



**Australian Government**

**Australian Government response to the  
Senate Environment and Communications References  
Committee report:**

**Environmental offsets**

**DECEMBER 2014**

## REPORT ON SENATE INQUIRY INTO ENVIRONMENTAL OFFSETS – RESPONSE TO RECOMMENDATIONS

### Introduction

Environmental offsets are measures that seek to compensate for the residual adverse impact of an action on the environment and achieve equivalent environmental outcomes. Under national environmental standards all reasonable steps should first be taken to avoid and then mitigate adverse impacts on the environment, before environmental offsets are considered.

Offsets can provide an important and scientifically-robust means to deliver environmental outcomes while achieving social and economic benefits associated with Australia's development.

Use of environmental offsets has grown over the past decade. Internationally, Australia is among a number of countries that have adopted the use of environmental offsets as part of the environmental assessment and approval process. Within Australia, the Commonwealth and all states have legislation or policies in place on environmental offsets.

#### *EPBC Act environmental offsets policy (2012)*

The Australian Government utilises offsets through its regulation of environmental impacts under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The *EPBC Act environmental offsets policy (2012)* guides the use of offsets under national environmental law. The policy is accompanied by the *offsets assessment guide*, which is a metric that is used to determine the suitability of offsets for listed threatened species and ecological communities. It measures an offset against a relevant impact to determine whether the offsets proposal is suitable, and whether the net environmental impacts are acceptable.

The *EPBC Act environmental offsets policy* applies to all matters of national environmental significance protected under the EPBC Act with the exception of water resources in relation to coal seam gas and large coal mine developments, which was added as a new matter of national environmental significance after the release of the policy.

The offsets policy applies to offsetting requirements in terrestrial and aquatic (including marine) environments and for both project-by-project assessments and strategic assessments approved under Parts 9 and 10 of the EPBC Act, respectively. The policy has had effect for all referrals made since 2 October 2012, and to projects that were undergoing assessment and had not had a proposed approval decision made by 2 October 2012.

The *EPBC Act environmental offsets policy* and the *offsets assessment guide* were released in October 2012. The policy and guide were developed following detailed research and stakeholder consultation. This included the release of a consultation draft for public comment, targeted stakeholder engagement with peak industry and environmental bodies and close collaboration with researchers from the Australian National University and University of Queensland through the National Environmental Research Program. The development of the policy also gave consideration to the Business and Biodiversity Offsets Program Standard on Biodiversity Offsets (2012).

The offsets policy articulates the role offsets play under the EPBC Act and how suitable offsets are determined. It makes a significant contribution toward the establishment of national standards for environmental offsets.

## *One-Stop Shop*

The Australian Government is working towards delivery of a One-Stop Shop for environmental approvals. States and territories will only be accredited when they can demonstrate that their processes meet high environmental standards. The standards are on the Department's website at [http://www.environment.gov.au/system/files/resources/40e7000f-4d52-47fe-9a61-ff2b321aec3b/files/standards-accreditation-2014\\_0.pdf](http://www.environment.gov.au/system/files/resources/40e7000f-4d52-47fe-9a61-ff2b321aec3b/files/standards-accreditation-2014_0.pdf). The standards are based on requirements of Commonwealth law and will facilitate the maintenance of environmental outcomes through the One-Stop Shop.

The standards specify that any offsets delivered through an accredited process must achieve long-term environmental outcomes for matters protected under the EPBC Act and be consistent with either the EPBC Act Environmental Offsets Policy, or another policy which achieves the objects of the EPBC Act to an equivalent or better level.<sup>1</sup>

The Government has developed an assurance framework which will put in place arrangements to provide ongoing confidence to the Government and the public in the long term durability and effectiveness of the regulatory arrangements under the One-Stop Shop policy. This will provide a series of safeguards designed to provide ongoing confidence about environmental outcomes and the effectiveness of the regulatory system.

