government to have its own offsets policy under its planning scheme. The revised framework also provides flexibility for the delivery of environmental offsets which achieves a more strategic environmental

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		<p>diligence on the project</p> <ul style="list-style-type: none"> <li>- the policy provides three clear 'escape' provisions to avoid a proper offset and those provisions will be exploited</li> <li>- the policy goes against the long standing position of Councils in SEQ requiring offsets to be applied locally</li> <li>- the policy makes no provision for the accreditation of local offsets to comply with both federal and state offsets requirements</li> <li>- fails to establish a standard for offsets, only an upper limit</li> <li>- does not address the fundamental issue of the securement of offset sites.</li> </ul>	<p>outcome by focusing on managing threats to the impacted matter in order to maintain the viability of the prescribed environmental matter into the future.</p> <p>The proposed Queensland Environmental offsets policy also provides for a proponent driven offset to be delivered in accordance with a geographic hierarchy which means locally within the same LGA in the first instance.</p> <p>The Bill (clause 28) outlines a number of legal security mechanisms available for offsets and introduces a new mechanism. The legal security mechanism, once operational, will prevent a prescribed activity from being undertaken on a legally secured offset site, unless the declaration has been removed. Upon removal, a replacement environmental offset would then need to be established, known as an 'offset to the offset', for the original and current impact to the site.</p>
Rehabilitated land as offsets	5	<p>QRC has argued that rehabilitation of an impact should be considered when assessing what the significant residual impact is of an activity and to some extent should reduce the offsetting obligation (or the amount of offset land required) of a proponent. QRC believes the Bill should make reference to rehabilitation measures.</p> <p><i>'This would provide proponents, all of whom will undertake rehabilitation activities as required by Queensland's Environmental Protection Act 1994 (Qld) (EP Act) and the Commonwealth EPBC Act (where applicable), with the surety that their rehabilitation techniques and commitments will be considered in determining their residual impacts and hence offset quantum'.</i></p> <p>QRC has also suggested that there should be recognition in the Bill that land rehabilitated as a result of an authority requirement can be used as an offset once the rehabilitation works has been completed, where the works go above and beyond the stated requirements. They argued that this would encourage proponents to leave the land on which the activity was taking place in a better condition than prior to the resource activity.</p>	<p>This matter is outside the scope of the Bill – the assessment and approval of mitigation measures is governed by the impact assessment and approval legislation.</p> <p>Section 2.7 of the policy outlines the characteristics that the rehabilitated land (or any other land) should have in order to be used as an offset site.</p> <p>Clause 18 requires offsets to provide benefits that are not already required under any other Act which would exclude rehabilitation required under other Acts unless the rehabilitation is above and beyond those requirements and the conservation gain achieved can be measured.</p>
Reporting and monitoring of offsets	37, 40	<p>There should be independent evaluation and clear reporting on the effectiveness and performance of offset conditions.</p> <p>EDOQ proposed that a new clause be inserted into the Bill to require offsets performance reporting in the State of the Environment Report.</p> <p>WPSWB recommended that offsets should be monitored by qualified consultants appointed by the Queensland Government, and be subject to an annual audit that is publicly available to ensure that the public interest is being maintained, and that endangered ecosystems being genuinely enhanced and protected within offset areas.</p>	<p>The Bill addresses the need to monitor offsets by mandating that offset delivery plans for proponent driven offsets include provisions for monitoring and reporting. In addition, all offset decisions must be recorded in a publicly available register.</p> <p>The department notes WPSWB suggestion that offsets should be monitored and audited by consultants. This requirement is not cost effective or necessary in all instances – requirements for independent monitoring and auditing will be based on an assessment of risks associated with each offset.</p>

Clause/Issue	Sub. #	Key Points	Departmental response
DBMPs and Strategic Investment Corridors	7, 33, 42, 47	<p>Suggest that it is appropriate and important to include direct benefit management plans and strategic investment corridors in the Bill.</p> <p>CYROs consider there is potential synergy between the objectives of the Environmental Offsets Bill and objectives to improve the social and economic circumstances of Cape York's Aboriginal people. They note that Aboriginal land and native title areas may be suitable Strategic Offset Environmental Corridors, and will provide Aboriginal land holders income for managing land to enhance and protect its environmental values.</p>	<p>The department notes RTCA's concerns regarding the strategic investment corridors and direct benefit management plans.</p> <p>While the Bill does not specifically mention those mechanisms, they may be adopted by proponents in the selection of the offset site and preparation of their offset delivery plan to meet the requirements of clauses 11 and 18 of the Bill.</p> <p>Under clause 19 of the Bill administering agencies must have regard to the environmental offsets policy when making a decision to approve an offset and the policy also provides for the use of those mechanisms.</p> <p>The new environmental offset framework improves the potential for offset investment in Cape York – offsets may now be delivered in ecosystems that are largely intact. Direct benefit management plans for the area may now focus on the control of weeds, fire and feral animals in the area potentially generating new income from land management.</p>
Agricultural interests	49	<p>AgForce expressed concern that the framework seems to have been developed with large organisations or resource companies in mind. "The framework assumes that agriculture's position within the framework is to provide offset opportunities, to the benefit of landholders, as another income stream on their properties and does not appear to consider the development opportunities available to the agricultural industry that may be impacted by the framework".</p> <p>AgForce is concerned primary producers required to provide an offset as part of agricultural development will be unintentionally constrained from taking part in the opportunities provided through other green tape reduction schemes due to the fact that the framework has not been tested within the agricultural sector.</p> <p>AgForce also believe that the Department must maintain some responsibility to ensure landholders are aware of the commitments they may be undertaking when entering into offset delivery arrangements and recommends that there is an appropriate education program for landholders following the finalisation of the offsets framework.</p> <p>They also noted that it is imperative that departmental staff are well trained and informed once the policy is finalised to again ensure consistency of advice, but also appropriate administration of the policy.</p>	<p>The department notes Agforce concerns regarding environmental offset in agricultural areas.</p> <p>Environmental offsets are currently required for some agricultural activities such as the clearing of protected plants – it is not a new requirement.</p> <p>The decision to deliver an offset in an area ultimately rests with the landholder. The Bill does not prevent the landholder from choosing other development opportunities available.</p> <p>Registration of offset areas will ensure future buyers of the land are made aware of the presence of legally secured offset areas – which in most cases is likely to enhance the value of the property.</p> <p>Information about the new environmental offset framework will be provided to the public and training provided to departmental staff before commencement.</p>
Comments about consultation and finalisation of regulation, policy and	5, 6, 8, 18, 19, 22, 23, 25, 27,	<p>Noted concern that the draft regulations, draft policy and/or associated guidelines were not released at the same time as the Bill to allow for a considered assessment of the overall framework.</p> <p>Some organisations also noted that they had not been invited to participate in the</p>	<p>The regulation will provide the legislative support to ensure certain provisions of the Bill are operational and is based on the information already provided during consultation.</p> <p>The Bill clearly defines the components of the Regulation that may include but</p>

Clause/Issue	Sub. #	Key Points	Departmental response
other supporting materials	28, 29, 30, 32, 37, 38, 39, 40, 42, 44, 45	targeted consultation activities on the draft policy and draft bill.	<p>not limited to, the prescription of matters of environmental significance, and authorities to which the Bill applies.</p> <p>The regulation and guidance material will be made available before commencement of the framework</p> <p>The department notes ASH concerns regarding public consultation on the Bill.</p> <p>The department held extensive consultation with representatives from industry, local government, natural resource management and conservation sectors who were identified as having an interest in the new environmental offsets framework for the State and reflects the policy position of the department as well as the information provided and feedback received during consultation.</p> <p>The offset review did not change the assessment triggers for offsets only how offsets can be provided.</p>
<b>Comments on Clauses of the Bill</b>			
3 Purpose and achievement	7, 32, 35, 37, 41, 40, 47	<p>Raised issue with the wording and intent of the purpose/objective; suggested it must include:</p> <ul style="list-style-type: none"> <li>- reference to 'compensation' rather than 'counterbalancing' to bring the Bill more in line with Commonwealth terminology. (Sub 32,35, 40.)</li> <li>- 'avoid, mitigation and offset' hierarchy for decision making (sub 7, 47)</li> <li>- Net environmental gain (sub 41)</li> <li>- principles of Ecologically Sustainable Development (ESD) (sub40)</li> </ul>	<p>The object provision has been drafted in accordance with government policy for environmental offsets and is consistent with the Commonwealth approach. The Australian Macquarie Dictionary defines compensate 'to counterbalance'.</p> <p>Concerns regarding 'avoid, mitigation and offset' hierarchy are noted. This hierarchy is already embedded in the objects provision through the definition of environmental offset (clause 7) and significant residual impact (clause 8) of the Bill.</p> <p>Under clauses 7 (what is an environmental offset), 8 (what is a significant residual impact) and 14 (imposing offset condition) – offsets remain a last resort option. However an offset cannot be used to authorise an activity that is not otherwise permitted.</p> <p>Clause 18(5) requires benefits delivered by proponent driven offsets be additional to any other lawful requirement placed on an applicant under another law. Similar requirements will apply to offsets delivered using financial settlement offsets.</p>
4 Act binds all persons	35	Suggests the State must not consider itself above the law and one law should apply to everyone. (Sub 35, p.1)	Clause 4 (Act binds all persons) is a standard provision in most legislation and includes the State.
5 Relationship with particular Acts	5, 10, 16, 21, 22, 27,	<p>Submissions raised concern for the Coordinator-General's exemption from the scope of the Bill, and argued that the Coordinator-General should be bound by the legislation:</p> <ul style="list-style-type: none"> <li>- provides uncertainty to proponents for whose projects are being assessed through</li> </ul>	<p>The department notes concerns regarding the relationship of the Bill to other Acts.</p> <p>The Coordinator General is not prevented from applying the principles and</p>



Clause/Issue	Sub. #	Key Points	Departmental response
(Coordinator-General exemption)	29, 32, 35, 37, 40, 47	<p>this process (Sub 10, 27)</p> <ul style="list-style-type: none"> <li>- appears to contradict the intent of the Bill in providing certainty and streamlining offsets framework (Sub 5)</li> <li>- lowers the standard and accountability for major project and may result in poorer environmental outcomes. (Sub 16, 21, 29, 32, 35, 37, 40, 47)</li> <li>- The PCA invited the department to consider extending exemptions to urban development areas. (Sub 22)</li> </ul>	<p>requirements of the Bill and associated policy to applications assessed under the State Development and Public Works Organisation Act. The CG has discretion to apply offsets under the current offsets framework.</p> <p>DSDIP may or may not refer applications to DEHP or other Departments for advice in relation to assessment decisions under the Sustainable Planning Act. However the deemed conditions ensure that DSDIP will have to comply with the Environmental Offsets Bill (if passed) in the situation where an offset is required</p> <p>The department notes PCA's suggestion to extend offset exemptions to urban development areas. This matter is outside the scope of the Bill – it relates to impact assessment and approval legislation under which an offset condition may be imposed. The Bill addresses how an offset is to be provided following assessment.</p>
5 (3) Relationship with particular Acts	5, 22	<p>Section 5(3) refers to the concepts of an 'imposed condition' and a 'deemed condition'. However, the dictionary provides a circular definition back to s16 of the Bill for a deemed condition.</p> <p>Moreover the terminology 'imposed' and 'deemed' is confusing and consideration needs to be given as to how to clarify the government's intent.</p> <p>QRC recommends that the definitions of both a 'deemed condition' and an 'imposed condition' be contained in the dictionary of the Bill.</p> <p>The PCA also sought greater clarity in relation to deemed conditions imposed under another Act. They suggested that as it is an offence to contravene a deemed condition, the Bill should be amended to require that deemed conditions are either replicated or referenced in the authority issued under the other Act. This will ensure persons required to comply with the deemed conditions are made aware of their existence.</p>	<p>The department notes QRC concerns regarding deemed conditions and imposed conditions under the Bill.</p> <p>As part of the impact assessment and approval process under other Acts the administering authority may impose an offset condition (an "imposed condition") for prescribed activities under that Act.</p> <p>Under clause 16 of the Bill, an imposed condition requiring an environmental offset automatically attaches the "deemed conditions" outlined in Part 6 of the Bill to the approval for the prescribed activity.</p> <p>Guidance materials are being prepared to assist the implementation of this arrangement.</p>
<b>Division 2 Key concepts and definitions</b>			
7 What is an offset condition and an environmental offset	5, 14, 15, 18, 26, 29, 30, 41, 42, 46	<p>Does not adequately describe or detail what is a suitable offset, including that:</p> <ul style="list-style-type: none"> <li>- The bill does not include reference to Direct Benefit Management Plans or strategic offset investment corridors when describing what may be a suitable offset (Sub 5, 30, 42)</li> <li>- the description of what constitutes an Environmental Offset has changed such that it now allows a broader range of indirect offsets/those which do not directly offset the impact (Sub 41, 46)</li> <li>- no thresholds or triggers outlined for when an offset is acceptable, as opposed to mitigation, and no threshold outlining when mitigation would be acceptable over</li> </ul>	<p>The offset requirements are outlined in clause 11 (conservation outcome achieved by an environmental offset) and 18(4) and (5) of the Bill – the criteria must be addressed in an offset delivery plan for the offset. This is the primary instrument under the Bill for ensuring the offset achieves a conservation outcome. Further information is provided in the draft Environmental Offsets Policy</p> <p>While the Bill does not specifically mention those mechanisms, they may be adopted by proponents in the selection of the offset site and preparation of their offset delivery plan to meet the requirements of clauses 11 and 18 of the</p>

