

21 March 2014

The Hon Ian Rickuss MP
Chair of the Agriculture, Resources and Environment Committee
Member for Lockyer
c/o the Research Director
Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: AREC@parliament.qld.gov.au

RE: Queensland Resources Council submission on the Environmental Offset Bill 2014 (Qld)

Dear Mr Rickuss,

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission on the Environmental Offsets Bill 2014 (Qld) (the Bill).

QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses mineral and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

The promotion of leading environmental management practices is a key goal of QRC, and is vital to ensuring the Queensland resources sector remains environmentally responsible and continues to meet community expectations. QRC believes that the provision of an efficient, effective and strategic Offsets framework is a critical component of the industry's environmental performance in Queensland.

As such, QRC would like to congratulate the Queensland Government on taking the first step in delivering a 'single touch point' for offsets in Queensland by introducing the Bill into Parliament. This Bill also potentially provides the first block in the development of a One Stop Shop for environmental approvals in Queensland, in conjunction with the Commonwealth, which will help to provide real environmental outcomes for Queensland, in the most efficient way possible.

Further, QRC would like to take this opportunity to commend the Department of Environment and Heritage Protection (EHP) for their work on the development and consultation on the Bill and associated Policy. Whilst QRC has been concerned at times with the delays in advancing this project, the Department's work on responding to the concerns of industry has helped make this process as smooth as it could possibly be.

Fundamentally QRC finds that the Bill is consistent with the negotiations industry has had with government on the development of the overarching Queensland offsets framework over the last two years. However this submission identifies a range of improvements that would serve to further enhance the new Queensland framework, particularly through their recognition / clarification in the Bill.

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 has actually yet to be defined) which cannot be avoided, minimised or mitigated. QRC supports the Queensland Government's alignment with this position. Importantly, both the Offsets Bill and policy are also entirely consistent with the principles of ecologically sustainable development.

Despite the number of positive developments in the Bill, QRC has identified a small but significant number of areas within the Bill that could be improved or clarified, and in some cases made consistent throughout the legislation. The key areas for improvement in the opinion of QRC are:

- ❖ Removal of the Coordinator-General exemption;
- ❖ Recognition of staging of offsets;
- ❖ Clearer recognition of the ability to utilise advanced offsets;
- ❖ Greater clarity around the legal security of offsets, and in particular placing limitations on the ability of utilising the legal security mechanism for vexatious means;
- ❖ Clarity around the distinction between the management of offsets and the securing of offsets, and in particular the duration of these actions;
- ❖ Clarity around the wording of the transitional provisions to reflect the intent of the legislation;
- ❖ Recognition of the ability of rehabilitation of a site to reduce the significant residual impact of an activity;
- ❖ Recognition of the ability to utilise land that has been rehabilitated as potential land for an offset, as long as it goes above and beyond the final agreed land use;
- ❖ Tighter restrictions on the operation, transparency and accountability of the financial offset fund;
- ❖ The need for clarity around the use of 'off the shelf' packages, particularly Direct Benefit Management Plans;
- ❖ Greater distinction between land-based offsets and marine-based offsets given the inherently different nature of the environment, tenure systems and stakeholders of the marine environment; and
- ❖ The problematic operation of a net environmental benefit test.

QRC would like the Committee to note that QRC was disappointed that the draft Regulation, draft Policy and draft guidelines were not released at the same time as when the Bill was tabled before Parliament. This would have allowed the industry to read the new offsets framework as an entire package, and would have provided greater context for how different aspects of the framework interact between the documents. As such, QRC has taken the opportunity to make comments on some of the matters that go across both the Bill and the released draft Policy as well as the flagged contents of the Regulation, whilst recognising that the Policy itself is not within the scope of the Committee's inquiry.

QRC would welcome the opportunity to discuss the matters contained in this submission further with the Committee.

If you have any questions about any matters raised in this submission, QRC's contact is Frances Hayter, QRC's Director Environment Policy on 0417 782 884 or at francesh@qrc.org.au.

Yours sincerely



Michael Roche
Chief Executive

QRC

submission

Working together for a shared future

A stylized graphic of two overlapping leaves. The leaf on the left is outlined in grey, and the leaf on the right is outlined in a light green color. They are positioned behind the central text box.

**To the Agriculture,
Resources and
Environment Committee
Environmental Offsets
Bill 2014
21 March 2014**

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1. EXECUTIVE SUMMARY

The Queensland Resources Council (**QRC**) welcomes the opportunity to provide a submission on the Environmental Offsets Bill 2014 (Qld) (**the Bill**).

QRC is the peak representative organisation of the Queensland minerals and energy sector.

QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

The promotion of leading environmental management practices is a key goal of QRC, and is vital to ensuring the Queensland resources sector remains environmentally responsible and continues to meet community expectations. QRC believes that the provision of an efficient, effective and strategic offsets framework is a critical component of the industry's environmental performance in Queensland.

As such, QRC would like to congratulate the Queensland Government on taking the first step in delivering a 'single touch point' for offsets in Queensland by introducing the Bill into Parliament. This Bill also potentially provides the first block in the development of a 'One Stop Shop' for environmental approvals in Queensland, in conjunction with the Commonwealth, which will help to provide real environmental outcomes, in the most efficient way possible.

Further, QRC would like to take this opportunity to commend the Department of Environment and Heritage Protection (**EHP**) for their work on the development and consultation on the Bill and associated Policy. Whilst QRC has been concerned at times with the delays in advancing this project, the Department's work on responding to the concerns of industry has helped make this process as smooth as it could possibly be.

Fundamentally QRC finds that the Bill is consistent with the negotiations industry has had with government on the development of the overarching Queensland offsets framework over the last two years. However this submission identifies a range of improvements that would serve to further enhance the new Queensland framework, particularly through recognition and clarification in the Bill.

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 supports the Queensland Government's alignment with this position. Importantly, both the Bill and the draft Queensland Environmental Offsets Policy (**the draft Policy**) are also entirely consistent with the principles of ecologically sustainable development (**ESD**).

We would like the Committee to note that QRC was disappointed that the draft Regulation, draft Policy and draft guidelines were not released at the same time at the Bill was tabled before Parliament. This would have allowed the industry to read the new offsets framework as an entire package, and would have provided greater context for how different aspects of the framework interact between the different documents.



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QRC's submission points to a range of matters that have not been included in the Bill. For example QRC has consistently suggested that impacts that can be rehabilitated, particularly within a suitable timeframe, should not be required to be offset as these impacts have been mitigated. Fundamentally, the offsetting framework should take a 'life of project' conceptualisation to offsetting, and should assess the impact that is left at the end of the project. While we believe the Queensland Government understands this position and the Commonwealth Government is moving towards it, there is no specific recognition of the ability to consider rehabilitation as potentially reducing offset liability in the Bill.

This submission also speaks to key components of the government's draft Policy. As noted above it is not possible to separate the major matters covered by the Bill from one of its key on-ground implementation components.

