



AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

Report No. 40 on the

Environmental Offsets Bill 2014

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 13 February 2014, the Honourable Andrew Powell MP, Minister for Environment and Heritage Protection, introduced the Environmental Offsets Bill 2014 into the Legislative Assembly.

The Bill was subsequently referred to the Agriculture, Resources and Environment Committee (the Committee) for consideration and report to the Parliament by 14 May 2014.

On 14 May 2014, the Committee tabled its report (No. 40) about the Bill (the report).

The Queensland Government response to the Committee's recommendations as outlined in the report is provided below.

RESPONSE TO RECOMMENDATIONS:

The Queensland Government thanks the Committee for its detailed consideration of the Bill and its recommendations.

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.

Queensland Government response:

The Government **supports** this recommendation **with minor modification**.

The Queensland Environmental Offsets Policy currently includes a commitment for review within five years of the framework's commencement. The outcomes of this review can be reported to the House.

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.

Queensland Government response:

The Government **supports** this recommendation.

The Queensland Environmental Offsets Policy will be amended to include the seven principles for offsets.

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.

Queensland Government response:

The Government **supports** this recommendation.

The effect of the offsets cap will be considered as part of the review.

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.

Queensland Government response:

The Government **notes** this recommendation.

The requirement for seeking landholder agreement for a delivery arrangement is not a new requirement, and is an improvement on current practice under existing offset policies. Under current policies an offset can be proposed and assessed before a landholder has agreed to the offset being located on their land. In the event that agreement is not reached, this has wasted time for the proponent and the administering authority. Seeking agreement up-front will address this problem.

In response to submissions, an amendment has been proposed to clause 18 of the Bill to clarify the intent for the staged delivery of offsets. This clarification will address the concerns of industry groups that sequencing of offset delivery is not adequately addressed by the Bill.

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*.

Queensland Government response:

The Government **does not support** this recommendation.

The terms “compensate” and “counterbalance” under the Macquarie Dictionary have similar meanings. The dictionary defines “compensate” as “to counterbalance”. The Commonwealth offset policy uses both terms. For example, it states “The term ‘environmental offsets’ refers to measures that compensate for the residual adverse impacts of an action on the environment. Offsets provide environmental benefits to counterbalance the impacts that remain after avoidance and mitigation measures.”

The objects of the Bill makes it clear that offsets are employed only “after avoidance and mitigation measures are taken” through the definition of “environmental offset” in clause 7 (measures to counterbalance significant residual impacts) and “significant residual impact” in clause 8 (impacts remaining despite avoidance and mitigation measures) of the Bill. This principle is also reinforced in clause 14(2) of the Bill.

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*.

Queensland Government response:

The Government supports this recommendation

The concerns of submitters are noted in relation to the discretion of the coordinator-general to impose offsets.

The Deputy Premier and Minister for State Development, Infrastructure and Planning and the Minister for Environment and Heritage Protection will develop and publish guidelines for environmental offsets to provide greater transparency for industry and conservation groups about how the coordinator general will impose environmental offsets.

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’.

Queensland Government response:

The Government does not support this recommendation.

The Government believes this amendment does not provide any greater clarity for the determination of whether a residual impact is significant.

The Department will publish “significant residual impact assessment guidelines” which will provide detailed and objective guidance for each specific matter of state environmental significance.

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.

Queensland Government response:

The Government does **not support** this recommendation.

In addition to the advice previously supplied regarding detailing in the regulation being the preferred approach to provide greater flexibility to make changes, the department further advises that placement in the regulation allows for more timely updates.

The regulation is the necessary vehicle to define the range of activities for which an environmental offset condition may be imposed and may be updated from time to time to reflect any changes in legislation relating to the introduction or reclassification of permitted activities. Updates of the regulation will still be subject to scrutiny and approval by Executive Council.

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.*

Queensland Government response:

The Government does **not support** the recommendation.

Expanding the definition of conservation outcome is not necessary, and may present greater risk of legal challenge of the offsets framework.

The policy provides a definition by specifying “Environmental offsets delivered under this framework are to achieve a conservation outcome for the impacted matter(s). This will require the offset to maintain the viability of the matter, relative to the status quo (i.e. what would have happened had the development and the offset not occurred).”

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.

Queensland Government response:

The government **supports** this recommendation.

The Government will amend section 14 (2)(b) to replace the words cost-effective with reasonable.

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.

Queensland Government response:

The Government does **not support** the recommendation to establish timelines for submission of the proponent's notice of election.

The Government **supports** the recommendation to establish timelines for the administering agency's consideration of a notice of election under section 19.

The time required to develop a notice of election will vary significantly from offset to offset.

Some larger proponent driven offsets may require significant research, on ground analysis, landholder negotiation and project design. The current arrangements provide applicants with the flexibility to submit their notice of election in a way that best suits the individual needs of their project, and offset conditions.

Works causing impacts to the matters in question cannot occur until offset arrangements have been approved. As a result project proponents have an incentive to submit their plans in a timely manner.