Clause/Issue	Sub. #	Key Points	Departmental response
		<p>avoidance.(sub 29)</p> <ul style="list-style-type: none"> <li>- location of offsets in relation to the area of impact (sub14, 18, 45) and the process for identifying suitable locations for strategic offset investment corridors</li> </ul>	<p>Bill. DBMPs and strategic offset investment corridors can be used for both proponent driven offsets and by the State in delivering offsets based on payments for financial settlement offsets.</p> <p>Decisions about whether an offset is a suitable measure to counterbalance impacts is guided by Queensland impact assessment and approval legislation – this matter is outside the scope of the Bill.</p> <p>The definition is broad to ensure that it includes all activities that could be undertaken (either separately or as part of a range of actions) to deliver on the purpose of the Bill, that is actions to 'counterbalance the significant residual impact of a prescribed activity on a prescribed environmental matter'. The Bill ensures that the environmental offset does deliver a conservation outcome as per Clause 11. The draft Queensland Environmental Offset Policy aligns with the Commonwealth by allowing no more than 10% of the offset to be provided as research or education. (section 2.7.1, page 12 of the policy) except where it can be demonstrated that such departures will achieve a better environmental outcome. This is in line with the Commonwealth approach.</p> <p>The department notes concerns regarding environmental offset locations. The environmental offset policy requires proponent driven offsets to be sited as close to the impact site as possible but does not prevent other locations being considered if a better environmental outcome can be achieved.</p> <p>The placement of future strategic offset investment corridors and offsets generally will take into consideration the potential for these areas to be affected by future development to ensure the long term protection of the matters being offset. There is no suggestion that future mining, agriculture and urban development that potentially impact on matters of environmental significance would become exempt from offsetting provisions.</p>
7 What is an offset condition and an environmental offset	7, 11, 15, 32, 40, 41, 46, 47	Concern that Cl.7(3) implies that it is possible for an environmental offset to be interpreted as being used to give an economic or social benefit without benefit to the impacted matter, and is not consistent with the purpose of the Bill dealing with environmental offsets.	<p>The department notes SEQ Catchment's concerns regarding offsets for protected areas.</p> <p>Clause 7(3) of the Bill relates to impacts on a protected area but not other matters of environmental significance within the protected area (such as threatened species and ecosystems).</p> <p>Consistent with government policy, clause 7(3) allows offsets for impacts on the protected area (but not the matters in the area) to be used to deliver environmental, social, cultural or economic benefits for any protected area in</p>

Clause/Issue	Sub. #	Key Points	Departmental response
			Queensland. Offsets for other matters in the protected area must maintain the viability of the matter impacted.
8 What is a significant residual impact	4, 5, 7, 10, 14, 156, 19, 25, 26, 27, 29, 32, 33, 34, 35, 40, 41, 43, 44, 45, 47, 49	<p>Concern that 'significant' residual impact has not been well defined in the bill to aid interpretation; and that:</p> <ul style="list-style-type: none"> <li>- the definition reflects lower standards as it does not capture cumulative and/or associated impacts (sub 7, 14, 16, 29, 32, 38, 40, 41, 49). As noted by Gecko 'smaller impacts are simply viewed as a nuisance factor and do not require consideration or trigger the requirement for an offset. This is death by a thousand cuts.'</li> <li>- there needs to be more guidance around the meaning of 'significant' so that proponents have certainty in how the approvals process will be administered (Sub 5, 27).</li> <li>- Gecko (Sub 38) formed the opinion that the Bill may be ineffective in protecting MLES because they are unlikely to trigger the "significant residual impacts" threshold.</li> <li>- CYLCAC (Sub 33) does not support the increase of the offsets threshold from any impact to only significant impacts, is not supported since this will have the effect of reducing the quantity of environmental offsets, reducing payments to Offsets Accounts, and therefore reducing the outcomes that may be achieved under the offsets framework</li> </ul>	<p>The department notes concerns regarding the proposed definition for "significant residual impact" in the Bill.</p> <p>The definition in the Bill is consistent with the Australian government definition.</p> <p>Whether or not an activity is likely to have a significant residual impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts. As the natural environment is complex, there is no one-size-fits-all answer in determining the significance or otherwise of an activity.</p> <p>The State will develop guidelines to assist proponents to identify whether or not a proposed impact will be significant for the impacted matter. The guideline will not be inconsistent with the Commonwealth guideline and will be available before finalisation of the framework.</p> <p>Significant residual impacts are assessed against individual matters and can vary, particularly when comparing management areas (National Parks) with strictly ecological matters. To address the specificity of impacts on individual Matters of State Environmental Significance (MSES), the Government is drafting a Significant Impact Guideline. This guideline will outline some of the broad definitions used to assess significant impacts as well as precise criteria that can be applied to impacts on individual matters, to determine significant residual impact. The guidance will be made available before finalisation of the framework.</p> <p>Consideration of 'cumulative' impacts is the role of the assessment process – to the extent that the relevant legislation (e.g. Sustainable Planning Act, Environmental Protection Act, etc) allows consideration of these impacts. The role of the Offsets Bill is to provide the foundation for offsets, once the decision has been made that an offset is required for the assessed impact.</p>
8 (3) What is a significant residual impact	7, 11, 41	<p>SEQ Catchments (Sub 7) and QRNMGC (Sub 47) raised that Subclause 3 seems to facilitate routine management activities on the protected estate, and suggested that it need to be made it clearer that the intent is to facilitate routine management actions under a management plan'.</p> <p>MCG (Sub 11) raised concern in that it is not clear from 3(a) that significant residual</p>	<p>The department notes SEQ Catchments concerns regarding the effect of clause 8(3)(a) of the Bill.</p> <p>Clause 8(3)(b) is limited by sub-clause (a) – that the person must be an authorised person. Under the NCA this is limited to:</p> <ul style="list-style-type: none"> <li>• the Chief Executive, performing functions under this Act;</li> </ul>

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		<p>impacts from mining are a part of prescribed activities that are exempt from being labelled as a significant residual impact, because they would be conducted by an authorised (via a mining permit) person performing functions under the <i>Nature Conservation Act 1992</i>.</p> <p>MCG sought clarification in relation to the intent of this clause and, if necessary recommend that the definition of "authorised persons" be clearly described.</p> <p>WBBEC (Sub 41) raised that section (8(3) implies that any activity identified under subsection 3 (a) &amp; (b) will be exempt from offset conditions under the EO Act because it pertains to any activities related protected area management under the <i>Nature Conservation Act 1992</i>.</p>	<ul style="list-style-type: none"> <li>a public service employee of the department performing functions under this Act for the Chief Executive; and</li> <li>a conservation officer who is not an employee of the department and who is performing functions under this Act for the Chief Executive.</li> </ul> <p>Sub-clause (3)(a) functions in conjunction with sub-clause (3)(b) – the works must be consistent with the management of the area under section 15 of the NCA.</p>
9 What is a prescribed activity	4, 7, 27, 32, 35, 46, 47	Raised concern that prescribed activity has not been well defined in the bill to aid interpretation; and that these matters should not be left entirely to the regulation (and open to public consultation)	<p>The definition addresses those activities are subject to consideration of offset requirements under existing legislation.</p> <p>EHP has published a draft list of prescribed matters and activities on the department's website <a href="http://www.ehp.qld.gov.au">www.ehp.qld.gov.au</a></p> <p>The Regulation will be made available before finalisation of the offsets framework.</p>
9 What is a prescribed activity	27	APPEA (Sub 27) considers that the Bill should specifically exempt activities such as exploration activities and emergency vegetation clearing.	<p>In relation to resource activities under the Environmental Protection Act, this is limited to:</p> <ul style="list-style-type: none"> <li>a resource activity that is an ineligible environmentally relevant activity; and</li> <li>a variation application for a resource activity, other than a mining activity that is an eligible environmentally relevant activity to the extent it relates to construction or extension of a pipeline of less than 150km.</li> </ul>
9 What is a prescribed activity	49	<p>AgForce is concerned that primary producers/landholders may be unintentionally constrained by the Act/offset framework when undertaking development and other routine activities on their property.</p> <p>AgForce recommends that small scale or low-risk level clearing should be exempt from providing an offset (i.e. not be included under the list of prescribed activities).</p>	<p>The definition addresses those activities that are subject to consideration of offset requirements under existing legislation.</p> <p>EHP has published a draft list of prescribed activities on the department's website <a href="http://www.ehp.qld.gov.au">www.ehp.qld.gov.au</a></p>
10 What is a prescribed environmental matter and a matter of environmental significance	5, 10, 11, 15, 27, 32, 35, 39, 40, 44, 49	<p>Concern raised that prescribed environmental matters (being MNES, MSES and MLES) have not been well defined/described in the Bill; suggest improved definitions and the inclusion of these matter within the Bill.</p> <p>Other concerns raised for the inclusion/exclusion of specific matters:</p> <ul style="list-style-type: none"> <li>AMEC Environment and Infrastructure (Sub 10), ASH (sub 32) and EDOQ (Sub 40) sought clarification in relation to the inclusion of 'special least concern' species</li> </ul>	<p>The prescribed matters reflect a reduced number of matters that are currently subject to offsets under existing legislation and policy, and reflect the Government's agreed policy position. DEHP has published a draft list of prescribed environmental matters on the department's website <a href="http://www.ehp.qld.gov.au">www.ehp.qld.gov.au</a></p> <p>There is no need to define 'matters of national environmental significance'</p>