2. SUPPORTED OFFSET PRINCIPLES

In the first instance, QRC would like to again reiterate our support for the following key principles of both the Bill and the relevant parts of the draft Policy, which QRC understands will also be considered as a Regulation under the Act.

2.1. Removal of duplication for offset conditioning

The Queensland resources industry has long been supportive of the removal of duplication between local, state and federal offsetting legislation. As such, QRC was pleased to see the election commitment of the Newman and Abbott Governments with respect to the agreement to develop an environmental 'One Stop Shop' with Queensland. This was clearly emphasised by the governments prompt announcement of a related memorandum of understanding on the 18 October 2013.

In the past, the conditioning of offsets for resource projects has been a significant area where the federal government and state government have duplicated conditions. For example, one of our members has advised that for a coal mining development involving the clearing of natural grasslands a different ratio of offsets was applied at the state and federal level. Specifically, following a detailed Environmental Impact Statement and assessment process, the Queensland Government required that the area of natural grasslands to be cleared as part of the development was to be offset at a ratio of 1:3. The proponent was well advanced on satisfying this offset requirement at the time of the state decision.

However, Commonwealth conditions imposed following the decision by the Queensland Government required that the offset ratio be revised from 1:3 to almost 1:6 resulting in an additional offset liability to the proponent and a significant reassessment of the proposed offset strategy.

As such, one of the most significant reforms in this Bill is section 15, which provides that "where the Commonwealth requires an offset the state will not require an offset for the same matter".¹ QRC would like to emphasise the industry's support for this reform, and reiterate how critical it will be to the efficient delivery of projects. QRC further supports the now recognised ability to co-locate matters that are required to be offset, as a significant advancement in the Queensland offsets framework. The concept of co-location has also been specifically recognised in the draft calculator, which will sit under

¹ Environmental Offsets Bill 2014 Explanatory Notes, page 3.



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the Regulations. QRC would like to take this opportunity to commend the Department on the work they have undertaken on reforming the calculator, and in particular the lengths that they have gone to in attempting to ensure that the calculator is open and transparent in the way that it calculates offset obligations. However, QRC will continue to monitor the application of the calculator to ensure our members are not worse off under the new system.

The Bill also provides a mechanism for the accreditation of the Queensland offsets framework by the Commonwealth Government. Should the accreditation of the Queensland offsets calculator eventuate, this will further streamline the provision of offsets by providing proponents with one government (and often one case manager) through which offsets will be determined. What this means in real terms is that a proponent will have to familiarise only one government with the details of the project. It is often this time spent educating, familiarising and negotiating with multiple levels of government, only to arrive at similar (though not identical) outcomes, that results in the significant time and cost delays to projects.

By delivering an offsets framework that combines the offsetting requirements by replacing the five current offset policies of:

- ❖ Policy for Vegetation Management Offsets;
- ❖ Queensland Biodiversity Offsets Policy;
- ❖ Offsets for Net Gain in Koala Habitat in South East Queensland Policy;
- ❖ Marine Fish Habitat Offset Policy; and
- ❖ Queensland Government Environmental Offsets Policy,

industry is better able to coordinate offsetting arrangements across whole projects (and even potentially whole operations) which will result in better environmental outcomes rather than the current situation of often disparate and patchwork-like offsets.

2.2. Significant residual impact

The federal government, through the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**), has long assessed projects on the basis of a test of 'significant impact'. The importance of defining the threshold at which projects are conditioned as being at the point of having a significant impact ensures that government is regulating in the 'high risk sphere' rather than getting bogged down in the regulation of minutiae.

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. QRC notes that the definition of 'significant residual impact' is contained in section 8 of the Bill, and the way of assessing 'significant residual impact' is to be contained in the respective guideline. QRC welcomes the opportunity to work with government further as this guideline is developed to provide workable on ground guidance for the interpretation of 'significant residual impact'.

While QRC has some issues with the clarification of this terminology, notably the lack of clarity on activities that should be considered exempt as they are extremely unlikely to have a significant residual impact, such as exploration activities and emergency clearing work, as well as the



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implementation of this terminology on the ground (discussed further in this submission at **Section 3.7**) QRC would like to reiterate what a welcome advancement this is in the realm of offsetting.

2.3. Land-based, financial and mixed offsets

Under the previous Queensland Government Environmental Offsets Policy (and the subordinate Queensland Biodiversity Offset Policy) there was an allowance for the provision of offsets through both land-based and financial means.

However, there were a number of provisos that significantly limited the application of how a proponent could deliver an offset. In particular, by limiting the application of financial offsets to activities that were NOT impacting on vegetation such as semi-evergreen vine thicket² or were not taking endangered, vulnerable or near threatened (EVNT) protected plants³ under the *Nature Conservation Act 1992 (Qld)* most resource proponents were excluded from delivering a financial offset.

Further to this there was also no ability to mix the way in which offsets were provided, for example, by providing half of the offset obligation as a land-based offset and half as a financial contribution.

QRC is pleased to see that a number of these unnecessary imposts have been removed from the provision requirements for offsets under the Bill and the draft Policy. In particular, s18(2)(iii) of the Bill provides absolute clarity on the ability of a proponent to provide a combination of both land-based and financial offsets.

This flexibility will allow proponents to weigh up the local, community and economic considerations as part of the approvals process and deliver a tailored offsets package suitable to the particular circumstances of an individual project. Fundamentally, this shift in the way in which an offset can be delivered recognises that no two project's significant residual impacts are the same.

Further QRC would like to commend the Queensland Government on providing proponents with the flexibility to deliver offsets through 100% financial means. 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.

2.4. Cap on offset multiplier

Since the introduction of offset legislation, there has been a slow but steady increase in the 'multipliers' applied to offset requirements. A multiplier is the amount that an impacted area is multiplied by to arrive at the offset obligation. Industry has seen instances of impacted areas being required to be offset at a ratio of 10:1.

While industry supports the provision of offsets as a way to mitigate the impact of resource activities, the provision of offsets must achieve an economic balance in order for investment in major projects to

² Queensland Biodiversity Offset Policy, October 2011, Page 57

³ Queensland Biodiversity Offset Policy, October 2011, Page 16



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proceed. The Queensland resources industry has long held that the offset policy of government should be one of 'no net loss' rather than 'net environmental benefit' and therefore there should not be an automatic assumption of a multiplier / ratio. Nevertheless, placing a cap on the degree to which a multiplier can be applied gives proponents greater investment certainty, and still ensures that there is no net loss for the Queensland environment. QRC believes that this is a positive advancement in offset policy and commends the Queensland Government on taking this important step in cutting green tape.

2.5. Matters of State Environmental Significance

In the first instance, QRC would like to congratulate the Queensland Government on the concept of matters of state environmental significance (MSES). QRC would like to note that we appreciate the alignment of terminology with the federal EPBC Act, which will assist with the delivery of an environmental one stop shop in the near future.

However, 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 Environments Significance (**MNES**). As such QRC believes that the Bill should define the MSES, rather than the Regulations, thereby providing stakeholders with certainty as to what matters may be captured by the Bill.