As a result the Government believes that establishing a timeframe for the submission of a notice of election will not enhance the delivery of offsets on the ground, and will impose an inflexible rule on proponents.

The Government will **amend** section 19 to include a requirement that the administering agency take an action under 19(2) or 19(3) within 40 business days of receiving a properly completed notice of election

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.

Queensland Government response:

The Government **supports** this recommendation.

The Government will amend clause 83 (Object of offset account) to provide that the object of the offset account is to provide funding for the delivery of environmental offsets that achieve a conservation outcome.

A similar provision will be inserted in Part 11, Division 2 of the Bill in relation to payments received by a local government.

The proposed amendment is consistent with the draft Queensland Environmental Offsets Policy.

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.

Queensland Government response:

The Government **supports** this recommendation.

The Government will amend the title of clause 41 to replace 'inspector' with 'enforcement officer'. The amendment is needed to correct a drafting error in the Bill.

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.

Queensland Government response:

The Government does **not support** this recommendation.

The Bill adequately establishes a head of power under primary legislation for the delivery of environmental offsets which may be provided in a number of innovative and effective ways to achieve a conservation outcome.

The Queensland Environmental Offset Policy made under the Bill is a statutory instrument in accordance with the *Statutory Instruments Act 1992* and provides the legislative rigor and necessary details for providing an environmental offset via a 'direct benefit management plan (DBMP)'. 'Strategic offset investment corridors' (SOIC) are implementation tools to assist in the provision of an offset.

They include pre-identified areas where some prescribed environmental matters exist and assist in providing the location of a potential offset. Both the DBMP and SOIC are provided as 'shelf ready' products and are designed in a way to ensure the effective delivery of a conservation outcome. A DBMP and SOIC comprise intricate details not suited to the succinct nature and primary function of a Bill or regulation. Furthermore the statutory policy adequately provides for the establishment of both products under the Bill.

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'.

Queensland Government response:

The Government does **not support** this recommendation.

The expressions 'direct benefit management plans' and 'strategic offset investment corridors' are not defined in the Bill because they are not used in the Bill. In Queensland, it is standard drafting convention to only define terms expressly stated within the legislation. The statutory policy established under the Bill, once enacted, provides an adequate definition for 'direct benefit management plan' and 'strategic offset investment corridor' to give certainty to its meaning.

Recommendation 16 - The committee recommends that the Environmental Offsets Bill 2014 be passed with the amendments recommended in this report.

Queensland Government response:

No response required

RESPONSE TO POINTS FOR CLARIFICATION:

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.

Queensland Government response:

a) Risks

The new offsets framework takes a risk-based approach to the provision of offsets rather than assessing every minor impact on an environmentally significant matter, and aligns with the Commonwealth approach to offsets.

A decision on what constitutes “significant” for State offsets will be made in consideration of the “significant impacts guideline” which is currently the subject of stakeholder consultation.

The assessment process takes into account the acceptability of the impact (in terms of meeting the purpose of the respective assessment legislation) when determining if an offset is a reasonable condition.

In addition, in assessing staged offsets the Offsets Policy requires consideration be given to the significance of all impacts associated with all stages of the activity, as a whole, rather than solely on a stage-by-stage basis, before approval to stage is granted.

b) Cumulative impacts

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.

The Government has a number of ongoing programs to monitor the condition and health of a range of aquatic and terrestrial ecosystems and species. Where these programs identify important cumulative impacts changes to laws and policies can be considered to appropriately manage those values.

In addition, the 5 year review of the new offsets framework will determine the effectiveness of the framework in achieving a conservation outcome for all impacted environmentally significant matters.

Point 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.

Queensland Government response:

The Government **supports** this recommendation.

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.

The Government has a number of ongoing programs to monitor the condition and health of a range of aquatic and terrestrial ecosystems and species. Where these programs identify important cumulative impacts changes to laws and policies can be considered to appropriately manage those values.

In addition, the 5 year review of the new offsets framework will determine the effectiveness of the framework in achieving a conservation outcome for all impacted environmentally significant matters.

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.

Queensland Government response:

Clause 15 of the Bill provides that local government offsets are not to duplicate the requirements of another level of government in relation to local government offsets. The Single State Planning Policy currently subject to public consultation will be the vehicle for aligning local government offsets with those required by the State to ensure an offset is not required for substantially the same matter.

Point 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.

Queensland Government response:

The Government will **amend** clause 44(1)(d) of the Bill to remove the ability to appoint any individual with their consent. There is adequate power to appoint classes of persons by regulation.

In relation to the qualifications, skills or experience that would qualify a person for appointment as an enforcement officer, where the proposed appointee possesses regulatory skills, for example, through experience in a regulatory or law enforcement role in another agency, the delegate may consider an appointment without further training. Otherwise, a person would not be appointed until completion of the approved Authorised Officer training course already in use by the Department.

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	Member:	
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