Clause/Issue	Sub. #	Key Points	Departmental response
		<p>and why 'near threatened' species have been excluded;</p> <ul style="list-style-type: none"> <li>- MCG (Sub 11) sought a response from the department as to where matters of regional conservation significance fit into the framework</li> </ul>	<p>under the Bill as only the matters mentioned in Part 3 of the EPBC Act, as each matter is specifically listed, and solely contained within Chapter 2. In the absence of Commonwealth accreditation of the State's offset and assessment framework, the Commonwealth will continue to assess and condition requirements for impacts on MNES. In addition, in order to avoid duplication, the EPBC offsets policy will take precedence over the State's policy where triggered matters are the same.</p> <p>The definition for a Matter or State environmental significance under sub-section (4) makes it clear that it must be a matter dealt with under a State law. DEHP has published a draft list of prescribed environmental matters on the department's website <a href="http://www.ehp.qld.gov.au">www.ehp.qld.gov.au</a></p> <p>The requirements for Local Government to develop planning instruments – the instruments which would include offset requirements – are provided under the <i>Sustainable Planning Act 2009</i>. The Queensland Government is reviewing what guidance should be provided under the planning framework, including the statutory guideline for making and amending planning schemes, to ensure that local government offset policies align with the Bill's requirements.</p> <p>Offset requirements have been retained for 'significant residual impacts' on special least concern species as these are iconic species in Queensland.</p> <p>The exclusion of 'near threatened' species from the list of 'prescribed environmental matters' does not mean that these matters are not of State significance. Exclusion of 'near threatened' species from the list of prescribed environmental matters is a risk based government policy position.</p>
10 What is a prescribed environmental matter and a matter of environmental significance	40	EDOQ noted concern that the extended definition of MNES at clause 10 (3)(b) means that the policy framework will apply where Queensland has assessment and/or approval accreditation under EPBC Act bilateral agreements, which therefore extends to the Great Barrier Reef strategic Assessment. There argued that the department had not been transparent about this fact during consultation.	<p>The department notes the comments about the application of the Bill to the Great Barrier Reef.</p> <p>In the absence of Commonwealth accreditation of the State's offset and assessment framework, the Commonwealth will continue to assess and condition requirements for impacts on MNES. In addition, in order to avoid duplication, the EPBC offsets policy will take precedence over the State's policy where triggered matters are the same.</p> <p>If however accreditation is provided, the State would assess and condition MNES requirements in accordance with the agreed accreditation arrangements.</p> <p>In addition, the Bill doesn't apply where an offset condition is imposed under the Great Barrier Reef Marine Park Act 1975</p>

Clause/Issue	Sub. #	Key Points	Departmental response
10 What is a prescribed environmental matter and a matter of environmental significance	49	<p>AgForce noted that the Regional Planning Interests Bill 2014 defines 'strategic environmental areas' which are very similar to 'prescribed environmental matter' as defined under the Bill. They asked if there was scope to combine these two similar definitions into one term?</p> <p>Chapter 10 of the Great Barrier Reef Strategic Assessment report refer to development of a 'sophisticated mapping system' as a planning tool to identify Matters of National Environmental Significance including essential habitat for terrestrial threatened species and key roosting and breeding sites for migratory species. Will these same maps be used for planning within the Environmental Offsets Bill 2014?</p>	<p>The Regional Planning Interests Bill has been established to serve a different purpose to the Environmental Offsets Bill. The values subject to the Environmental Offsets Bill are those that are currently subject to offsets under existing legislation, with a few now excluded from offset requirements.</p> <p>EHP has published a draft list of prescribed environmental matters on the department's website <a href="http://www.ehp.qld.gov.au">www.ehp.qld.gov.au</a></p> <p>Suitable guidance mapping for MNES will be identified if the Commonwealth accredits the State's system, and the State adopts the Commonwealth's assessment role.</p>
11 Conservation outcome achieved by environmental offset	2, 4, 7, 11, 30, 32, 34, 35, 40, 41	<p>Concern raised for the adequacy of this definition, a new measure by which an offset is deemed successful, including:</p> <ul style="list-style-type: none"> <li>- Defines outcomes in terms of inputs (sub 2)</li> <li>- Abandons 'improve or maintain' requirements in favour of 'maintain viability' which is a departure from current policies and the EPBC act requirements (sub 2, 7, 11, 30, 32, 34, 35)</li> <li>- there is no criteria for determining if a proposed conservation outcome is appropriate and will achieve a suitable outcome for the environmental matter being impacted (Sub 4, 32).</li> <li>- Uncertain what is meant by 'viability' (Sub 11, 30, 32, 34, 40, 41)</li> </ul>	<p>Clauses of the Bill do not operate independently of each other and the effect of parts 1 to 9 of the bill ensure that the quantum of impact is considered and acted upon in delivering an environmental offset. The main purpose of the Bill is to counterbalance the significant residual impact of particular activities on prescribed environmental matters through the use of environmental offsets. The definition of conservation outcome refers to and includes the term environmental offset, and how this offset will be delivered in a way that maintains the viability (of a prescribed environmental matter). An environmental offset, whether provided as a proponent driven offset, or delivered using the funds received as a financial settlement offset, is considered successful if the activity counterbalances the significant residual impact of a prescribed activity on a prescribed environmental matter.</p> <p>The term 'maintain the viability' has been provided within primary legislation to make certain the environmental outcome that is to be achieved. The viability of a threatened species population or ecosystem extent needs to be considered to ensure its future survival. A viable population, for example, must have an adequate population, age structure and retain enough genetic variability to ensure long term survival. Maintaining the viability of a species increases the likelihood of its survival in the long term. In the context of the offsets policy, the viability of the matter impacted must be maintained, a principle shared with the Commonwealth EPBC.</p>
<b>Part 4 Environmental offsets policies</b>			
12 What is an environmental offsets policy	5, 26, 27, 39	<p>APPEA does not believe that this clause/provision adequately safeguards against a proliferation of offset policies in the future.</p> <p>Stakeholders also raised concern that it is currently unclear how local government offsets policies can be made, what these policies must/may consider and how they will</p>	<p>Government's intent is to have a single policy for the State; however this provision needs to provide flexibility for local government offset policies made under a local planning instrument.</p> <p>The Queensland Government is reviewing what guidance should be provided under the planning framework, including the statutory guideline for making</p>

Clause/Issue	Sub. #	Key Points	Departmental response
		be given effect under the Bill. (Submissions 5, 26, 39)	and amending planning schemes, to ensure that local government offset policies align with the Bill's requirements and their use is adequately detailed in those instruments.
12 What is an environmental offsets policy	32, 40	Concern over the lack of precise guidance on the way offsets policies may/must be published and made available.	Provisions in the Bill regarding public access to key instruments and decisions under the Bill reflect current drafting practice.  Clause 12 requires that the policy be made available for inspection. The intention is to make the information readily available to the public in a manner suitable for the circumstances ensuring that distribution of information is efficient and cost-effective.
13 Content of environmental offsets policy	13, 32	Cl.13 must be amended to mandate minimum requirements (replace 'may' with 'must') Otherwise there's no point in having a policy at all.  Offset requirements must refer to the fundamental principles of genuine offsetting eg: environmental/ecological equivalence; refusal if equivalence is not possible; net environmental/ecological gain; no cap on ratio - remove reference to 1:4 cap (a cap will ensure cumulative losses); and application of the Precautionary Principle and other principles of the EPBC Act.' (Submissions 13, 32)	The appropriateness of using an offset as a means to counterbalance impacts is determined under the impact assessment and approval legislation – this is outside the scope of the Bill. The Bill however mandates that offsets may only be used as a last resort (clause 14) and prevents authorised prescribed activities from commencing before the offset is approved (clause 18 and 19).  ESD and the precautionary principle are not referenced in the Bill, as this is more relevant to the impact assessment and approval process established under other legislation. This consideration occurs in determining whether an offset condition should be imposed under that legislation.
13 Content of environmental offsets policy	41	'In line with the concept of ensuring that any future offsets policies are consistent with the concept of preventing the loss of environmental values, it is essential that any policy 'must' have the legislative power to require Sec 13 (a)- (d) be implemented.  The term 'may' implies suggestion whereas the term 'must' implies statutory intent.  We therefore recommend that the term 'may' be omitted and replaced with 'must'.' (Sub 41, p.5)	While clause 13 outlines what an offsets policy may include, the draft environmental offset policy has been prepared to meet all requirements.  The Queensland Government is reviewing what guidance should be provided under the planning framework, including the statutory guideline for making and amending planning schemes, to ensure that local government offset policies align with the Bill's requirements.
13 Content of environmental offsets policy	47	'This clause could be used to place a head of power for direct benefit management plans and strategic investment hubs. We recommend consideration is given to supplementing the wording in Sub-clause (b) to nominate direct benefit management plans and strategic investment hubs as two examples to reflect the stated outcome in the explanatory notes (page3);  Sub-clause (b) establishes a provision to set out the characteristics of offset receiving areas in the policy. We are keen to see this part of the policy establish similar decision criteria to those contained in former koala state planning policy; that is, that the offset delivery site should be located as close as possible/feasible to the impact site for the impacted matter. While no change to the Bill is proposed, we look forward to commenting on the policy when appropriate.' (Sub 47, p.7)	While the Bill does not specifically mention direct benefit management plans and strategic investment corridors, they may be adopted by proponents in the selection of the offset site and preparation of their offset delivery plan to meet the requirements of clauses 11 and 18 of the Bill.  Under clause 19 of the Bill administering agencies must have regard to the environmental offsets policy when making a decision to approve an offset and the policy also provides for the use of those mechanisms.  The drafting of clause 13 accounts for the use of direct benefit management plans and strategic investment hubs and does not need to reference these specifically.

Clause/Issue	Sub. #	Key Points	Departmental response
<b>Part 5 Imposing offset conditions</b>			
14 Imposing offset Conditions	5, 9, 13, 16, 19, 35, 40, 46	<p>There were opposing views in relation to the introduction of the new 'test of significance' as the threshold for when offsets will be required:</p> <ul style="list-style-type: none"> <li>- Supporting submissions on the basis of improve efficiency and targeted/improved outcomes – but subject to clearer guidance on what is significant (subs 5, 6, 9)</li> <li>- Opposing submissions on the basis of lower environmental standards than current approach which requires offsets for ANY residual impact and did not recognise cumulative impacts (Subs 13, 16, 41, 35, 40)</li> <li>- Concern regarding the use of the wording "cost effective" at Cl. 14(2)(b) and suggests that 'reasonable' is more appropriate (Subs 16, 35, 40, 46)</li> <li>- Submissions also noted that the 'avoid and mitigate' hierarchy was not adequately reflected in this clause (Subs 19, 40, 46)</li> </ul>	<p>The department notes concerns regarding the scope of environmental offsets under the Bill. However, the Bill is drafted consistent with the government's policy position.</p> <p>Significant residual impacts are assessed against individual matters and can vary, particularly when comparing management areas (National Parks) with strictly ecological matters. To address the specificity of impacts on individual Matters of State Environmental Significance (MSES), the Government is drafting a Significant Impact Guideline. This guideline will outline some of the broad definitions used to assess significant impacts as well as precise criteria that can be applied to impacts on individual matters, to determine significant residual impact.</p> <p>Inclusion of the wording 'cost effective' in clause 14(2)(b) is consistent with the government's policy position for these areas and reflects provisions in current legislation - s346A(2) of the <i>Sustainable Planning Act 2009</i>, and s207(1)(c) of the <i>Environmental Protection Act 1994</i>.</p>
14	22	<p>The PCA raised concern that there is only a tenuous link between the Policy and an offset condition. There is nothing in section 14 of the Bill, which deals with imposing offset conditions, which requires an offset condition to be consistent with the Policy.</p> <p>PCA also identified an inconsistency between the bill and policy in that the Bill refers to cost-effective on-site mitigation measures, while the Policy refers to 'all reasonable avoidance and mitigation measures'.</p>	<p>The department notes PCA concerns regarding the application of the offset policy under the Bill.</p> <p>Inconsistencies in the Policy pointed out by PCA will be corrected to align with the Bill.</p>
15 Restriction on imposition of offset condition	9, 18, 22, 23, 27, 30, 42, 49	<p>Concern that the current provisions may not remove duplication, particularly between State imposed offset conditions and those imposed by Local Governments under offset policies incorporated in planning schemes, on the basis that it assumes that approvals are obtained in a particular order, or that there is a degree of integration in the approval processes that does not currently exist.</p> <p>Agforce further noted that accreditation with the Commonwealth environmental legislation has not yet been achieved, and asked what plans would be put in place to avoid duplication of offset requirements should this accreditation not occur?</p>	<p>The department notes concerns regarding the potential for duplication of offset requirements.</p> <p>Several measures are provided under the Bill to minimise duplication. For example, clause 14(3) provides that an administering agency can have regard to a condition already imposed.</p> <p>Duplication will also be reduced through the prescription of matters of environmental matters under the Act. Commonwealth matters will not be listed under the Bill unless the environmental offset framework is accredited by the Commonwealth.</p> <p>The Queensland Government will also oversee the listing of matters of local environmental significant in local planning instruments under the Sustainable Planning Act.</p>