Further to this, QRC would like to note that as currently drafted, the Queensland resources industry has a number of concerns with some of the matters that have been prescribed as MSES. This again highlights the importance of releasing the Regulations (where the MSES are contained) alongside the Bill, as this would have allowed the industry to consider the new offset framework as a whole. QRC notes that we would welcome the opportunity to work with the Department to assist in the refining of these matters as the Regulations are developed or as they form part of the Act.

2.6. Utilisation of remnant vegetation as acceptable offset

Under the Queensland Biodiversity Offset Policy, a land-based offset could not be provided on land that contained remnant vegetation.⁴ As time has progressed, and more and more offset land is secured, there is an increasing scarcity of appropriate offset land available to proponents.

The perverse outcome is that by not allowing remnant vegetation to be secured as an offset, this land cannot be protected and managed to control pests and weed invasion. This has meant that some of Queensland's most pristine environment does not get managed as well as the state's more degraded environment.

QRC would like to emphasise our support for the greater flexibility introduced into the Bill and draft Policy, which will allow for the management of remnant vegetation to be included as an offset. This provides both a long term view of offsets, whilst resulting in better environmental outcomes for Queensland by allowing the management and protection of some of the state's highest quality environment and creating opportunities for improving areas that currently do not have any protection.

⁴ This restriction explicitly forms part of criteria B1, in Section 11 of the Queensland Biodiversity Offset Policy (October 2011). It remains part of criteria B1 in the Queensland Biodiversity Offset Policy (January 2014), though the specific reference to "remnant vegetation" has been absorbed into the defined term "category B area".



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In addition this approach to remnant vegetation is consistent with the Commonwealth Government offset policy.

3. OVERARCHING CONCERNS

Despite the number of positive developments in the Bill, QRC has identified a small but significant number of areas within the Bill that could be improved or clarified, and in some cases made consistent throughout the legislation. The key areas for improvement in the opinion of QRC are:

- ❖ Coordinator-General exemption;
- ❖ Recognition of staging of offsets;
- ❖ Recognition of the ability to utilise advanced offsets;
- ❖ Greater clarity around the legal security of offsets, and in particular placing limitations on the ability of utilising the legal security mechanism for vexatious means;
- ❖ Clarity around the distinction between the management of offsets and the securing of offsets, and in particular the duration of these actions;
- ❖ Clarity around the wording of the transitional provisions to reflect the intent of the legislation;
- ❖ Further recognition of the ability of rehabilitation of a site to reduce the significant residual impact of an activity;
- ❖ Recognition of the ability to utilise land that has been rehabilitated as potential land for an offset, as long as it goes above and beyond the final agreed land use;
- ❖ Tighter restrictions on the operation, transparency and accountability of the financial offset fund;
- ❖ The need for clarity around the use of 'off the shelf' packages, particularly Direct Benefit Management Plans;
- ❖ Greater distinction between land-based offsets and marine-based offsets given the inherently different nature of the environment, tenure systems and stakeholders of the marine environment; and
- ❖ The problematic operation of a net environmental benefit test.

Further details on these concerns and suggested solutions to these concerns are discussed further below.

3.1. Coordinator General exemption

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 raised these concerns with the Coordinator General because it is QRC's view that this has the potential to undermine the whole of government approach to offsets and potentially send conflicting messages to the federal government during the current negotiations on the environmental 'One Stop Shop' and accreditation of the Queensland system.

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



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certain, transparent and accountable means of conditioning offsets in Queensland is to ensure that all decision makers in Queensland are bound by the Bill.

Recommendation 1: that the Committee recommend that the Bill be amended to ensure that the Bill applies to all offset decision makers in Queensland.

3.2. Staging of Offsets

QRC is concerned that there is a lack of reference in the Bill to the ability to provide an offset in a staged approach. A staged approach, within appropriate timing parameters, allows for companies to not only balance their financial costs but also has the potential benefit of influencing impact points which will allow greater capacity to avoid and minimise impacts on prescribed environmental matters.

Particularly in the context of our CSG members, although it can also apply to large coal projects, whose impacts move across the land in stages throughout the life of their gas extraction, the ability to provide offsets in line with the sequence of the potential significant residual impact is critical to the viability of projects. This is also critical for new or small companies that face significant upfront costs before cash flow is received to fund ongoing operations.

There are examples of current approvals, at both a state and federal level, which include a staged approach to offsets. For example, Arrow Energy's Surat Basin expansion project, which was approved on 19 December 2013, provided for a staged delivery of offsets under the EPBC Act.⁵ The approval provides that under the proponent's Species Impact Management and Offset Plan, for each stage of the project, the proponent would submit for approval an updated version of the plan taking into account the respective development stage.⁶

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 EHP 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.

Further to this, at the public briefing to the Committee on the 19 March 2014, it was noted that "for proponent driven offsets, the Bill will now allow developers to commence if they have found a suitable offset and have an approved offset delivery plan for the impacted value."⁷ QRC does not believe this accurately reflects the requirements of the Bill, and the potential difficulties in securing an approved offset delivery plan. For example, section 18(4)(b) requires that in order to secure an offset delivery plan (which is a key milestone of being able to commence on ground disturbance) the proponent must have the offset delivery plan signed by the entity that owns the land on which the environmental offset will be undertaken. This has the potential to lead to lengthy delays as the proponent negotiates specifics with the landholder where an offset is to take place. This would delay the commencement of any disturbance activities and thus unnecessarily delay the commencement of resource activities.

⁵ <http://www.environment.gov.au/epbc/notices/assessments/2010/5344/2010-5344-approval-decision.pdf>

⁶ <http://www.environment.gov.au/epbc/notices/assessments/2010/5344/2010-5344-approval-decision.pdf> at Page 4-5.

⁷ Public Briefing – Examination of the Environmental Offsets Bill 2014 at Page 5, available at: <http://www.parliament.qld.gov.au/documents/committees/AREC/2014/21-EnvironmentalOffsets/trns-pb19Mar2014.pdf>



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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, which is what s19(2)(b) appears to allow. However, when this is read in conjunction with s18(4)(b) it does not appear that this is the case.

Further to this, 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.

Instead, QRC believes that the reference to 'entity that owns land on which the environment offset will be undertaken' in the Bill is meant to only relate to the offsets for the first stage of the offset obligation (as would be stated in the offset delivery plan). However, the scope of offset obligation under consideration for s18(4)(b) is not clear, particularly when read in conjunction with s18(5)(d).

Recommendation 2: that the Committee recommend the Bill be amended to include the express recognition of the ability for offsets to be provided in stages.

Recommendation 3: that the Committee recommend that the wording of s18(4)(b) be amended to ensure that it does not prohibit the provision of staged offsets or the commencement of activities on the proviso that negotiations with an offset landholder is completed within a reasonable timeframe.

