



24 March 2014

Mr Ian Rickuss MP
Chair, Agriculture, Resources and Environment Committee
Parliament House
George Street
Brisbane QLD 4000

BY EMAIL: AREC@parliament.qld.gov.au

Dear Mr Rickuss,

RE: APPEA Submission - Environmental Offsets Bill 2014

The Australian Petroleum Production & Exploration Association (**APPEA**) is pleased to provide a submission on the *Environmental Offsets Bill 2014 (Bill)* to the Agriculture, Resources and Environment Committee (**the Committee**).

APPEA acknowledges the effort made by the Department of Environment and Heritage Protection (DEHP) to draft this legislation in close consultation with industry and we reference previous submissions made to DEHP in **Attachment 1** of this submission. We consider that the Bill presented to parliament is broadly consistent with this consultation however we have identified some outstanding issues which are detailed in this submission.

By way of highlighting our key issues with the Bill we make the following comments:

- A draft regulation has not been provided to industry, and given that Bill refers many powers to the Regulation it is therefore not possible to assess the full impacts of this legislation. APPEA appreciates efforts by the State government to release components of the Regulation (eg. the draft list of MSES on DEHP's website) as they become available and encourages the department to continue consultation before the Regulation is finalised.
- There is a lack of clarity around the transitional provisions for existing approved activities. APPEA does not support retrospective application of a new regime, but considers that there should be an ability to opt into the new regime.
- There is no safeguard against a proliferation of offset policies. While the Bill sets out what an offset policy can and cannot contain, and the Explanatory Notes suggests there will be a single offsets policy, under the Bill it would be possible for multiple policies to be created over time.
- The inclusion of staged offset as a delivery method should be included within the Bill. Defining staged offset such that they align with staged project phasing will assist industry in better



identifying offset requirements given that the large coordinated projects seen in the industry are already complex to plan and develop.

- APPEA supports the development of guidelines to simplify the assessments for ecological equivalence and provide a formula for assessing the quality of an offset site against the area being impacted. Ideally, the Bill would provide guidance about the range of matters that can be considered in assessing offset sites and areas being impacted.
- Commonwealth accreditation should be clearly dealt with by the Bill. APPEA understands that the explanatory notes states the Bill provide for this, however it would be valued by industry to clearly give effect to this intent within the Bill itself.
- Offset multipliers are problematic in their nature and often have little or no scientific justification. Highlighted throughout the DEHP consultation it was a key theme that offsets should focus on ecological outcomes rather than arbitrary ratios. APPEA therefore recommends that ecological outcomes should underpin the offsets regime rather than multipliers. If this is not supported we would request that a cap be set for multipliers with reference to the highest ecological value that may be offset. This would assist in managing the trend seen by industry that multipliers tend to increase over time for no apparent scientific reason.

We have also provided comments on specific sections of the Bill at **Annexure 1** of this submission.

APPEA looks forward to working further with government on simplifying and streamlining the State's offset legislation. Creating a single Act with associated Regulation will benefit industry and achieve outcomes for the environment with less duplicative and administrative burden on government and industry. If you would like to discuss any of the matters raised in this letter please contact Mr Nathan Lemire at nlemire@appea.com.au or (07)3231-0509.

Yours sincerely

Matthew Paull

Policy Director – Queensland

Australian Petroleum Production & Exploration Association Limited (APPEA)

ANNEXURE 1: COMMENTS ON ENVIRONMENTAL OFFSETS BILL 2014

General comments on Bill

COMMENTS ON SPECIFIC SECTIONS OF THE BILL

NO.	PROVISION	SECTION	COMMENT
1.	Bill does not apply to Coordinator-General's conditions	5	<ul style="list-style-type: none"> Given the State Government's intention to move to a single Offsets policy, the Bill should apply to the Coordinator-General's conditions. Having two separate streams for offsets within the State provides no certainty for industry and has the potential for duplicative offset conditioning for bilateral projects. A single offset Act with associated legislation under one department with the technical expertise will provide the State the best outcome for Commonwealth accreditation.
2.	Meaning of <i>significant residual impact</i>	8	<ul style="list-style-type: none"> APPEA recommends that the introduction of a threshold for "significance" is fully aligned to the Commonwealth position and we note this is not achieved by the Bill. For example, the use of language such as 'temporarily' is not consistent with the Commonwealth approach and means that any impact at any time may be captured. While APPEA appreciates that there is no 'one size fits all' approach to determining significance, there needs to be more guidance around the meaning of 'significant' so that proponents have certainty in how the approvals process will be administered. The Bill does not specifically identify rehabilitation as being an acceptable mitigation measure. As raised by APPEA in previous submissions to DEHP, it is often possible to rehabilitate so that there will be no significant residual impact and this should be explicitly recognised in the Bill.
3.	Meaning of <i>prescribed activity</i>	9	<ul style="list-style-type: none"> APPEA considers that the meaning of 'prescribed activity' should not be left entirely to the regulation, as this is a key cornerstone of the operation of the Bill. State and Commonwealth policies acknowledge that certain types of activities can appropriately be exempt from offset requirements. The current Queensland Biodiversity Offsets Policy makes reference to Gas and petroleum activities (level 1 activities) that will trigger offsets, and therefore recognises the nature of minimal disturbance of exploration activities. Similarly, the