Clause/Issue	Sub. #	Key Points	Departmental response
			In relation to alignment with conditions imposed later by a higher-level of Government, this can be administratively addressed through drafting conditions that will 'fall away' to the extent that they duplicate or are inconsistent with conditions imposed by the higher-level of Government  Clause 15 is also designed to avoid duplication with Commonwealth requirements should accreditation not occur – matters of national environmental significance will not require offsets under the Act unless accreditation occurs.
15 Restriction on imposition of offset condition	11, 12, 21, 32, 34, 40, 41	Some opposed to the restriction on multiple levels of government being able to impose an offset condition for the same and/or similar environmental matters, on the basis that: <ul style="list-style-type: none"> <li>- Inconsistent with the Precautionary Principle</li> <li>- In some cases a local government may have more on ground knowledge than the State/Australian governments.</li> <li>- That it is more desirable for all levels of government to cooperate/coordinate in determining required offsets</li> </ul> Noosa Council objected on the basis that 'separating Commonwealth and State responsibilities provides the necessary checks and balances for environmental assessment, and the concept of State assessing Commonwealth matters is not supported.'	The department notes concerns regarding the restriction on the imposition of offset conditions under the Bill. removal of duplication.
15 Restriction on imposition of offset condition	35, 46	Supports environmental offsets being located as close as possible to clearing areas, and recommends that the legislation include this approach.	Clause 19 of the Bill requires that the offsets policy be considered in making a decision about a proponent-driven offset.  The environmental offset policy requires offsets to be sited as close to the impact site as possible preferably in the same local government area but does not prevent other locations being considered if a better environmental outcome can be achieved.
15 Restriction on imposition of offset condition	26, 46	CMSEQ has concerns regarding: how "impact" is measured and what constitutes "substantially the same"; there being no guarantee that the condition on the previous approval will not be amended or completely removed at some time in the future; potential differences between the offset standards prescribed in the offset policies for Commonwealth, State and Local government.(sub 26, p.6)  BCC emphasised the importance of ensuring the environmental offsets legislation, regulation and all associated policies do not restrict the ability to adequately protect matters of local environmental significance. Instead of dealing with the power to impose the condition, the provisions should allow for any inconsistency or duplication	The department notes concerns raised by local government stakeholders regarding provisions to reduce duplication in the Bill.  The Queensland Government is reviewing what guidance should be provided under the planning framework, including the statutory guideline for making and amending planning schemes, to ensure that local government offset policies align with the Bill's requirements.  The terms "substantially the same" has been used to reflect the potential for an area to be given different statutory names e.g. impacts on a threatened species in a "State marine park" (a matter of State environmental

Clause/Issue	Sub. #	Key Points	Departmental response
		between conditions to be resolved, by providing for any one condition to be read subject to any other that affords best mitigation of the impact. Further, the determination of an "area" should be clarified. (Sub 46, p.5)	significance) could occur also be a threatened species in a "world heritage area" (a matter of national environmental significance).
<b>Part 6 Requirements about offset conditions</b>			
<b>Division 1 Deemed conditions</b>			
Conditions that apply under this Act to authority Contravention of deemed condition	27	APPEA noted that some conditions set out in the Bill are deemed to become part of environmental authorities. Deemed conditions prevail over specific imposed conditions in some circumstances. However APPEA's experience is that there are significant practical difficulties in reconciling generic conditions with specific conditions. We therefore recommend these provisions be reconsidered.	To ensure that a consistent approach is taken in relation to environmental offsets, deemed conditions will prevail over any other offset condition imposed on an authority to the extent of the inconsistency.  Guidance materials will be provided to assessing agencies to minimise the risk of this situation arising.
16 Conditions that apply under this Act to authority 17 Contravention of deemed condition	39	CGCC recommends that clause 16 (Conditions that apply under this Act to authority) and clause 138 (Amendment of SPA section 346A – Environmental offset conditions) be amended to make clear that offset conditions (deemed condition under the Environmental Offsets Act and an offset condition that is an environmental offset condition under the SPA) are not inhibited by SPA limitations. (Sub 39, p.2)	Clause 18(6) has been included in the Bill to address this issue.
17 Contravention of deemed condition	32	Proposes that clause 17(3) & (4) be amended to replace 'may' with 'must'. Submit that breaches of deemed conditions must be enforced, and where a proposed offset cannot be delivered, a substitute and equivalent offset must replace the non-delivered offset. (Sub 32, p.11).	Clause 17(3) and (4) have been drafted consistent with current legislative standards.
<b>Division 2 Election before starting prescribed activity</b>			
18 -19 Election about delivery of offset condition Reaching agreement about delivery	5, 10, 18, 23, 27, 30, 35, 42, 46	Concern for lack of statutory timeframes for assessment and approval of offset delivery plans and decision notification for offset delivery agreements; and concern that lack of specific timeframes may lead to project delays and unnecessary disputes.  Concern also for absence of dispute resolution processes (Sub 22)	The decision about whether to impose an offset condition must be made within the timeframes specified under the impact assessment and approval legislation. Part 5 of the Bill (imposing offset conditions) must be considered within those timeframes.  Part 6 of the Bill (requirements about offset conditions) applies after the approval has been issued where an environmental offset condition has been imposed. It is therefore not governed by the above assessment timeframes.  The department notes QRC concerns regarding the timeframes that apply to the approval of an offset delivery approach under clause 18 and 19 of the Bill. Currently an offset delivery plan is predominantly assessed and approved after the issue of the approval and there are no appeal provisions applying to those processes or decisions. The Bill addresses this issue by providing, for

Clause/Issue	Sub. #	Key Points	Departmental response
			<p>the first time, dispute resolution process for those decisions including an inability to reach agreement within a stated reasonable time.</p> <p>The dispute resolution process for an offset in relation to a prescribed activity will be the same dispute resolution process normally applies to those activities. As there are a range of different mechanisms in use under the impact assessment and approval legislation, they will be detailed in the regulations.</p> <p>Consultation in relation to regulations will occur prior their finalisation.</p>
18	5, 9, 10, 18, 22, 27, 42	<p>Does not believe that clause 18 makes adequate allowances for staging of offsets; and that staging will not be possible if the requirement in s18(4)(b) remains, which requires the agreement of landholders prior to the commencement of disturbance activities.</p> <p>For example, 'QRC had thought that as a very minimum, there would be the allowance for a twelve month period where a proponent could commence impacting activities, whilst still negotiating with the offset landholder... If the proponent must secure the agreement of all the landholders on which their offset obligation will take place for the complete life of the project, QRC is concerned that this would appear to contradict the intent of allowing the staging of offsets to occur'.</p> <p>The UDIA (Sub 18) sought additional clarity on whether there would be an ongoing requirement for reapplication or review at subsequent stages prior to impact, if the staged offsets are proceeding as per the original offset strategy.</p>	<p>The delivery of staged offsets is not ruled out under the Bill however as section 2.4.1 of the environmental offsets policy indicates, the decision to authorise the staging of operations and the process for ongoing assessment requirements is outside the scope of the Bill – this matter is considered under the impact assessment and approval legislation.</p> <p>An offset delivery plan applies to an identified offset site for each stage of the operations and therefore must be signed by the entity who owns the land. As proponents will no longer be required to legally secure the site before works commence, development may now commence one year earlier. An environmental offset agreement may apply to an offset for a single stage of the development.</p> <p>EHP will seek further advice on these provisions.</p>
18	11, 12, 32, 37, 40	<p>Submitters did not support changes that will require only a notice of the offset and an agreement to be in place prior to commencement of the prescribed activity, instead arguing that there should be a requirement in the Bill to ensure that the proponent legally secures the offset area <u>prior</u> to destroying the environmental matter.</p>	<p>The department notes concerns in relation to the timing of development in relation to offset delivery. Adequate protection of matters of environmental significance is provided under clause 11 which requires an offset to maintain the viability of the matter – this would include consideration of the impact that the offset delivery timeframe and initial condition of the offset site would have on the matter; and clause 18 which requires a proponent to have an agreed offset delivery plan for the proposed offset site in place prior to commencing the prescribed activity. An offset delivery plan must detail the timeframe for legally securing the area.</p> <p>Guidelines are also being prepared to support the selection of suitable offset sites for each matter of environmental significance.</p>
18	18	<p>Noting that the Bill requires that the proponent delay commencement of on-ground impacts to the matters of environment significance until the required payment has been</p>	<p>A financial settlement offset payment may be made for each stage of the</p>

Clause/Issue	Sub. #	Key Points	Departmental response
		made to the relevant offset account, the UDIA have requested more clarification regarding the legal trigger point for financial settlement, and noted the preference that this be as late in the development cycle as possible.	operations.
18	19	QTIC supports applicants having the option to choose their offset delivery as opposed to this being determined by the administering agency. Providing options is not only important for feasibility assessment purposes, but revealing the required proponent-driven offset provides a real comprehension of the extent of impact that the development is having on the environment.	The department thanks QTIC for their support for the proposed environmental offset framework.
18 Election about delivery of offset condition	34	Suggested there should be an independent commission to ensure integrity of assessments and financial aspects of offsets.	The department notes the suggestion that an independent commission is required.  Under clause 89 of the Bill administering authorities must record all offset decisions on a register and provide this information to the chief executive when requested. These provisions will ensure greater accountability and oversight of offset decisions.
18 Election about delivery of offset condition	32	There must be no difference in offsetting standards between proponent-driven and other offset requirement. All must be 'of size and scale proportionate to the significant residual impacts'. Also developer Strategic Plan, Monitoring (with appropriate frequency) and Annual reporting must be mandatory.	Clause 18(5) of the Bill requires a proponent driven offset to be of a size and scale proportionate to the significant residual impacts on the prescribed environmental matter and also must be adequately monitored. These standards will also apply to offsets delivered using financial settlement payments.
18 Election about delivery of offset condition	35	Suggests cl. 18(4) should be amended to require that the offset delivery plan must detail what is being destroyed and how the offset will compensate for the loss. (Sub 35, p.3) Also suggests 18(5)(d) be amended to more clearly specify that the offset will exceed significantly the significant residual impacts on the prescribed environmental matter. (sub 35, p.3)	The department notes the suggestion in relation to the requirements of an offset delivery plan. The department is of the view that the provision has been adequately drafted. Guidelines are also being prepared to assist the preparation of offset delivery plans.
18 Election about delivery of offset condition	39	CGCC recommends that clause 18 (Election about delivery of offset condition) be amended so the requirement for the authority holder to submit the offset delivery plan is part of the deemed condition where a proponent-driven offset is proposed and its relationship with an authority is clear. The recommended amendment to clause 18 is necessary because, as currently drafted, the requirement for the offset delivery plan sits separately to the deemed condition. The recommended amendments to clause 18 will ensure submission of an offset delivery plan can be compelled and appropriately enforced (under section 17) where it is not submitted. (Sub 39, p.2)	Once an environmental offset condition has been imposed, the authority holder may decide how the environmental offset will be delivered.  The Bill only applies once the administering agency has decided the project may proceed and an approval provided under the relevant Act, with the imposition of an offset condition. The delivery of an environmental offset including an agreed delivery arrangement may be provided post approval.
18 Election about delivery of offset	39	CGCC further recommends that clause 18 (Election about delivery of offset condition) is amended so it is clear the requirement for the benefits to be provided by an offset is in addition to a benefit provided under a requirement of an Act or a condition of an	The department notes concerns raised by CGCC regarding offset delivery plans. However the provisions as drafted are consistent with government policy.