3.3. Advanced Offsets

Under the current Queensland Biodiversity Offsets Policy, the Policy recognises the ability to utilise advanced offsets. An advanced offset, as defined in the current policy, "is an area of land which has been protected from impacts, in advance of the lodgement of a development application which would require an offset in the future."⁸

Advanced offsets are a useful mechanism as it provides environmental benefit prior to any impact occurring, as well as allowing proponents to secure land to provide and manage offsets from different projects in one strategic area. It also encourages proponents to strategically identify areas of environmental significance and manage them accordingly.

A number of QRC members have already secured large amounts of area as advanced offsets. For example, one company has reported to QRC that they have in excess of 1800 ha of advanced offsets.

Case Example One

Another example is the case of the Glencore Newlands Nature Refuge, which contains around 4,500ha which is in effect an advanced offset. Further to this, the area already contains offsets for previous projects (Wollombi and the Newlands Extension). More than half of the total area is still available for future offsetting. The management practices undertaken by Glencore associated with the refuge has seen a significant recovery of certain species and communities. The concern is that to date, the existence of the refuge hasn't necessarily equated to greater government confidence in success of the area despite on the ground evidence of significant recovery of species and ecological communities. QRC believes that this is an important demonstration of how advanced offsets are

⁸ Queensland Biodiversity Offset Policy, October 2011, Page 51



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already having positive benefits to the environment here and now and that the government's approach to advanced offsets can only be further enhanced by more detailed recognition in the Bill.

Whilst QRC is pleased that the Bill creates the head of power for advanced offsets at s92(2), by giving the power to create a Regulation for the identification of advanced offsets, QRC believes that there needs to be a definition for advanced offsets contained in the Bill. This appears to be the intent, as the term advanced offsets is bolded and italicised as per standard legislative formatting; however there is no reciprocal definition of advanced offsets contained in the Bill. QRC recommends that the Bill should be amended to include a definition of advanced offsets in the Bill.

Further, QRC would like to note that we are pleased that the wording from the Queensland Biodiversity Offsets Policy has been carried across to the draft Policy. However, given that the Regulation will define how advanced offsets are identified and used, this heightens QRC's request 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.

QRC believes that given the large amount of land that has already been secured as advanced offsets in accordance with previous offsetting policy, 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.

Recommendation 4: that the Committee recommend that the Bill be amended to provide a definition of 'advanced offsets' and to provide specific recognition of the ability to utilise advanced offsets as a means of fulfilling and offset obligation.

3.4. Legal Security of Offsets

Firstly, QRC would like to commend the government on the development of a potentially easier method of securing an offset. In the past, there has been difficulty (at both a conceptual and implementation level) as to how best to secure an offset, and the most appropriate legal instrument through which to provide security.

As such, QRC appreciates the thought and effort that the Department has put into the development of a new method for securing offsets.

However, QRC believes that the Bill would benefit from some additional protections to ensure that the protection of offsets (through an offset protection area under s29 of the Bill) cannot be used for vexatious purposes.

Secondly, QRC is concerned that an offset protection area can be declared under s29 without having to consult with the holder of a petroleum or mineral exploration permit or consideration of the potential mineral, CSG or petroleum prospectivity in the area. QRC is happy to see that consultation must occur with higher order interest holders⁹, so it would be disappointing to see offset protection areas used as a means to prevent the development of resource projects, without even having to consult with the exploration parties affected.

⁹ For example, mineral development licence, mining lease and petroleum lease holders



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Given that s29(6)(d) provides essentially a veto right, and given that exploration permits cover large areas of Queensland, QRC believes that while it would not necessarily be feasible to require the agreement of all holders of explorations permits before approving an offset protection area exploration interest holders should have the right to be consulted prior to the declaration of an offset protection area over their permit.

Recommendation 5: that the Committee recommend that s29 of the Bill be amended to require the Chief Executive to be satisfied that the application for an offset protection area is not being used for ulterior means, such as the sterilisation of a resource project.

Recommendation 6: that the Committee recommend that s29(7) of the Bill be amended to include exploration interests in the definition of mining interests.

Additionally, 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.

This is critical given the prohibition of certain activities that attach to offset protection areas under the Bill. The risk of offset areas being 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. If for whatever reason the offset area was wanted to be used for another purpose by a proponent, the proponent should be required to replace the offset, under whatever policy might apply at the time.

QRC believes that this is a fundamental policy point that has not been clarified in the Bill, and underpins the entire way in which the offsets framework will operate. As such QRC believes that the Bill should be amended to clarify that an offset should be secured for the life of the approved impact.

Recommendation 7: that the Committee recommend that the Bill be amended to clarify that an offset should only need to be secured for the life of the approved impact.

3.5. Management of offsets versus securing offsets

QRC would like to draw the Committee's attention to the comment made by the Department in the Consultation Report¹⁰ that "*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.*"

QRC believes that this comment appears to note that there is a 20 year cap on the 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.

¹⁰ Correspondence - Department of Environment & Heritage Protection regarding policy drivers and consultation outcomes, Page 21



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Recommendation 8: that the Committee recommend that the Bill be amended insert the 20 year cap on the management and conditions of offsets into the Bill.

3.6. Transitional Arrangements

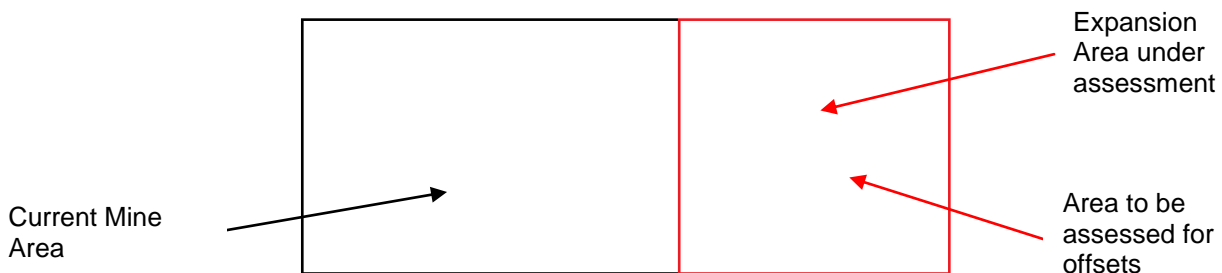
The inclusion of clear and consistent transitional provisions is the cornerstone of any effective piece of legislation. However, QRC does not believe that the transitional provisions in the Bill appropriately reflect the intent of not unnecessarily opening up existing operations to new offsetting requirements under the Bill. This is consistent with the wording of the transitional provisions in the draft Policy, which provide much greater clarity with respect to how the transitional provisions will be applied.

The operation (or potential operation) of the transitional provisions are best demonstrated through a case example.

Case Example Two

An existing open cut coal mine that has been conditioned (or not conditioned) for offsets under a previous policy wishes to expand the operation of the mine beyond the current approval under their Environmental Authority (EA). As such, they apply to the Department to amend their EA. See Figure One below for illustration of case example.

Figure One



The amendment is determined to have a significant residual impact, and as such triggers s94(4)(b) of the Bill.