### *The Committee's recommendations*

There remain opportunities to improve the implementation of offsets. Recent audit reports of offsets required as conditions of approval under the EPBC Act have identified issues in relation to ensuring protective mechanisms are attached to the title of a property in a timely fashion. There are a number of causes of these delays, including the complexities of negotiating with land owners for the protection and management of areas proposed as offsets as well as the legal complexities of registering a restrictive covenant on a title. There may be an opportunity for the Commonwealth to work with states and territories to streamline covenanting arrangements to achieve better outcomes for approval holders and the environment. The states and territories have responsibility for the legal mechanisms available to secure offsets and changing these mechanisms would ultimately be a decision for the states.

The policy and offsets assessment guide were scheduled to undergo a technical review one year after its release and a complete review of effectiveness against the aims of the policy every five years thereafter. The performance of the offsets policy against the stated objectives will be evaluated as part of these review processes. The one year technical review has been temporarily delayed to allow consideration of state and territory processes that may be accredited through the One-Stop Shop policy.

The EPBC Act offsets policy also commits to the development of a register for offsets, and that once completed, that information on offsets be made publicly available where it is possible to do so. This work is currently being considered in the context of improved coordination and display of environmental information across the jurisdictions that will support the Government's One-Stop Shop policy.

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<sup>1</sup> Standards for Accreditation of Environmental Approvals under the *Environment Protection and Biodiversity Conservation Act 1999*, p. 11-12.

## Response to committee report

Recommendation	Response
<p>Recommendation 1: The committee recommends that the EPBC Act be amended to expressly recognise environmental offsets and to include the principles in the offsets policy as relevant considerations for the Minister in making decisions about conditions of approval relating to offsets</p>	<p>Not agreed.</p> <p>The Australian Government has integrated the principles of the EPBC Act environmental offsets policy into the environmental assessment and approval process. The principles are therefore considered in approval decisions where offsets are relevant and it is not necessary to specifically include these considerations in the EPBC Act.</p>
<p>Recommendation 2: The committee recommends that the policy be revised to provide further clarity on the principle of additionality.</p> <p>Recommendation 3: The committee recommends that the Department ensure that all offsets adequately reflect the principles of additionality, and are not granted in relation to areas that are already protected under existing Commonwealth, state or territory legislation or policy.</p>	<p>Noted.</p> <p>The EPBC Act environmental offsets policy requires that offsets must be additional to what is already required, or determined by law or planning regulations, or agreed to under other schemes or programs.</p>
<p>Recommendation 4: The committee recommends that offsets be used as a last resort.</p>	<p>Noted.</p> <p>The EPBC Act environmental offsets policy provides that offsets should only be considered if residual impacts are significant, and only following implementation of all reasonable avoidance and mitigation measures.</p>

<p>Recommendation 5: The committee recommends that, prior to approval being given for actions under the EPBC Act, the mitigation hierarchy be rigorously implemented, with a greater emphasis on avoidance and mitigation.</p>	<p>Noted.</p> <p>The mitigation hierarchy is followed in considering approvals and conditions, and in assessing the adequacy of proposed offsets under the EPBC Act. The EPBC Act environmental offsets policy states that avoidance and mitigation measures are the primary strategies for managing the potential significant impact of a proposed action. Offsets will not be considered until all reasonable avoidance and mitigation measures are considered, or acceptable reasons are provided as to why avoidance and mitigation of impacts is not reasonably achievable.</p>
<p>Recommendation 6: The committee recommends that the policy be revised to provide greater guidance on developments in which offsets are unacceptable, including a list of 'red flag' areas, such as world heritage and critically endangered communities and species.</p>	<p>Not agreed.</p> <p>The Australian Government acknowledges that the application of offsets for some protected matters, for example, World Heritage, may not always be appropriate. These decisions are made on a case-by-case basis. Offsets do not enable proposals with unacceptable residual impacts to be approved. Under the EPBC Act, the final decision as to whether a proposal will be approved rests with the Minister, including whether a proposal will have unacceptable residual impacts. The offsets policy makes it clear that the avoid, mitigate and offset hierarchy must be followed, and offsets used only when all reasonable avoidance and mitigation options have been considered.</p>
<p>Recommendation 7: The committee recommends that environmental offsets related to any particular development or activity should be clearly identified prior to approval being given for that development or activity.</p>	<p>Agreed in principle.</p> <p>The EPBC Act environmental offsets policy states that offsets should be identified in a timely manner so as to reduce the risk of the offset not succeeding. Where offsets are unable to be clarified prior to approval, the proponent is required to identify and secure the required offsets, which must meet the offsets policy principles, in approval conditions within a specified timeframe.</p>