Clause/Issue	Sub. #	Key Points	Departmental response
condition		authority. Amendment to this clause is recommended to remove any doubt as to whether this includes a requirement of an authority given under an Act (for example, a requirement under a condition of an existing development approval). (Sub 39, p.3)	
18 Election about delivery of offset condition	49	AgForce raised two issues in relation to the requirement for an offset delivery plan to be signed. Firstly they identified that there seemed to be a lack of process articulated for the signing of plans for aquatic regions which have high environmental value; and secondly that there appears to be no process for public notice of a proposed offset delivery plan to enable adjoining neighbours to submit concerns about land management for conservation values.	The Bill can apply to offsets in aquatic areas. The new legal security mechanism for offsets – an environmental offset area – has been developed with this in mind. Clause 29 of the Bill requires the chief executive to consult with persons with interests in the land or waters. The chief executive may also consult with other persons who may be affected by the decision.
19 Reaching agreement about delivery	35, 46	Cl. 19(2)(d) could be better worded to strengthen requirements for the timely delivery of offsets and/or clearly specify the timeframe in which proponents have to legally secure an offset.	The timing for legal security must be detailed in the offset delivery plan and must normally be less than 12 months after the commencement of the development. The requirement for an offset to maintain the viability of an impacted matter of environmental significance includes consideration of the effect that the proposed offset delivery timeframe will have on the impacted matter.
19	40	'There is no requirement in the Bill for DEHP to undertake its own research about the suitability of the sites identified under a proponent-driven offset. A recent example of where this has resulted in unsatisfactory outcomes is at Maules Creek in NSW. EDOQ submit that DEHP should be required to independently research the suitability of offset areas for proponent-driven offsets.' (Sub 40 p.11)	Adequate safeguards are in place to address these issues. Guidelines are also being prepared to support the selection of suitable offset sites for each matter of environmental significance.
<b>Division 3 Proponent-driven offsets</b>			
20-21 What is a proponent-driven offset  Requirement for proponent-driven offset	10	AMEC Environment and Infrastructure submitted that it is currently unclear as to what an acceptable direct proponent driven offset will look like. For example they requested clearer direction on what will constitute a conservation outcome for particular matters (e.g. remnant, regrowth or revegetation) and what 'like for like' criteria will be used when locating suitable offset sites. AMEC Environment and Infrastructure requested that the current ability to use a Regional Ecosystem (RE) with the same or higher status in the same broad vegetation group as the impacted RE not be removed as it provides some flexibility to proponents. "This is not only to support proponents and offset providers but also so landholders can be more informed and confident as to the offset values and offset potential that their property may provide". (Sub 10 pp.4)	Guidelines are being prepared to assess a potential offset site and assessment of a conservation outcome through habitat quality. A general guideline will also be available to detail how a significant residual impact will be determined, and the offset requirements for each matter. For Commonwealth accreditation, an offset must be for the same matter of environmental significance that will be impacted by a prescribed activity.

Clause/Issue	Sub. #	Key Points	Departmental response
<b>Division 4 Financial settlement offsets</b>			
22 - 23 What is a financial settlement offset  Requirements for financial settlement offsets	5, 33	<p>Welcomed the inclusion of provisions to allow for flexible delivery of offsets through a financial settlement approach.</p> <p>Despite some stakeholders arguing that this will not result in positive environmental outcomes, QRC believes that the financial offset option actually allows the government and organisations who are skilled at undertaking offsets to drive the delivery of offsets, rather than requiring proponents who are not in the business of offsetting to have to deliver outcomes. This, coupled with the ability for proponents to deliver an offset, if they believe there is a business case to answer, is a significant advancement in offsetting policy in Queensland, and indeed Australia.</p>	The department thanks [submitters] for their support of the financial settlement offset proposals.
22 - 23 What is a financial settlement offset  Requirements for financial settlement offsets	7, 12, 16, 21, 29, 37, 39, 47	<p>Submitters do not support the introduction of the financial settlement option as an option for meeting environmental obligations on the basis that this would not product sustainable long term protection of biodiversity.</p> <p>The QCC argued that the very notion of financial settlements seems to contradict the objective and intent of the the bill. If there are no comparable offsets in a region, and therefore a financial settlement applied, that is a very clear signal that impacting upon a habitat is unacceptable."</p> <p>QMDC also argued that issues pertaining to both, surface and groundwater quality, quantity, and ecology cannot be adequately addressed by financial offset arrangements.</p> <p>There was also concern that the bill did not provide a clear or strong link between the financial settlement offset and the impacted environmental matter (i.e. the requirement for financial settlement to deliver a conservation outcome directly relevant to the impacted matter). (Subs 7, 16, 39, 47, 49)</p> <p>For example, Agforce noted that for an offset to be effective it must ensure there is an actual offset prior to impacts rather than just a monetary payment. In the absence of either of these there is a risk that an offset fund will be used to advance projects or development without the significant impacts actually being offset.</p> <p>Where financial settlement is considered appropriate, there should be a requirement for settlement amounts to be held in trust and quarantined from other departmental accounts (Subs 12, 37)</p>	<p>Financial payments have been provided to allow flexibility in the delivery of offsets, and will result in the State taking responsibility for the delivery of a conservation outcome.</p> <p>Clause 7 (what is an offset), 11 (conservation outcome), and 83 (object of offset account) of the Bill require offsets delivered using financial settlement offset payments to maintain the viability of the matters of environmental significance impacted by prescribed development.</p> <p>Offsets delivered using financial settlement offsets will be primarily land-based offsets (i.e. 'direct' offsets) rather than related to scientific research or education programs (i.e. 'indirect' offsets).</p> <p>The policy requires that no more than 10% of the offset can consist of indirect offsets (such as education and research) unless otherwise agreed.</p> <p>Financial offset projects may be based on a single financial settlement offset, or may be a pooling of offset payments, in order to achieve a more effective and strategic outcome for the impacted matters.</p> <p>Through "strategic offset investment corridors" and "Direct Benefit Management Plans", the Government can direct offsets to locations that will deliver the greatest environmental outcome.</p>
22 - 23 What is a financial	4, 5, 10, 18, 22	Concerns raised in relation to the method of calculating the financial settlement, the adequacy of settlement amounts provided for under the calculator, and the fact that the methodology had not been reference in the Bill, or released publically for broad	The Bill provides the head of power for the financial payment formula to be prescribed by regulation. This is necessary because of the detailed nature of the calculation.

Clause/Issue	Sub. #	Key Points	Departmental response
settlement offset  Requirements for financial settlement offsets		<p>consultation.</p> <p>Specific issues raised in relation to the calculator/methodology included:</p> <ul style="list-style-type: none"> <li>- the landholder compensation components are far below the current market value (Subs 10)</li> <li>- the administration costs appear well in excess of what is currently best practice (Subs 10, 22)</li> <li>- who is liable for non-compliance associated with failure to deliver the offset, once funds are paid by the proponent to the administering agency (Subs 10, 45)</li> <li>- the bill does not specifically outline an approach that would cap financial payments (Subs 46)</li> <li>- importance of the financial calculator producing financial offsets costs which are viable/not cost-prohibitive (Subs 18, 22)</li> </ul> <p>Submitters noted that there is significant risk to the delivery of conservation outcomes should the amount payable under financial settlement be insufficient to cover the market cost to deliver that offset. (Subs 10, 46)</p>	<p>A guideline on the use of the calculator will also be publicly available.</p> <p>Clause 7 (what is an offset), 11 (conservation outcome), and 83 (object of offset account) of the Bill require offsets delivered using financial settlement offset payments to maintain the viability of the matters of environmental significance impacted by prescribed development.</p> <p>The total payment required includes a landholder incentive payment, administrative costs and the cost of delivering the offset on the site by the landholder.</p> <p>A scientifically-based approach was used to calculate the offset obligation that takes into account regional differences, variation in the quality of environmental matters on the impacted and offset site and the ability to co-locate some matters on an offset site. Costs were based on advice from practicing offset brokers, natural resource management bodies and recognised experts in the field of environmental offsets and land restoration.</p> <p>Financial settlement offset payments can be pooled and delivered through single offsets rather than multiple smaller offsets. Savings arising from this strategy can be used to support delivery of other offsets.</p> <p>Once a proponent has made the payment the proponent's role in the delivery of the offset ends and development can commence.</p>
22-23 What is a financial settlement offset  Requirements for financial settlement offsets	11	<p>MCG noted that a financial settlement offset is a form of indirect offset and that there is potentially some inconsistency between the Bill and the policy in that the policy describes the difference between a direct and indirect offset, whilst the Bill appears to adopt different terminology. MCG recommended that the difference between direct and indirect offsets needs to be explained in this legislation. And when and where they are applicable.</p>	<p>Offsets delivered using financial settlement offsets will be primarily land-based offsets (i.e. 'direct' offsets) rather than related to scientific research or education programs (i.e. 'indirect' offsets).</p> <p>The policy requires that no more than 10% of the offset can consist of indirect offsets unless otherwise agreed.</p>
23 Requirement for financial settlement offsets	34	<p>CCC submit that local governments rarely have sufficient expertise or resources to assess environmental matters, and by allowing financial settlement for MLES to be paid to local governments this could result in a patchwork of offsets rather than the desired goal of biodiversity hubs and corridors across Queensland.</p>	<p>Environmental offsets are currently required by some local governments. The skills and qualifications of local government employees in relation to the administration and delivery of local government offsets are outside the scope of the Bill.</p>
23 Requirement for financial settlement offsets	25	<p>SCRC raised concern that financial settlement offset contributions related to MNES and MSES but which occur within a local governments jurisdiction may not be go back into the local government area that suffered the impacted loss. This is because the state government is given authority to manage the offset account for matters of MNES</p>	<p>The department notes SCRC concerns regarding the siting environmental offsets.</p> <p>The environmental offset policy requires proponent driven offsets to be sited as close to the impact site as possible preferably in the same local</p>