However what is not clear in the Bill is whether only the new area to be opened should be conditioned under the Bill, or whether the EA amendment opens up the entire previously disturbed area for consideration as needing to be offset.

When reading the draft Policy¹¹, it becomes clear that the intent is to only apply the Bill “to the extent that the change or new authority results in a significant impact on prescribed environmental matters beyond the scope of the impact previously assessed.” However this is not clear in the drafting of the Bill.

¹¹ Draft Policy at page 16



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As such, QRC believes that s94(4) should be redrafted to ensure that the area offset is only that which is beyond the scope of the impact that has previously been assessed.

Recommendation 9: that the Committee recommend that s94(4) of the Bill should be redrafted to ensure that the Bill only applies “to the extent that the change or new authority results in a significant impact on prescribed environmental matters beyond the scope of the impact previously assessed.”

3.7. Recognition of rehabilitation as reducing significant residual impact

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.

As such, QRC is pleased to see the Department note in their Consultation Report¹² that “*The effectiveness of required rehabilitation to mitigate the ‘significance’ of an impact can be considered under the framework.*” 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. QRC believes that there is an appropriate point in the Bill through which this could be recognised, at section 14(2)(b), where an example, such as has been utilised in section 14(3) of the Bill, could make reference to rehabilitation measures.

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.

Recommendation 10: that the Committee recommend that s14(2)(b) be amended to provide for rehabilitation as an appropriate mitigation measure that can be considered in reducing any offset obligation.

3.8. Rehabilitation as an offset

QRC would like to note our support of the Department’s statement in their Consultation Report¹³ that the intent of the new offsets framework is to recognise that “*Land rehabilitated as a result of an authority requirement can be used as an offset once the rehabilitation works have been completed.*”

As mentioned above, all resource proponents are required to undertake rehabilitation. Industry believes that where an EA or other relevant approval (noting that this should also be defined in Schedule 2 Of the Bill) has set the level and criteria to which the land must be rehabilitated, then any improvement to the condition of the land which goes above and beyond approval conditions should be capable of being recognised as an offset under the Bill.

¹² Correspondence - Department of Environment & Heritage Protection regarding policy drivers and consultation outcomes, Page 39

¹³ Correspondence - Department of Environment & Heritage Protection regarding policy drivers and consultation outcomes, Page 39



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Unfortunately, the Bill does not appear to contemplate the ability for this to occur. This is an important aspect of the conditioning of offsets, as it results not only in an overall environmental benefit, but an improvement directly to the land on which the impact has occurred.

Despite the Department's assurance that the Bill "provides flexibility in offset delivery"¹⁴, s18(2) only provides flexibility of the mechanisms through which an offset can be provided, rather than flexibility of what can be considered an offset. It is the later which will allow for the recognition of rehabilitated land as an offset, and provide better environmental outcomes for the land being directly impacted by a development activity.

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.

As such, QRC asks that the Committee consider recommending that the Bill be amended to allow for rehabilitated land that goes above and beyond the requirements in their operating approval to be considered as part of a proponents offset requirement.

Recommendation 11: that the Committee recommend that the Bill be amended to allow for rehabilitated land that goes above and beyond the requirements in operating approvals to be considered as part of meeting a proponent's offset obligation.

3.9. Financial Offset Fund

Section 82 of the Bill establishes the Financial Offset Account (**offset account**) as the repository for funds provided by proponents from financial settlement offset contributions.

QRC is concerned that the Bill has not established the account as a trust fund, which we understood through negotiations with government over the last 18 months would be the case, with all the legal obligations and protections that trust accounts provide. Further to this, it is a reduction in the protection afforded to financial offset payments in contrast to the previous offset policy, which had established the (still somewhat problematic) Balance the Earth Trust. The fact that payments to local governments have to be made to a trust fund seems to emphasise a lack of consistency with the state approach.

Further to this, QRC is disappointed to see that the Bill further allows the financial offset contributions to be held in a Departmental account with other moneys, under s86(2) of the Bill. QRC believes that the funds provided as part of a financial offset must be kept and administered separately from the rest of the Department's moneys.

In even greater detail, QRC believes that the following parts of the financial offset payment must be quarantined separately from the other parts of the payment to ensure that they are being used for the express purposes for which they were provided:

¹⁴ Correspondence - Department of Environment & Heritage Protection regarding policy drivers and consultation outcomes, Page 39



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- ❖ Administration payment;
- ❖ Landholder incentive payment; and
- ❖ On ground offset payment.

QRC believes that the provision of offsets must be held to the highest possible levels of financial accountability. This is critical to ensure that the community has faith that the financial offsets fund is being used for the purpose for which it was developed, and therefore that the overarching offsets framework is achieving the environmental outcomes intended in the Bill.

Recommendation 12: that the Committee recommend that the Bill be amended to provide that the Offset Fund be a trust fund.

Recommendation 13: that the Committee recommend that the Bill be amended, such that in the event that the offset fund is not made a trust fund, that the financial offset payments must be held in a separate account from Departments other moneys.

Recommendation 14: that the Committee recommend that the Bill 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. that administrative payment is only used for administrative costs.

3.10. Direct Benefit Management Plans and Strategic Offset Investment Corridors

Firstly, QRC would like to note the Queensland resources industry support for the introduction of the concept of Direct Benefit Management Plans (DBMP) and in particular the government's recognition that often research can have significant benefits for a matter requiring an offset.

In the Bill it is section 7(1)(a) "conducting scientific research or an education program" which provides for the ability to provide an offset in an indirect manner. This has been given the title of a DBMP in the draft Policy. A DBMP is intended to be a means of providing an offset obligation in a way that may be considered indirect to the matter impacted on. The draft Policy then provides greater detail with respect to the contents of DBMPs, which provides that DBMPs are "packaged investments that provide a range of actions to benefit *prescribed environmental matters*. This may include measures that improve our knowledge, understanding and management of these matters – leading to improved *conservation outcomes* for the impacted matter."¹⁵

QRC would like to draw the Committee's attention to the Department's Consultation Report¹⁶, where the Department notes that "*Proponents will have a greater choice in delivery of offsets through strategic investment corridors and Direct Benefit Management Plans, which will provide "shelf ready" packages for offset payments. These plans will direct payments to areas that will provide a landscape outcome and demonstrate a net benefit for impacted matters.*"

QRC is concerned that this appears to link the delivery of DBMPs to the financial settlement option, however QRC had understood that DBMPs could be either a proponent driven or financial settlement offset option. This classification is important, as QRC understood that industry would be able to

¹⁵ Draft Offset Policy at page 9

¹⁶ Correspondence - Department of Environment & Heritage Protection regarding policy drivers and consultation outcomes, Page 16



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undertake proponent driven DBMPs, which would not be the case if the only way of contributing to a DBMP would be through the financial settlement option. This is critical as it could allow a proponent to pool their identical DBMPs, about a specific matter across multiple sites, into one DBMP with a greater pooled amount for research. As such, QRC is seeking clarification on the operation of DBMPs in the Bill and clarification on whether DBMPs are intended to be linked to the financial settlement option.