NO.	PROVISION	SECTION	COMMENT
			<p>Commonwealth, through its guidance material, provides examples of exploration projects for mining that do not need to be referred under the EPBC Act.</p> <ul style="list-style-type: none"> • For these reasons the Bill should specifically exempt activities such as exploration activities and emergency vegetation clearing.
4.	<p>Meaning of <i>prescribed environmental matter</i> and <i>matter of environmental significance</i></p>	10	<ul style="list-style-type: none"> • APPEA notes that a draft list of MSES has been provided on DEHP's website. • Given the extent to which the meaning of these concepts determine the impact of this Bill on industry, the Bill should provide guidance on what can be a prescribed environmental matter or matter of environmental significance. • Oil and gas projects are generally not subject to local government approval requirements and the Bill should therefore expressly recognise that local government offset requirements do not apply to oil and gas projects. • APPEA notes with concern that the inclusion of regrowth vegetation (Cat C and Cat R areas on the regulated vegetation management map) is contradictory to advice provided by EHP in 2013. The introduction of regrowth into MSES also has implications on the accuracy / validity of the Offset Calculator when generating coefficients concerning remnant v's non-remnant. The Offset Calculator would be generating skewed clearing rates (proportions / coefficients) because it would be including regrowth areas including Cat C and Cat R areas into the non-remnant category proportion. Regrowth vegetation should be removed from the list of MSES. • Near threatened species and special least concern animals under the Nature Conservation Act should be removed from the list of MSES. • The inclusion of regional ecosystems that intersect with watercourses and wetlands is a duplication of watercourses and wetlands in high ecological value waters. These regional ecosystems should be removed from the list of MSES.
5.	<p>When an offset condition may be required</p>	14	<ul style="list-style-type: none"> • APPEA supports the inclusion of a test that limits when an offset condition may be imposed.
6.	<p>Requirements about offset</p>	Part 6 (sections	<ul style="list-style-type: none"> • APPEA supports the standardisation of the process for approving an offset.

NO.	PROVISION	SECTION	COMMENT
	conditions	16 – 24)	
7.	Deemed conditions	16,17	<ul style="list-style-type: none"> • Some conditions set out in the Bill are deemed to become part of environmental authorities. Deemed conditions prevail over specific imposed conditions in some circumstances. However APPEA's experience is that there are significant practical difficulties in reconciling generic conditions with specific conditions. • We therefore recommend these provisions be reconsidered.
8.	Election about delivery of offset condition	18	<ul style="list-style-type: none"> • APPEA supports the ability to allow development to commence before the offset for the development is legally secured. However, APPEA considers that the requirement to identify a suitable offset and have an approved offset delivery plan in place before commencing development will cause unnecessary delay, as there are no timeframes around completion of these arrangements. • We recommend instead that the Bill should ensure that proponents demonstrate the ability to provide a financial settlement offset if they so elect. Leaving this at the discretion of the administering agency would create significant uncertainty. • Further, this section seems to preclude staged offsets, by being very specific about what is required - including the offset delivery plan - where a staged offset delivery could not meet the requirements. Staged offset delivery is a critical part of making the offset regime workable for the petroleum industry and needs to be supported by the Bill.
9.	Environmental Offset Policies	Part 4 (sections 12-13)	<ul style="list-style-type: none"> • APPEA recommends the introduction of a single offsets policy, and supports limitations on what an offsets policy may contain. However, the Bill does not enact the State government's policy of a single offset policy that is Commonwealth accredited and would instead permit the development of multiple policies.
10.	Restriction on imposition of offset condition	15	<ul style="list-style-type: none"> • APPEA supports the reduction in the potential for duplication between Commonwealth, State and local government offset conditions. • However, current provisions of the Bill may not prevent duplication, depending on the order in which approvals are obtained. For example, if a State approval is obtained first and contains an offset condition, subsequent Commonwealth conditions may duplicate the State approval, and there is no way of subsequently

NO.	PROVISION	SECTION	COMMENT
			<p>resolving the duplication.</p> <ul style="list-style-type: none"> There is also no guarantee that duplication will be removed in relation to multiple State approvals - State agencies 'may' (not must) take into account other State agencies' offset conditions.
11.	Impacts on legally secured offset area	24	<ul style="list-style-type: none"> The Department has stated that the Bill will not prevent development of an existing offset area as long as the original offset and the new impact are both satisfied. However, section 24 appears to prevent an authority holder from impacting on a legally secured offset area. APPEA's members have had recent experience with conflicts with overlapping tenure, with one proponent having advanced offsets in an area that another proponent wishes to undertake exploration activities in. The current Bill could preclude resource activities, even exploration, from impacting an offset area - effectively sterilising large sections of resource tenures, particularly where there are multiple overlapping tenures (eg. Bowen basin).
12.	Declaration of environmental offset protection area	29	<ul style="list-style-type: none"> APPEA supports the ability for environmental offset protection areas to be declared over separate parcels of land in different ownership.
13.	Transitional provisions	Part 13 (sections 93 – 95)	<ul style="list-style-type: none"> APPEA does not support any compulsory retrospective impact, but considers that there should be an ability to opt in to the new regime voluntarily. To achieve this outcome we submit that the transitional regulation should provide a grace period or freeze on current offset acquittal timeframes for proponents to transition across to the new offset framework. Further, APPEA is concerned about the impact of opening existing activities up to this new offset framework through simple amendment applications. The Bill should contain clear exemption provisions to provide certainty. Note: there is a typo in clause 94(5) of the Bill where the word 'not' should be deleted