Clause/Issue	Sub. #	Key Points	Departmental response
		and MSES; and there is no defined outcome within the bill to legally enforce/ensure that offset is delivered within the same bioregion as where the impact occurred.	government area but does not prevent other locations from being considered if a better environmental outcome can be achieved.  The development of Strategic Offset Investment Corridors will include local government input.
<b>Division 5 Further condition about legally secured offset areas</b>			
24 Impacts on legally secured offset area	5	QRC believes that there is a lack of clarity with respect to the temporal duration of the securing of an offset. QRC believes that the securing of an offset should last for the life of the approved impact, rather than in perpetuity.  This is critical given the prohibition of certain activities that attach to offset protection areas under the Bill. The risk of securing offset areas in perpetuity is that they effectively become 'private national parks' that lock the state into a single type of land use for that land forever.	This amendment is not considered necessary.  Under the environmental offsets policy, an offset area should be legally secured for the life of the approved impact. The duration for legal security must be outlined in the offset delivery plan which is approved under clause 19 having regard to the offsets policy.
24 Impacts on legally secured offset area	27	APPEA has noted that in previous representations, the Department stated that the Bill will not prevent development of an existing offset area as long as the original offset and the new impact are both satisfied. However, section 24 appears to prevent an authority holder from impacting on a legally secured offset area.  This raises concern as APPEA's members have had recent experience with conflicts with overlapping tenure, with one proponent having advanced offsets in an area that another proponent wishes to undertake exploration activities in. The current Bill could preclude resource activities, even exploration, from impacting an offset area - effectively sterilising large sections of resource tenures, particularly where there are multiple overlapping tenures (eg. Bowen basin).	The Bill will not prevent development of an existing offset area as long as the original offset and the new impact are both satisfied. Clause 24 of the Bill applies to existing legally secured offset areas. Where an approval is issued to conduct a prescribed activity on a legally secured offset area that would prevent the delivery of an offset, the activity must not be conducted unless the legal security mechanism is first revoked.  For the purposes of the Bill, a legally secured offset area is not an advanced offset area.
24 Impacts on legally secured offset area	22, 42	Under the Bill, there are limitations on the use of legally secured offset areas for a prescribed activity. The Policy (section 2.6) appears to be inconsistent with the Bill on this topic.	In relation to legal secured offset areas, clause 24 of the Bill only applies where an offset condition has been imposed to address significant residual impacts on a legally secured offset area (see definition in clause 8(4)) arising from a new prescribed activity. While development of a legally secured offset area is contemplated, clause 24 of the Bill prevents the commencement of the activity until the legal security mechanism is removed and a suitable offset has been approved under clause 19.
<b>Part 7 Environmental offset agreements</b>			
26 Duration of environmental offset agreement	5	QRC would like to draw the Committee's attention to the comment made by the Department in the Consultation Report that <i>"Management of the offset will only be required for the life of the impact, or until the restoration of the values has occurred based on a 20 year timeframe and the requirements of the offset management plan."</i>  QRC believes that this comment appears to note that there is a 20 year cap on the	The reference to the 20 year life of management is based on a proponent's use of the financial settlement approach, or following the requirements for a proponent-driven offset that will be specified in the supporting guidelines.  This will include strict requirements on the requirements for start and end condition of the offset site, including parameters on the condition gain that will



Clause/Issue	Sub. #	Key Points	Departmental response
		management of an offset obligation. While QRC would be supportive of the creation on a cap on the duration of the management of an offset, as it would give surety to proponents, QRC does not believe that this has been reflected in the draft Policy, and with no ability to see what is in the Regulation, QRC is unsure how this cap is meant to operate. Further, any such cap should be contained in the Bill to give proponents certainty across the duration of their projects.	reasonably be expected over 20 years of management using standard management practices.  The conservation outcome sought for a given offset receiving area could well be achieved in a shorter time period, or over a much longer time period than 20 years, depending on many factors such as the intensity of management and unforeseen setbacks
24 Duration of environmental offset agreement	11	MCG raised concern relating to the duration of protection over an offset area. Their interpretation of the legislation is that once the environmental offset agreement ends the offset site no longer has protection and is available for later development, and hence the risk of later contributing to long-term environmental loss.  They also questioned whether/if multiple offsets can/should be delivered on the one single site noting that offset areas should not be used twice as an offset if it is to meet the requirement of no net loss of biodiversity as another area of high conservation value would be being lost to create the need for an environmental offset.	The State's approach will be consistent with the Commonwealth approach – the offset must be secured for the life of the impact. Where the impact is permanent, the offset is to be secured in perpetuity.  Similarly, the duration of the agreement will be guided by the offset timeframe and the purpose for which the agreement is required.
26 Duration of environmental offset agreement	35	Suggests the Bill should set some limits on the duration of environmental offset agreements. (Sub 35, p.3)	The State's approach will be consistent with the Commonwealth approach – the offset must be secured for the life of the impact. Where the impact is permanent, the offset is to be secured in perpetuity.  Similarly, the duration of the agreement will be guided by the offset timeframe and the purpose for which the agreement is required.
26 Duration of environmental offset agreement	34	'Offsets periods say of 30 years are totally inadequate for most ecosystems to be repaired or re-established. A coal mine might have a productive life of 25-50 years followed by a 30 year rehabilitation phase. Current practice allows for permanent final voids (for which there appears to be no requirement for offsets) and problematic rehabilitation priorities and trial practices. Ecologically it may take 150 years for a mature sclerophyll forest to recover and provide the complexity of niches for species recovery and viability. Within a 30 year offset period a series of hot dry years could inhibit growth which could be wiped out by a series of consequently hot fires (especially with the almost certainty of invasive exotic grasses outcompeting the „cooler burning“ native ground covers. Alternatively extreme rainfall and flood events (or storm surges and permanent sea water inundation or ground water penetration in coastal areas) could change the capacity of offset areas to support regeneration of vegetation and associated fauna.' (Sub 34, p.3)	The State's approach will be consistent with the Commonwealth approach – the offset must be secured for the life of the impact. Where the impact is permanent, the offset is to be secured in perpetuity.  Similarly, the duration of the agreement will be guided by the offset timeframe and the purpose for which the agreement is required.
<b>Part 8 Legally secured offset areas</b>			
28-29 What is a legally	5, 33, 26, 6	Submitters sought clearer and more specific provisions to require the CEO to consult with impacted entities prior to the declaration of legally secured offset areas including	Clause 29(5) allows the Chief Executive to consult with any person where they are likely to be affected by the declaration of an environmental offset

Clause/Issue	Sub. #	Key Points	Departmental response
secured offset area Declaration of environmental offset protection area		with: <ul style="list-style-type: none"> <li>- Native title parties and indigenous land holders</li> <li>- exploration interest holders (Sub 5)</li> <li>- local government</li> <li>- entities who may own/construct infrastructure</li> </ul>	protection area and requires the consent of persons who have a registered interest in the land.  The establishment of a legally secured offset area does not override existing requirements under native title legislation.  Given exploration permits cover large areas it is not feasible to require the agreement of all holders of explorations permits before approving an offset protection area.  The department notes concerns regarding lack of local government involvement in the declaration of legally secured offset areas.
28-29 What is a legally secured offset area Declaration of environmental offset protection area	42	'The Policy provides that a legally binding mechanism for an offset must remain in place where a landholder advises in writing that it wishes to retain the legally binding mechanism. This 'veto' power limits the flexibility of the Bill and other legislation.'	Landholder rights are not fettered by the revised framework.
28-29 What is a legally secured offset area Declaration of environmental offset protection area	13	NPAQ supports the declaration of legally secured offset areas but believes it does not go far enough. They suggest that in addition to securing LSOAs in perpetuity, they should also be declared as national parks under other legislation and that the effect of declaring a LSOA would extinguish any mining or similar leases over the area of land and designate the area as strategic environmental areas under regional plans	The State's approach will be consistent with the Commonwealth approach – the offset must be secured for the life of the impact. Where the impact is permanent, the offset is to be secured in perpetuity.  The mechanisms for legally securing offset areas will include the declaration of protected areas – this option will be detailed in the regulations.
28-29 What is a legally secured offset area Declaration of environmental offset protection area	49	AgForce raised concern that Bill only makes provisions for legally secured offset areas on land/terrestrial environments. They sought clarification as to how riparian areas, tidal coastal regions and marine areas will be protected.	The Bill establishes a new mechanism (an environmental offset protection area) which can apply to any land and waters (regardless of tenure) for any matters of environmental significance.
29 Declaration of environmental offset protection area	5	QRC believes that there is a lack of clarity in the Bill with respect to the temporal duration of an offset secured through s29 of the Bill. The policy of the Queensland resources industry is that the securing of an offset should last for the life of the approved impact, rather than in perpetuity.	The State's approach will be consistent with the Commonwealth approach – the offset must be secured for the life of the impact. Where the impact is permanent, the offset is to be secured in perpetuity.  Similarly, the duration of the agreement will be guided by the offset timeframe and the purpose for which the agreement is required.

Clause/Issue	Sub. #	Key Points	Departmental response
29 Declaration of environmental offset protection area	10	AMEC Environment and Infrastructure welcomes the introduction of this new tool to protect offset areas, however requests further detail on what this new legal protection mechanism will entail, the process required and its standing against other forms of development approval. AMEC Environment and Infrastructure also recommend that all offsets have a mandated base level of protection (which may be the new legal instrument) and then proponents or landowners have the choice of adding other instruments such as a nature refuge.	<p>The new environmental offset protection area may be used to legally secure an offset area from any matter of environmental significance on any land or waters regardless of the tenure. The requirements for the establishment of the area are similar to most existing mechanisms – persons with registered interest in the land must consent to the declaration of the area.</p> <p>The protection given to the area under the Bill is the same level given to all legally secured offset areas. Clauses 9 and 24 of the Bill prevent prescribed activities from being conducted on a legally secured offset area if the activity would prevent the delivery of the approved offset delivery plan. The area would need to be revoked in order for an approved activity to commence. In addition, an offset is required for both matters impacted by the original development leading to the need for the offset area as well as any matters on the area.</p>
30 Recording of declared areas, etc	35	Proposes that the list of declared areas should be publicly available and readily searchable on the web. (Sub 35, p.3)	Legally secured offset areas will be registered under clause 89. This information will be publicly available in a readily searchable on the web.
32 Amending or revoking declaration	5	ORC believes that section 32 should also be amended to allow for the revocation of a declaration of an environmental offset protection area where it can be demonstrated that the environmental offset protection area was applied for with intent other than the purpose of becoming an offset area, and with a vexatious or ulterior purpose.	<p>Noted. Provisions regarding the revocation of an environmental offset protection area will be detailed in the regulations. The department will take QRC comments into consideration when preparing those regulations.</p> <p>The revocation of other forms of legal security is governed by other legislation and is outside the scope of the Bill.</p>
32 Amending or revoking declaration	32, 40, 44	As best practice offsets frameworks require offset areas to be in perpetuity, submitters sought further information on how or why a declaration would be revoked; and proposed that this clause be omitted, as the Bill should reflect the general rule that offset areas need to be fully protected from development in perpetuity and very limited exceptions might apply to this necessary rule.	<p>Regulations providing for the revocation of environmental offset protection areas are currently being considered.</p> <p>The State's approach will be consistent with the Commonwealth approach – the offset must be secured for the life of the impact. A legally secured offset area may be revoked where this requirement is met.</p> <p>The legal security mechanism may also need to be revoked where approved development will hamper or prevent an offset being delivered. Consistent with Commonwealth requirements however, where a prescribed activity is conducted on a legally secured offset area, an offset must be provided for both the impacts arising from the original development as well as for impacts on other matters of environmental significance on the site.</p>
33 Correcting, updating or removing registry	5	Given the potential for environmental offset protection areas to impact on investment, proponents, community and government are likely to rely heavily on the offset registry record. Therefore the registry should be held to the same standards as those applied to	The department notes QRC concerns regarding the use of the register under clause 89 of the Bill. The provisions as drafted are consistent with current legislative standards and the requirements for registers under other State