QRC would like to note our support of the recognition that offsetting can include the provision of research, which will be particularly invaluable in environments where there has not been research undertaken previously.

Recommendation 15: That the Committee recommend that the Bill be amended to clarify how Direct Benefit Management Plans are intended to operate.

Recommendation 16: That the Committee seek clarification from the Department as to whether Direct Benefit Management Plans are capable of being undertaken by proponents, and that this be clarified in the Bill.

3.11. Marine Offsets and Federal Net Benefit Test

QRC would like to emphasise that there are important distinctions to be drawn between land-based offsetting and marine offsets. The Queensland resources industry has maintained a consistent policy of advocating for 'no net loss' in the context of land based offsetting, as the impacts are easily definable and measurable.

Given that the Queensland Government is currently in the process of seeking Commonwealth accreditation of the offsets framework, as recognised in the Explanatory Notes to the Bill¹⁷, QRC would like to take the opportunity to place the following issues on the record, noting that this is not specifically within the scope of the Committee's review of the Bill.

In the context of the marine environment, the industry notes the difficulty in defining and quantifying the impacts at an ecosystem level. As such, the industry can see the efficiencies of adopting a slightly different approach, where there is a less direct link between the exact scale and nature of the impacts and those of the offsets. This approach would facilitate small-scale localised impacts from dredging operations to be offset through a contribution to an offset fund. Hence the industry could support a 'net benefit' policy, provided it is contained and defined to ensure certainty to proponents.

In line with this position, QRC has provided an extensive submission on the recently completed Strategic Assessment of the Great Barrier Reef to the Australian Government. As part of the Strategic Assessments it was recommended that the federal government establish a 'Reef Trust' which will allow for financial offset payments in the marine environment and provide a net environmental benefit.

QRC has proposed that any financial offsets fund that looks to provide a net environment benefit should adopt a proportional 'whole of impacts' approach to the requirement of offsetting, which extends beyond major projects captured by the EIS system. This is critical because a concentration or weighting on one particular industry or activity will not achieve the necessary balance needed to

¹⁷ Environmental Offsets Bill 2014 (Qld) Explanatory Notes, Page 3



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deliver ESD for the whole of the environment; especially if that industry/activity (i.e. the resources sector) is a minor contributor to any ongoing environmental decline.

While QRC's submission on the Strategic Assessment was accepting of a measured adoption of the 'net benefit' policy in the context of the marine environment, this should not be seen as an endorsement of a similar policy in the context of land-based offsets, which are capable of set parameters and quantification based on a 'no net loss' policy.

3.12. *Net Environmental Benefit*

The Queensland resources industry finds the concept of a 'net environmental benefit' test potentially problematic, particularly if it were to be used to put a burden on new proponents to offset pre-existing negative impacts.

Where the concept of net environmental benefit is tied to the requirement to project offsetting, this approach may place the burden of benefit (or rehabilitation) of the environment on project proponents falling within the 'regulatory net' of project assessments and approvals. Given such proponents are not always the primary or sole contributors to the impacts on the environment, this burden would not align with the concepts of natural justice, user pays or the principles of ESD.

As such, QRC reemphasises our support for the Queensland offsetting system being based in the concept of 'no net loss', as discussed earlier in this submission.

4. SPECIFIC CONCERNS

QRC also has a small number of recommendations with respect to the specific drafting of the Bill, which has been provided in tabulated format at Attachment One.

5. CONCLUSION

QRC would again like to commend the Department of Environment and Heritage Protection on the outstanding work they have done on reforming the Queensland offsets framework.

The QRC submits for the Committee's consideration, the following recommendations as detailed in the body of this submission:

Recommendation 1: that the Committee recommend that the Bill be amended to ensure that the Bill applies to all offset decision makers in Queensland.

Recommendation 2: that the Committee suggest the Bill be amended to include the express recognition of the ability for offsets to be provided in stages.

Recommendation 3: that the Committee recommend that the wording of s18(4)(b) be amended to ensure that it does not prohibit the provision of staged offsets or the commencement of activities on the proviso that negotiations with an offset landholder is completed within a reasonable timeframe.

Recommendation 4: that the Committee recommend that the Bill be amended to provide a definition of 'advanced offsets' and to provide specific recognition of the ability to utilise advanced offsets as a means of fulfilling and offset obligation.



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Recommendation 5: that the Committee recommend that s19 of the Bill be amended to require the Chief Executive to be satisfied that the application for an offset protection area is not being used for ulterior means, such as the sterilisation of a resource project.

Recommendation 6: that the Committee recommend that s19(7) of the Bill be amended to include exploration interests in the definition of mining interests.

Recommendation 7: Recommendation: that the Committee recommend that the Bill be amended to clarify that an offset should be secured for the life of the approved impact.

Recommendation 8: that the Committee recommend that the Bill be amended insert the 20 year cap on the management of offsets into the Bill.

Recommendation 9: that the Committee recommend that s94(4) of the Bill should be redrafted to ensure that the Bill only applies “to the extent that the change or new authority results in a significant impact on prescribed environmental matters beyond the scope of the impact previously assessed.”

Recommendation 10: that the Committee recommend that s14(2)(b) be amended to provide for rehabilitation as an appropriate mitigation measure that can be considered in reducing any offset obligation.

Recommendation 11: that the Committee recommend that the Bill be amended to allow for rehabilitated land that goes above and beyond the requirements in operating approvals to be considered as part of meeting a proponent’s offset obligation.

Recommendation 12: that the Committee recommend that the Bill be amended to provide that the Offset Fund be a trust fund.

Recommendation 13: that the Committee recommend that the Bill be amended, such that in the event that the offset fund is not made a trust fund, that the financial offset payments must be held in a separate account from Departments other moneys.

Recommendation 14: that the Committee recommend that the Bill 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.

Recommendation 15: That the Committee recommend that the Bill be amended to clarify how Direct Benefit Management Plans are intended to operated.

Recommendation 16: That the Committee seek clarification from the Department as to whether Direct Benefit Management Plans are capable of being undertaken by proponents, and that this be clarified in the Bill.

QRC looks forward to working with the government further as the Bill, Regulation and draft Policy are finalised, particularly to discuss the issues that industry has raised through this submission. QRC provides this submission to the Committee as an initial position on the draft Queensland Environmental Offsets Bill 2014 (Qld). The points made in this submission are not meant to prejudice



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QRC's position or future work on the matters throughout the development of the Regulation and the draft Policy, and any yet to be developed legislative changes.

QRC would be happy to discuss this submission further with the Committee. The lead on these matters is Frances Hayter – Director Environment Policy at (07) 3316 2517 or at francesh@qrc.org.au.