<p>Recommendation 8: The committee recommends that all environmental offsets plans and strategies, required as part of the conditions of approval under the EPBC Act, be published on the Department's website.</p>	<p>Agreed in principle.</p> <p>Information concerning referrals and assessments under the EPBC Act, including approval conditions, is already made available on the Department of the Environment website. This includes requirements in approval conditions for approval holders to publish plans.</p> <p>Under the One-Stop Shop policy and assurance framework, the Australian Government is working with the states and territories to improve information exchange and public access to environmental information.</p>
<p>Recommendation 9: The committee recommends that the Department expedite the development of a publicly available nationally coordinated register of environmental offsets.</p>	<p>Agreed in principle.</p> <p>The establishment of a nationally coordinated register of environmental offsets would require the cooperation of all the states and territories. Initial work is currently being undertaken on the development of a register for offsets for EPBC Act approvals.</p> <p>Under the One-Stop Shop policy and assurance framework, the Australian Government is working with the states and territories to improve information exchange and public access to environmental information.</p>
<p>Recommendation 10: The committee recommends that the Department develop a separate offsets policy in relation to the marine environment.</p>	<p>Noted.</p> <p>The principles of the EPBC Act environmental offsets policy apply to offsetting requirements in both the terrestrial and aquatic, including marine, environments. The Australian Government is working with the states and territories to develop and implement more detailed approaches to marine offsets, including through strategic approaches such as the Reef Trust.</p>

<p>Recommendation 11: The committee recommends that the Department carefully verify all calculations and information provided by proponents in relation to environmental offsets.</p>	<p>Noted.</p> <p>Information provided by proponents during environmental assessments, including proposed offsets, is thoroughly assessed by the Department of the Environment. The EPBC Act assessment process involves a thorough assessment of proposed offsets in accordance with the policy and using the offsets assessment guide.</p>
<p>Recommendation 12: The committee recommends that the scheduled technical review of the policy be commenced as soon as possible. The technical review should be made publicly available and should consider evidence provided to this committee in relation to the Offsets Assessment Guide.</p>	<p>Agreed.</p> <p>The EPBC Act environmental offsets policy and offsets assessment guide play a key role in the Standards for Accreditation, which facilitate the maintenance of strong environmental outcomes through the One-Stop Shop policy. The technical review of the offsets assessment guide will commence following the implementation of the One-Stop Shop. Negotiations for the One-Stop Shop will continue on the basis of the established offsets policy and guide. Information and experience gained through the negotiations will then inform the technical review.</p>
<p>Recommendation 13: The committee recommends that resource and staffing levels within the Department should be sufficient to ensure adequate monitoring capacity in relation to approvals of conditions under the EPBC Act, including conditions relating to offsets.</p>	<p>Agreed.</p> <p>The Department of the Environment has recently introduced a strategic risk-based approach to compliance monitoring and auditing of approval conditions imposed under the EPBC Act, including approval conditions concerning offsets. This will achieve higher-value compliance and enforcement outcomes, and, ultimately, better protection of Australia's environment and heritage.</p> <p>In addition to the development of a risk-based project-prioritisation model, the Department has more than doubled the number of staff responsible for monitoring compliance with conditions since August 2011. In effect this means that the Department has more monitoring resources focused towards achieving the greatest environmental benefit.</p>