Clause/Issue	Sub. #	Key Points	Departmental response
record		the Land Title Register, and the Bill be amended to include timeframes for the maintenance of the information contained in the registry.	legislation. However, guidance material can recommend a timeframe for this to occur. AREC could note the advice that guidelines could address the need to update records. The committee could recommend that this be done or that, given the importance of timely records of offsets, that the obligation to maintain the currency of information be included in the regulations with penalty provisions. As with all declarations which "run with the land" and are binding on future landholders, legally secured offset areas must be registered under section 89 of the Bill as well as on the Land Title Register.
<b>Part 9 Compliance notices</b>			
34 Local government or chief executive may give compliance notice	32	ASH submits that a clause should be added to create an offence applicable to breaches of agreements, with prescribed and discouraging 'on-the-spot' penalties related to the value of the project and severity of breach, and that this cannot be a discretionary matter unless the government intends to encourage nepotism. Enforcement procedures are highly discretionary. (Sub 32, p.12)	Clause 36 (offences relating to compliance notices) and associated enforcement powers in the Bill provide an ability to monitor and enforce compliance with environmental offset agreements consistent with current legislative standards.
<b>Part 10 Investigation and enforcement</b>			
<b>Division 1 Preliminary</b>			
41 Functions of inspectors	5	There is no reference to an 'inspector' anywhere else in the Bill except section 41. QRC believe that s41 should be a reference to an 'enforcement officer'. QRC recommends that s41 of the Bill be amended to replace the reference to 'inspector' with 'enforcement officer'.	Noted.
<b>Division 2 General provisions about enforcement officers</b>			
<b>Subdivision 1 Appointment</b>			
44 Appointment and Qualification	5	QRC notes that section 44(2) allows for the Chief Executive Officer of a local government to appoint and employee of the local government to the position of an enforcement officer. QRC believes that this power should sit solely with the state government.  QRC believes that enforcement will require skills in auditing and checking documents and registers, reviewing offset plans and ensuring compliance against the plans. As such, QRC believes that section 44(3) should be amended to make specific reference to the qualifications that will be required of an enforcement officer.	Local government requires an ability to enforce compliance with environmental offset agreements associated with offsets delivered using local government financial settlement offset funds.  Clause 44 allows the appointment of enforcement officers by local government to enforce compliance with local government decisions.  Part 10 (Investigation and Enforcement) has been drafted in accordance with current legislative standards.
<b>Part 11 Amounts received as financial settlement offsets etc.</b>			
<b>Division 1 Amounts received by the department</b>			

Clause/Issue	Sub. #	Key Points	Departmental response
82 - 86	5, 7, 10, 11, 47, 49	<p>Submitters expressed concern in relation to the financial offsets account that:</p> <ul style="list-style-type: none"> <li>- the Bill has not established the account as a <u>trust fund</u>, with all the legal obligations and protections that trust accounts provide (Sub 5)</li> <li>- there should be more protections afforded to the payments including greater separation from other areas of departmental revenues, and clear governance arrangements for the management and use of funds held in the account (Subs 5, 10, 49)</li> <li>- concern that the Bill does not adequately protect against the use of offsets funds for purposes other than delivery of conservation outcomes such as administration and departmental expenses (subs 7, 47, 49)</li> <li>- how local government funds will be managed, audited and accountable to delivery of conservation outcomes (Sub 11)</li> </ul> <p>AMEC Environment and Infrastructure raised concern that there may be potential for a conflict of interest with the government agency which is responsible for approving a development (e.g. EP Act) and deciding on the extent of offset payment, is also the one to receive and manage those funds.</p> <p>AMEC Environment and Infrastructure recommended an independent board of advisors be established including people from industry, conservation, community and government sectors to provide advice on the most appropriate use of the funds and oversee management and distribution of the funds.</p>	<p>The government critically analysed what mechanism would be the most efficient and effective to manage funds received as a financial settlement.</p> <p>Clause 81- 86 provide adequate security for the funds – the funds may only be used to counterbalance impacts arising from prescribed activities and the funds will not form part of consolidated revenue.</p> <ul style="list-style-type: none"> <li>- Clause 84 (3) states that the funds will be “controlled receipts” under the <i>Financial Accountability Act 2009</i> which will ensure that the funds are “carried over” financial years. The department will also implement best practice governance policies and provide transparent reporting and auditing of the funds to ensure that the most appropriate environmental outcome is achieved for the impacted matter.</li> <li>- Clause 85 outlines how financial settlement offset payments may be used while providing flexibility to deal with the requirements of each individual program.</li> <li>- Clause 86 (2) provides an opportunity to have other money, not just proponent money, to counterbalance impacted matters. For example, if another entity wanted to assist the provision of an offset outside of a legislative requirement this could be done with the Bill still providing security that all money (proponent derived money &amp; other money) must be acquitted on counterbalancing impacted matters. The offset account will not have funds for other departmental priorities outside of offsets in the offset account.</li> </ul> <p>Similar standards will apply to financial settlement offset payments received by local government. Monitoring of local government offset is facilitated through section 89 of the Bill. Local government agencies must make the register available for inspection and an administering agency must, if requested by the chief executive give information held on the register to the chief executive.</p>
<b>Division 2 Payments received by a local government</b>			
87-88 Payment of amounts into and from trust fund	40	<p>EDO Qld is supportive of a fund for offsets that is separate from other funds of the administering agency, which appears at Part 11 Division 2 for local governments, however it does not appear the same requirement is imposed on DEHP under Division 1.</p> <p>EDOQ note that investments can be made with offset funds under cl. 85(c). EDO Qld submits that it is appropriate for such investments to be in ethical investments to</p>	<p>The new offsets framework will deliver a conservation outcome for offsets funded using financial settlement payments through the definition of ‘environmental offset’ (clause 7), ‘significant residual impact’ (clause 8) and object of the offset account (clause 88) of the Bill.</p> <p>Offsets provided using financial settlement offsets will also meet the requirements of section 2.7 (characteristics of an offset site) which requires</p>

Clause/Issue	Sub. #	Key Points	Departmental response
		ensure that the money is not inappropriately used to support industries that contribute to the destruction of the environment.	an offset to provide additional benefits to the matter not otherwise provided under other legislation.
88 Payment of amounts into and from trust fund	46	BCC noted that the requirements at clause 88 for offset payments to be lodged and managed through trust accounts will be onerous and unnecessary. This provision should be amended to allow greater options for managing offset funds (not in trust accounts) but with appropriate financial management practices in place.  Council also requires clarification about whether it can charge for the costs associated with establishing new systems to assist with the administration of a trust and ongoing administration of the trust.	The department notes BCC concerns regarding the use of local government trust funds.
<b>Part 12 General</b>			
89 – 92 Advance offsets	5, 30, 42	QRC, NELA and RTCA believe that the concept of advanced offsets should be defined in the Bill to provide current and future proponents with certainty and security of their offset investments.  QRC also noted, given that the Regulation will define how advanced offsets are identified and used, that the Regulation should have been released alongside the Bill and draft Policy, so that industry could have been consulted on the package as a whole.	The department notes concerns in relation to advanced offsets.  Advanced offsets will be detailed in the regulation. Reference to advanced offsets in the bill provides the head of power for this to occur. Consultation will be undertaken in relation to the proposed regulations.
89 Register to be kept by each administering agency	32, 34, 40	Submit that the 'offsets register' must ensure transparent information and be publically accessible and be open to peer review. The register should also include relevant data such as offset delivery plans and agreements.  EDOQ suggested that this will provide for public confidence in offsets framework and allow the community can also assist DEHP with monitoring and enforcement.	The department notes suggestions in relation to the register. The register will provide transparent information for public review.  To ensure accountability and transparency, the registers must be available for inspection by the public. In addition information held on registers must be provided to the chief executive if requested.  Regulations may be made under the Bill outlining other information that must be held on the register.
<b>Part 13 Transitional provisions</b>			
94 - 95 Application of this Act or existing Act Transitional regulation-making power	18, 27, 30, 42	UDIA, APPEA, NELA and RTCA notes that the Bill does not permit proponents with undecided applications or proponents who have already received a decision from reapplying (or 'opt-in') under the new Act, as the Bill only applies to an application for an authority made after the Bill commences. They submitted that that there should be scope to allow proponents to reapply under the new if no activity has occurred under an existing approval.	The department notes NELA views about the application of the Bill to existing approvals and undecided applications.  The Bill does not prevent proponents from seeking an amendment to their existing approval or for applications that have been lodged but not decided to adopt the new framework however this is governed by amendment powers under the impact assessment and approval legislation and is outside the scope of the Bill.
94 - 95	6, 28,	Ergon Energy, Energex and Powerlink expressed concern with the application of	The Bill does not apply retrospectively to existing infrastructure or existing

Clause/Issue	Sub. #	Key Points	Departmental response
Application of this Act or existing Act Transitional regulation-making power	36	transitional provisions proposed in the Bill and that this may have the effect of pre-existing energy assets being subject to offset conditions (where these assets are subject to periodic renewal of the fixed-term occupation permits under the NCA).	approvals in protected areas under the Nature Conservation Act.
93-95 Application of this Act or existing Act Transitional regulation-making power	5, 26, 42	QRC, COMSEQ, RTCA does not believe that the transitional provisions in the Bill appropriately reflect the intent, are somewhat unclear and may be inconsistent with those expressed in the Policy. As such, s94(4) should be redrafted to ensure the precise meaning/intent is expressed and understood.	The department notes concerns regarding the drafting of transitional provisions.
<b>Part 15 Amendment of Currumbin Bird Sanctuary Act 1976</b>			
Cl. 100-101	37	<p>The repeal of the Currumbin Bird Sanctuary Act has not been made widely known to the citizens of Queensland and full public consultation undertaken.</p> <p>The draft Constitution of the National Trust as a company limited by guarantee, does not provide protection for the property of the Currumbin Wildlife Sanctuary given to the people of Queensland under the 1976 Deed of Gift from Alex Griffith in perpetuity.</p> <p>There is nothing in the draft Constitution of the National Trust as a company limited by guarantee, to ensure that CWS lands will remain a public asset for the people of Queensland in the event of the winding up of NTQ or CWS. GECKO requests that:</p> <p>That the citizens of Queensland are fully informed and provided with opportunities for full consultation of the intention of Part 15 of the Environmental Offsets Bill to repeal the <i>Currumbin Bird Sanctuary Act 1976</i> and replace it with a body known as the National Trust as a company limited by guarantee.</p> <p>That Part 15 of the Environmental Offsets Bill is excised from this Bill until there has been full and informed debate about the repeal of the <i>Currumbin Bird Sanctuary Act 1976</i>.</p> <p>That should the National Trust become a company limited by guarantee, that there will be clauses inserted in the constitution of NTQ to guarantee the preservation and continuation of the CWS lands in perpetuity as a public asset such as an environmental reserve under the trusteeship of the Gold Coast City Council. (Sub 38, p.6)</p>	<p>The department notes GECKO concerns regarding the repeal of the Currumbin Bird Sanctuary Act.</p> <p>The development of legislation amendments on the Act has followed due process, with a Preliminary Impact Statement on the National Trust and Currumbin amendments submitted to the Office of Best Practice Regulation, who determined that a Regulatory Impact Statement was not required.</p> <p>Extensive consultation on the National Trust and Currumbin legislation amendments was undertaken with the National Trust and Currumbin Wildlife Sanctuary, who are the organisations directly impacted by the changes. Additional direct consultation by DEHP with other community groups was not deemed necessary.</p> <p>The National Trust has publically advised of the governance changes via National Trust newsletters and their website, over the past few years. National Trust members have been overwhelmingly supportive of the governance changes, with full support at the National Trust AGM in Nov 2013, with the draft constitution for the proposed company on the National Trust's website since late 2013. With organisations represented on the National Trust including the Qld Museum, the Historical Society, and the State Library, and with over 6000 National Trust members, it is considered that sufficient and appropriate consultation on the governance changes to be enacted by the legislation amendments has been undertaken.</p> <p>Management of the Currumbin Wildlife Sanctuary has consulted with various local community groups including Friends of Currumbin (which shares some</p>