6. ATTACHMENT ONE: SPECIFIC CONCERNS OF DRAFTING OF BILL

SECTION OF BILL	QRC CONCERN	RECOMMENDATION
<p>Section 5(1) This Act does not affect or limit the functions or powers under the State Development Act of the Coordinator-General, including, for example, the power to impose a condition under part 4, division 8 of that Act.</p>	<p>QRC has expressed our concern in the submission that the exclusion of the Coordinator General from the scope of the Bill is disappointing, and appears to contradict the intent of the Bill in providing 'one touch point' for the provision of offsets in Queensland.</p>	<p>QRC recommends that s5(1) of the Bill be deleted.</p>
<p>Section 5(3) '<i>deemed condition</i>' and '<i>imposed condition</i>'</p>	<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>Section 7(1)(a) 'conducting scientific research or an education program'</p>	<p>Section (7)(1)(a) indirectly references the ability to undertake Direct Benefit Management Plans, however there is no express recognition of DBMPs in the Bill.</p>	<p>QRC recommends that s7(1)(a) be amended to expressly recognise and define the concept of Direct Benefit Management Plans, and that the Bill then further detail on the intended operation of DBMPs, and whether they can be undertaken by proponents.</p>
<p>Section 10(4) '<i>matter of local environmental significance</i>'</p>	<p>QRC seeks further clarification with respect to the definition of the concept of a matter of local environmental significance, with respect to how a matter is created. Is it</p>	<p>QRC recommends that s10(4) of the Bill be amended to provide greater clarity with respect to how a matter of local environmental significance (MLES) is</p>

SECTION OF BILL	QRC CONCERN	RECOMMENDATION
	sufficient that a local government planning document makes reference to the environmental matter, or does it need to explicitly prescribe the matter as a matter of local environmental significance?	prescribed, and that the matter must be explicitly prescribed in the local planning scheme or policy as a MLES.
Section 10(4) ' <i>matter of state environmental significance</i> '	QRC is concerned that the Bill has been introduced into Parliament and a cornerstone of the Bill is the concept of a matter of state environmental significance (MSES) the matters of which have not been released alongside the Bill. This has meant that QRC and its members are unable to determine the extent to which the Policy may apply. QRC recommends that the Bill should define the MSES, rather than the Regulations, given that this is the approach that has been adopted by the federal government's Environment Protection and Biodiversity Act (EPBC Act) from which the Bill has adopted its terminology.	QRC recommends that the Bill be amended to include a Schedule which contains the prescribed matters of state environmental significance. Failing this, QRC recommends that the Bill be amended to include the criteria for which a matter is deemed to be a MSES.
Section 12(3) As soon as possible after the prescription as an environmental offsets policy of a document made by a local government, the local government must ensure the policy is available for inspection in the way the local government considers appropriate.	Given that local governments do not have fundamental legislative principles which guide the appropriate, equitable and efficient means of gazetting new policies, QRC suggests that the Bill should err on the side of prescription and ensure that local governments are following one consistent process across the state.	QRC recommends that s12(3) be amended to provide clarity, consistency and certainty across local governments with respect to the process of gazetting offset policies.

SECTION OF BILL	QRC CONCERN	RECOMMENDATION
Section 13 Content of environmental offsets policy	QRC is uncertain with respect to the 'or' between the subsections of s13. Should the lead sentence be amended to read, "An environmental offsets policy can include".	QRC recommend the Committee seek clarification from the Department with respect to the intent of s13, and whether the section should read "An environmental offsets policy can include".
Section 14(3) In making a decision under the other Act about whether to impose an offset condition, the administering agency may have regard to any relevant offset condition that has been imposed on an authority under another Act for the same prescribed environmental matter.	QRC believes that the administering agency MUST have regard to any relevant offset condition that has been imposed on an authority under another Act for the same prescribed environmental matter.	QRC recommends s14(3) replace the word 'may' with 'will'.
Section 18(2)	Section 18(2) provides that it is a condition of the authority that before the authority holder starts any part of the prescribed activity to which the offset condition relates the holder must make the election required by s18(2) and agree with the administering agency about the delivery of the offset condition. There are no timeframes around completion of these arrangements, so delay is a real and likely possibility.	QRC recommends that s18(2) be amended to include timeframes for the approval of the notice under s18(2). Given that the commencement of resource activities hinges upon the completion of this, QRC believes that without the inclusion of timeframes there is a very real possibility of delay to the commencement of projects.
Section 18(4)(b)	s18(4)(b) appears to contradict s19(2)(b), which is meant to allow for the staging of offsets. QRC believes that the intent of s19(2)(b) is to allow the commencement of activities, whilst the negotiation process for the delivery of offsets is still underway, and requires the Department and the proponent to agree to a reasonable timeframe for the delivery of the offset.	QRC recommends that s18(4)(b) be amended to remove the requirement for landholder agreement prior to the commencement of disturbance activities.

SECTION OF BILL	QRC CONCERN	RECOMMENDATION
	<p>However 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. This also has potential implications for offsetting arrangements that do not include staging.</p>	
<p>Section 19 Reaching agreement about delivery</p>	<p>QRC believes that the Bill must interact with all the other Acts which it will guide on the provision of offsets. As such, QRC believes it is critical that the Bill make reference to the timeframes for assessments and approvals under the relevant Acts.</p>	<p>QRC recommends s19 be amended to make reference to adhering to the timeframes of the Acts from which the development authority derives its jurisdiction.</p>
<p>Section 23(3)</p>	<p>QRC believes that the financial offset formula, given that it is not overly complex, should be contained in the Bill and not the Regulation to provide certainty that the formula will not be open to change.</p>	<p>QRC recommends that s23(3) be amended to include the financial offset formula in the Bill.</p>
<p>Section 24 Impacts on legally secured offset area</p>	<p>QRC believes that there is a lack of clarity with respect to the temporal duration of the securing of an offset.</p> <p>QRC believes that the securing of an offset should last for the life of the approved impact, rather than in perpetuity.</p>	<p>QRC recommends that s24 of the Bill be amended to clarify that an offset should be secured for the life of the approved impact.</p>

SECTION OF BILL	QRC CONCERN	RECOMMENDATION
	<p>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.</p>	
<p>Section 29(6) However, the Chief Executive must not make a declaration for an area under subsection (2) unless the chief executive reasonably believes -</p>	<p>As noted in the body of this submission, QRC welcomes the introduction of a new form of legal security for offsets, which provides clarity on how an offset can be secured.</p> <p>However, QRC is concerned that under the current drafting there is no ability for the Chief Executive to give consideration to whether the application of offset protection area is for a vexatious purpose.</p> <p>QRC believes that there should be another subsection under s29(6) which provides the ability for the Chief Executive to consider whether the application is for a vexatious of ulterior purpose.</p>	<p>QRC recommends that s29(6) be amended to include another subsection that provides the ability for the Chief Executive to consider whether the application is for a vexatious of ulterior purpose.</p>
<p>Section 29(7) '<i>Mining interest</i>'</p>	<p>As noted in the body of this submission, QRC is concerned that an environmental offset protection area can be declared under s29 without having to consult with the holder of a petroleum or mineral <u>exploration</u> permit or consideration of the potential of the area</p>	<p>QRC recommends that s29(7) be amended to provide that holders of petroleum and mineral exploration permits must be consulted with prior to the declaration of an environmental offset protection area.</p>