<p>Recommendation 14: The committee recommends that the Department's compliance audit program be extended to include an evaluation of the progress of offsets granted as conditions of approval under the EPBC Act in achieving their intended environmental outcomes.</p>	<p>Agreed.</p> <p>The implementation of offsets required under the EPBC Act is evaluated by the Department of the Environment in management plans and compliance reports required by approval holders.</p> <p>The Department of the Environment has recently introduced a strategic risk-based approach to compliance monitoring and auditing of approval conditions imposed under the EPBC Act, including approval conditions concerning offsets.</p> <p>The Australian Government recognises the value of focusing regulatory effort on measuring outcomes, rather than monitoring process or administrative requirements.</p> <p>The Government is currently exploring how to facilitate a more outcomes-based approach to environmental approvals, which will enable better measurement of the outcomes of EPBC Act approvals. For example, applying more outcomes-based offset conditions to environmental approvals would allow compliance audits to focus on the environmental outcomes achieved by offsets.</p>
<p>Recommendation 15: The committee recommends that the scheduled five-year review of the policy include consultation and evaluation of the extent to which offsets are achieving positive environmental outcomes.</p>	<p>Agreed.</p> <p>The performance of the EPBC Act environmental offsets policy against the stated objectives will be evaluated as part of these review processes.</p>



<p>Recommendation 16: The committee recommends that the Department reviews the mechanisms for securing offsets under the EPBC Act with a view to ensuring that the strongest possible legal mechanisms are used or developed, if required, to secure offsets in perpetuity.</p>	<p>Noted.</p> <p>The EPBC Act environmental offsets policy includes a requirement to consider suitable legal mechanisms to protect offsets and provides guidance on acceptable delivery mechanisms. The states and territories have responsibility for the various legal mechanisms available to secure offsets. Approval conditions concerning offsets under the EPBC Act work within the parameters of those mechanisms. There is an opportunity for the Commonwealth to work with the states and territories to streamline covenanting arrangements to achieve better outcomes for approval holders and the environment.</p>
<p>Recommendation 17: The committee recommends that the Department revise the policy to clarify that offsets need to be protected in perpetuity and should not be subject to future development.</p>	<p>Not agreed.</p> <p>The EPBC Act environmental offsets policy states that the best legal mechanisms for protecting land are intended to be permanent and secure. The requirement for offsets is tied to the length of the impact. Offsets should be in place for the duration required to ecologically recover from the impact of the proposal.</p> <p>The offsets policy also states that, where a proposal is likely to impact on an existing EPBC Act offset, there should be a referral. If determined to be a controlled action, the policy requires that the person proposing to take the action must develop an offsets package to compensate for both the impact of the proposed action, as well as the original action for which the offset was a condition of approval.</p>

<p>Recommendation 18: The committee recommends that the Department include requirements in conditions of approval under the EPBC Act for the secure funding of the future management of offset areas.</p>	<p>Agreed in principle.</p> <p>The EPBC Act environmental offsets policy recognises the value of ongoing management of offsets in contributing towards a measurable conservation gain for an impacted protected matter. Many approval conditions under the EPBC Act require ongoing management of offset areas during the period of the action. Offset proposals that include management funding, where that is important for the efficacy of the proposed offset, are more likely to be accepted for approval.</p>
<p>Recommendation 19: The committee recommends that the Department examine and review options to ensure a more strategic approach to offsets, including encouraging greater use of 'advanced offsets'.</p>	<p>Agreed in principle.</p> <p>The EPBC Act environmental offsets policy encourages the supply of offsets before an impact occurs. Under the One-Stop Shop policy, the Government will explore more strategic approaches to offsets, such as advanced offsets and offsets in relation to strategic assessments, in collaboration with the states and territories. The Reef Trust is another model that will facilitate more strategic approaches to offsets, through ongoing evaluation and adaptive management to focus on critical areas for investment in sustainably managing the Great Barrier Reef.</p>

Recommendation 20: The committee recommends that a consistent national standard be developed in relation to environmental offsets based on the policy.