Clause/Issue	Sub. #	Key Points	Departmental response
			<p>members with the GECKO group), on issues impacting Currumbin Wildlife Sanctuary, including the governance changes. GECKO is the only group to raise concerns.</p> <p>The National Trust takes its responsibility for the protection of properties which it owns very seriously, and this strong level of responsibility will continue under an independent National Trust. As part of the company of the National Trust of Australia (Qld) Ltd, Currumbin Wildlife Sanctuary will continue to be run as a not-for-profit organisation with revenue reinvested back into conservation-based research, public education and caring for sick and injured wildlife. Currumbin Wildlife Sanctuary, as a commercially run tourist and wildlife attraction, would not be suitable to become an environmental reserve under the trusteeship of the Gold Coast City Council.</p>
<b>Part 17 Amendment of Environmental Protection Act 1994</b>			
Cl. 105-115	5	<p>QRC does not understand the intent of the amendment to the Environmental Protection Act 1994 s209 to add s209(6) to the Act.</p> <p>We believe that the intent of the drafting was to differentiate between offset agreements between the Department and NRM bodies with respect to the provision of offsets, and agreements between proponents and the Department. However, this should not preclude agreements under the EP Act from being recognised as an offset agreement under s25 of the Bill.</p>	<p>The proposed amendment clarifies that an environmental authority may include a condition requiring the proponent to comply with an agreement in relation to the delivery of staged offsets or other matters relating to offsets that are not detailed in, or inconsistent with, the Bill.</p>
111 Amendment of s 207 (Conditions that may be imposed)	32, 40	<p>Raised concern over the proposed amendments to remove from principal assessing and approving legislation (section 207(1)(c) EP Act and s.346A(2) SPA) the requirement that an offsets condition may only be imposed "if the administering authority is satisfied all cost-effective on-site mitigation measures for a relevant activity have been, or will be, undertaken." If this amendment is passed, it will mean that the EP Act and SPA will not contain any requirement for the decision-maker to actively consider whether all cost-effective on-site mitigation measures will be undertaken. This is different to the EPBC Offsets Policy which simply provides for 'reasonable' on-site measures.</p> <p>Whilst there is a similar provision in the Bill at clause 14(2)(b), it is not sufficient to simply have this reference in the Offsets Bill. It must be front and centre in the consideration of the assessment under the EP Act or SPA without reference to another Act.</p> <p>EDOQ submit that clause 111 should be omitted so that under the EP and SPA, the decision maker is required to be satisfied that all mitigation measures will be or have</p>	<p>The department notes concerns regarding the 'avoid, mitigation and offset' hierarchy.</p> <p>Under clauses 7 (what is an environmental offset), 8 (what is a significant residual impact) and 14 (imposing offset condition) – offsets remain a last resort option.</p>



Clause/Issue	Sub. #	Key Points	Departmental response
		been undertaken, and offset conditions are 'as a last resort'. (Sub 40, p.3)	
<b>Part 19 Amendment of Marine Parks Act 2004</b>			
Cl. 120-123	23	QELA's raised concern that the maximum penalty of 3000 penalty units for noncompliance with a deemed condition imposed under the Offsets Bill (clause 121) imposes an unnecessarily excessive penalty. They notes that it is considerably higher than the maximum penalty of 295 penalty units that applies to a contravention of another condition of a marine park authority; and higher than the maximum penalty of 1665 penalty units that may apply to a contravention of a condition under section 580 of the SPA. QELA supports the objective of offsetting significant impacts on matters of environmental significance, but considers that penalties commensurate with the penalties imposed under the EP Act and the SPA are a sufficient deterrent.	The department notes QELA concerns regarding the proposed marine park offence provision. The Environmental Protection Act and Sustainable Planning Act offence provisions only apply to approvals that are issued under those Acts. The proposed offence provision under the Marine Parks Act applies to permissions issued under that Act in relation to significant residual impacts on highly protected areas of the marine park – areas specifically set aside for the protection of marine park values.
<b>Part 21 Amendment of Nature Conservation Act 1992</b>			
Cl. 128-131	5	QRC seeks clarification with respect to the wording "or on other land in the State" at s66(2) of the amending section. QRC is also concerned that there is an unnecessary layer of duplication between the requirements for offsetting under the Bill and the requirement for a permit with an offset obligation under the <i>Nature Conservation Act 1992 (Qld)</i> and the <i>Environmental Protection Act 1994 (Qld)</i> .  QRC recommends that s129 be amended to provide greater clarity with respect to the wording "or on other land in the State". QRC recommends that clarification be given with respect to the intent of s130, and how this meets the objectives of the Bill that there is a 'single point of truth' for offsets under the Bill.	The proposed wording allows an offset to be undertaken outside a protected area where it provides for the maintenance of matters of environmental significance in the area.
<b>Part 23 Amendment of Sustainable Planning Act 2009</b>			
138 Amendment of s 346A (Environmental offset conditions)	23, 46	The relationship between the Sustainable Planning Act 2009 (SPA), the State Planning Policy (SPP) and the Bill is unclear, resulting in a lack of clarity about when local governments will need to align with the new environmental offsets framework, and could leave the offset conditions open to challenge.	The Queensland Government is reviewing what guidance should be provided under the planning framework, including the statutory guideline for making and amending planning schemes, to ensure that local government offset policies align with the Bill's requirements and their use is adequately detailed in those instruments.
138 Amendment of s 346A (Environmental offset conditions)	32, 40, 46	The effect of this amendment is that the EP Act and SPA will not contain any requirement for the decision-maker to actively consider whether all cost-effective on-site mitigation measures will be undertaken. This is different to the EPBC Offsets Policy which simply provides for 'reasonable' on-site measures.  Whilst there is a similar provision in the Bill at clause 14(2)(b), it is not sufficient to simply have this reference in the Offsets Bill. It must be front and centre in the consideration of the assessment under the EP Act or SPA without reference to another	The department notes concerns regarding the application of environmental offsets under the Bill.  Under clauses 7 (what is an environmental offset), 8 (what is a significant residual impact) and 14 (imposing offset condition) – offsets remain a last resort option after all cost-effective onsite avoidance and mitigation measures

Clause/Issue	Sub. #	Key Points	Departmental response
		Act. Submit that clause 138 should be omitted so that under the EP and SPA, the decision maker is required to be satisfied that all mitigation measures will be or have been undertaken, and offset conditions are 'as a last resort'. (Sub 40, p.3)	have been considered.
<b>138</b> Amendment of s 346A (Environmental offset conditions)	<b>39</b>	CGCC propose that clause 16 (Conditions that apply under this Act to authority) and clause 138 (Amendment of SPA section 346A – Environmental offset conditions) be amended to make clear that offset conditions (deemed condition under the Environmental Offsets Act and an offset condition that is an environmental offset condition under the SPA) are not inhibited by SPA limitations. (Sub 39, p.2)	This matter is addressed within clause 18 (6) of the bill.
<b>139</b> Insertion of new ch 10, pt 10	<b>32</b>	ASH seeks clarification - for ensuring that strategic corridor mapping and offset proposals are consistent with land use planning. Offsets must be reflected in local planning instruments. (Sub 32, p.12)	The Queensland Government is reviewing what guidance should be provided under the planning framework, including the statutory guideline for making and amending planning schemes, to ensure that local government offset policies align with the Bill's requirements and their use is adequately detailed in those instruments.
<b>Schedule 2 Dictionary</b>			
	<b>5</b>	QRC believes that there are a number of concepts that are missing a definition in Schedule 2 including: Indirect; Temporary; and Advanced offset	Noted.
	<b>33</b>	CYLCAC submit that the definition of 'owner' in the schedule should be amended to also include native title parties. (Sub 33, pp.1-2)	Noted. The bill does not affect State and Commonwealth native title legislation.
<b>Late submission</b>			
	<b>51</b>	APFA formally requests that prawn farming aquaculture be exempted from this and any future consideration of imposing offsets on this industry. Environmental offsets are being suggested as a way forward out of this unfair regulatory impasse; however prawn farmers reject this possible solution. The majority of our operations have no impact on the Great Barrier Reef lagoon.	The assessment framework determines when and if an offset can be considered. Under the Bill an offset is required only where there is a significant residual impact on a matter of environmental significance.

## Dissenting Report

### Environmental Offsets Bill 2014

The Queensland Labor Opposition holds significant concerns regarding the *Environmental Offsets Bill 2014* with key concerns outlined below in the following dissenting report.

Labor believes that environmental offsets should be used as a last resort. Under some circumstances, environmental offsets provide an opportunity to balance development activities and environmental protection. Sadly, the *Environmental Offsets Bill 2014* (the Bill) does not meet that opportunity and is instead a thinly veiled attempt to reduce costs for developers.

The Opposition supports the use of environmental offsets as a final measure in cases where environmental damage is unavoidable. Labor consider them as a mechanism in cases where damage cannot be avoided or mitigated. Further, we support the consolidation of existing environmental offsets policies into one legislative framework. However, any changes to the current regime must not compromise existing environmental protections or weaken the scientific basis on which offsets are calculated. Labor is deeply concerned that the Liberal National Party Government's approach to environmental offsets is essentially a pay-and-go system.

#### Arbitrary Limits

The inclusion of an arbitrary one-is-to-four cap on the ratio of land affected to the area to be offset is unwelcome. This means that offsets will not be based on scientific evidence and instead are designed to reduce costs on developers. As Dr Martine Maron states in her submission;

*"Such a ratio is, on its own, meaningless. It is merely the ratio of impact area to the area over which offset actions will be done. This cannot tell us if 'improve or maintain' is being achieved. Instead, what is of relevance is the ratio of impact to benefit. The Bill does not address this. Reliance on simple and arbitrarily-capped multipliers means that the approach will fail to achieve 'improve or maintain'. The illogicality and unscientific nature of arbitrary ratios is the reason that the EPBC Act offsetting approach moved away from arbitrary ratio-based offsetting approaches and towards one based in the ecology of the affected matter and logical accounting approaches."*

Given that the Government's stated intention is to provide consistency with the federal *Environmental Protection and Biodiversity Conservation Act 1999*, it is perplexing that the legislation includes this maximum ratio as no such cap is included under the federal offsets policy.

#### Consistency

The explanatory notes provide the following objectives for the bill;

*"The Environmental Offsets Bill 2014 (the Bill) will introduce primary legislation to*

*coordinate Queensland's environmental offsets framework, giving effect to a whole-of government approach and replacing the complexities and duplication surrounding the five existing policies. The Bill also provides a single point-of-truth under primary legislation resulting in a more timely and affordable delivery of environmental offsets under an integrated regulatory framework."*

The bill fails to deliver on its stated intention by continuing to exempt the Coordinator-General from abiding by the supposedly “whole-of-government” environmental offsets policy. There is an obvious contradiction between the Government’s stated intention and the effects of the bill. Minister Powell was unable to provide a rationale for continuing to exempt the Coordinator-General under questioning, stating only;

*“It is no different from what was previously the case under the previous Labor government—that is, the legislation that the Coordinator-General operates under is separate to the Environmental Protection Act, is separate to the Nature Conservation Act, is separate to the Vegetation Management Act...”*

If the Government actually intends to provide consistency and clarity for proponents of developments, it has lost a significant opportunity to extend the “whole-of-government” offsets policy to the Coordinator-General and projects of state significance.

### **Offset Brokers**

The Opposition harbours concerns with the lack of regulation for offset brokers and believes the potential exists for environmental offsets to be accepted but never actually delivered. While most brokers will operate in a fair and ethical manner the bill and regulatory framework have deficiencies which will potentially allow unscrupulous traders to rot the system.

The recent Auditor-General’s report has highlighted the lack of oversight within the Department of Environment and Heritage on offset agreements. The report states

*“EHP is not fully effective in its supervision, monitoring and enforcement of environmental conditions and is exposing the state to liability and the environment to harm unnecessarily. Poor data and inadequate systems continue to hinder EHP’s planning and risk assessments. As a result, EHP cannot target its monitoring and enforcement efforts to where they are most needed.”*

It is likely that the savage staff cuts within the Department of Environment and Heritage Protection will exacerbate the existing problem. Without an accreditation regime for offset brokers the public can have no confidence that offsets approved by the Department will actually be delivered.

### **Conclusion**

Environmental offsets are a useful tool in reducing environmental damage from development projects however they must be based on science and not on a misguided attempt to reduce costs for proponents. The Opposition has serious and numerous concerns with this bill, which will be comprehensively detailed during parliamentary debate.



Jackie Trad MP

**Member for South Brisbane**

**Deputy Chair, Agriculture, Resources and Environment Committee**