SECTION OF BILL	QRC CONCERN	RECOMMENDATION
	<p>for future mineral, petroleum or gas resources.</p> <p>QRC does not believe that an exploration right should attract a veto right as prescribed in s19(6)(d), however, QRC strongly recommends that exploration interest holders have the right to be consulted prior to the approval of an environmental offset protection area over their permit.</p>	
Section 32 Amending or revoking declaration	Further to the comments above on the amendment to s29(6) of the Bill with respect to vexatious applications, QRC 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 an intent other than the purpose of becoming an offset area, and with a vexatious or ulterior purpose.	QRC recommends that s32 of the Bill 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 an intent other than the purpose of becoming an offset area, and with a vexatious or ulterior purpose.
Section 33 correcting, updating or removing registry record	QRC believes that given that proponents, community and government are likely to rely heavily on the offset registry record, in order to provide certainty that the registry can be relied on, there must be legislative timeframes introduced into s33 with respect to maintenance of the information contained in the registry.	QRC recommends that s33 of the Bill be amended to include timeframes for the maintenance of the information contained in the registry.

SECTION OF BILL	QRC CONCERN	RECOMMENDATION
	<p>Given the potential for environmental offset protection areas to impact on investment, irrespective of whether it is a small landholder, a farmer or a resource proponent, the registry should be held to the same levels of standard as those applied to the Land Title Register.</p>	
<p>Section 41 Functions of inspectors</p>	<p>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'.</p>	<p>QRC recommends that s41 of the Bill be amended to replace the reference to 'inspector' with 'enforcement officer'.</p>
<p>Section 44 Appointment and qualifications</p>	<p>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.</p> <p>QRC also notes that section 44(3) provides that an enforcement officer must be appropriately qualified to hold the position, however the section does not provide any further detail as to the qualifications that are appropriate.</p> <p>QRC believes that enforcement will require skills in auditing and checking documents and registers, reviewing offset plans and ensuring compliance against the plans. As</p>	<p>QRC recommends that s44(2) be removed from the Bill.</p> <p>QRC recommends that s44(3) be amended to make specific reference to the qualifications that will be required of an enforcement officer.</p>

SECTION OF BILL	QRC CONCERN	RECOMMENDATION
	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.	
Section 82 Establishment of offset account	<p>As noted in the body of the submission, QRC believes that the state government offset fund should be a trust fund, with all the legal obligations and protections that trust accounts provide.</p> <p>Further to this, it is a reduction in the protection afforded to financial offset payments in contrast to the previous offset policy, which had established the (still somewhat problematic) Balance the Earth Trust.</p>	QRC recommends that s82 of the Bill be amended to provide that the Offset Fund be a trust fund.
Section 84 Payment of amounts into offset account	As noted above, QRC believes that offset payments should be secured in a trust fund, however, if this is not the case, there should be more protections afforded to the payments (particularly given the size of the payments) that is provided for under section 84 currently, which allows for the money to be deposited with other Departmental money and essentially 'earmarked' for offsets.	QRC recommends that if s82 is not amended to create an offsets trust fund, then s84 of the Bill be amended so that the financial offset payments must be held in a separate account from Departments other moneys.
Section 85 Payment of amounts from offset account	As noted in the body of the submission, QRC believes that the following parts of the financial offset payment must be quarantined separately from the other parts	QRC recommends that s85 of the Bill be amended to ensure that the different components of the financial offset payment are used to the express purpose for which

SECTION OF BILL	QRC CONCERN	RECOMMENDATION
	<p>of the payment to ensure that they are being used for the express purpose for which they were provided:</p> <ul style="list-style-type: none"> ❖ Administration payment; ❖ Landholder incentive payment; and ❖ On ground offset payment. <p>Further to this, s85(a) is unclear with respect to the scope of an expense incurred 'indirectly' by the department in relation to an environmental offset. QRC believes that there must be clarity in the Bill with respect to what is an acceptable expense for the Department to incur in the delivery of an environmental offset.</p>	<p>they were provided e.g. administrative payment is only used for administrative costs.</p> <p>Further, QRC recommends that s85(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.</p>
Section 86 Administration of offset account	As noted in the body of the submission, and also with respect to a specific recommendation on the amendment to section 84, QRC believes that offset payments should not be held with other Department moneys.	QRC recommends that s86 of the Bill be amended to provide that the financial offset payments must be held in a separate account from Departments other moneys.
Section 92(2) Regulation-making power	The Bill creates the head of power for advanced offsets at s92(2), by giving the power to create a Regulation for the identification of advanced offsets, QRC believes that there needs to be a definition for advanced offsets contained in the Bill.	QRC recommends that the s92(2) and Schedule 2 be amended to provide for a definition of 'advanced offsets' in the Bill.
Section 94 Application of this Act or existing Act	As noted in the body of this submission, QRC believes that the intent of the transitional provisions (which is consistent	QRC recommends that: S94(4) of the Bill should be redrafted <i>to ensure that the Bill only applies</i> "to the

SECTION OF BILL	QRC CONCERN	RECOMMENDATION
	<p>with the wording in the draft Policy) was to ensure that there was no unnecessarily opening up of existing operations to new offsetting requirements under the Bill. In particular that it was intended the Bill would only apply to the area of land beyond the scope of the impact that has previously been approved.</p> <p>However, QRC does not believe that the transitional provisions in the Bill appropriately reflect this intent.</p>	<p>extent that the change or new authority results in a significant impact on prescribed environmental matters beyond the scope of the impact previously assessed.”</p>
<p>Section 112 Amendment of s 209 (environmental offset conditions)</p>	<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>QRC is confused by the wording in s112 of the Bill. 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>QRC recommends that s112 be amended to ensure that there is not the perverse outcomes of not allowing agreements under the EP Act to be recognised as appropriate offset agreements under the Offsets Bill, and suggests that the wording be amended to:</p> <p><i>Insert –</i> (6) An agreement entered into under subsection (3) or (4) is not necessarily an environmental offset agreement under the <i>Environmental Offsets Act 2014</i>, unless it meets the requirements under s25 of the <i>Environmental Offsets Act 2014</i>.</p>
<p>Section 129</p>	<p>QRC seeks clarification with respect to the wording “or on other land in the State” at s66(2) of the amending section.</p>	<p>QRC recommends that s129 be amended to provide greater clarity with respect to the wording “or on other land in the State”.</p>

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Section 130	QRC is 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 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.
Schedule 2 Dictionary	QRC believes that there are a number of concepts that are missing a definition in Schedule 2 including: <ul style="list-style-type: none"> ❖ Indirect; ❖ Temporary; and ❖ Advanced offset 	QRC recommends that Schedule 2 of the Bill be amended to include definitions for the terms suggested.