Noted.

Under the One-Stop Shop policy, states and territories will be required to meet the high environmental standards of the EPBC Act, including in relation to offsets. An assurance framework has been developed to ensure these standards are met. The provisions of the approval bilateral agreements with each state and territory will give effect to the assurance framework.

The Australian Government has released Standards for Accreditation of Environmental Approvals under the EPBC Act, which articulates the environmental standards and considerations for accreditation of state and territory approval processes through bilateral agreements. Standard 28 requires that offsets under a state process must achieve long-term environmental outcomes for matters protected under the EPBC Act and be consistent with either the EPBC Act environmental offsets policy, or another policy accredited by the Minister as achieving the objects of the EPBC Act to an equivalent or better level.

For example, the draft approval bilateral agreement with Queensland requires that Queensland applies the EPBC Act environmental offsets policy, except where the Commonwealth Minister is satisfied that the Queensland offsets policy will result in outcomes equivalent to or greater than the outcome that would be achieved under the EPBC Act environmental offsets policy.

Not agreed.

Recommendation 21: The committee recommends that the Australian Government not accredit state and territory approval processes under the EPBC Act.

The Australian Government is committed to delivering a One-Stop Shop for environmental approvals that will accredit state planning systems under national environmental law, where high environmental standards are met. The One-Stop Shop will create a single environmental assessment and approval process for nationally protected matters.

## Response to Australian Greens minority report

<p>Recommendation 1: The Government must refuse projects which have unacceptable impacts on matters of national environmental significance, rather than using offsets as a fig leaf to allow continued approvals.</p>	<p>Noted.</p> <p>The EPBC Act environmental offsets policy clearly states that offsets do not enable proposals with unacceptable residual impacts to be approved. Offsets will not be considered until all reasonable avoidance and mitigation measures are considered.</p>
<p>Recommendation 2: The Government should immediately revoke the approval for the Maules Creek coal mine, and Whitehaven Coal should be prosecuted for providing the Government with false information in order to get approval for their environmentally disastrous mine at Maules Creek.</p>	<p>Not agreed.</p> <p>The approval for Whitehaven Coal's Maules Creek coal mine was undertaken in accordance with the requirements of the EPBC Act.</p>
<p>Recommendation 3: The Government should immediately revoke approval for Waratah Coal's Galilee Coal Project.</p>	<p>Not agreed.</p> <p>The approval for Waratah Coal's Galilee coal and rail project was undertaken in accordance with the requirements of the EPBC Act</p>
<p>Recommendation 4: The Government should immediately revoke approval for the Abbot Point coal terminal dredging and dumping.</p>	<p>Not agreed.</p> <p>The approval for the North Queensland Bulk Ports Abbot Point coal terminal capital dredging project was undertaken in accordance with the requirements of the EPBC Act</p>

Recommendation 5: Any existing offset areas already secured must be protected in perpetuity and not subject to further development.

Not agreed.

The various legal mechanisms available to secure offsets are the responsibility of the states and territories. The EPBC Act environmental offsets policy requires that suitable legal mechanisms for offsets be considered and must work within the parameters of those mechanisms to enable the best legal security that is practicable. The requirement for offsets is tied to the length of the impact. Offsets should be in place for the duration required to ecologically recover from the impact of the proposal.

The offsets policy also states that, where a proposal is likely to impact on an existing EPBC Act offset, there should be a referral. If determined to be a controlled action, the offsets policy requires that the person proposing to take the action must develop an offsets package to compensate for both the impact of the proposed action, as well as the original action for which the offset was a condition of approval.

