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Using the law to protect our environment.

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The Research Director
Agriculture, Resources and Environment Committee
Queensland Parliament
By email only: AREC@parliament.qld.gov.au

Dear Chair and Members of AREC,

EDO Qld's submission on the Environmental Offsets Bill 2014

Thank you for the opportunity to make a submission on the Environmental Offsets Bill 2014 (the Bill). The Environmental Defenders Office (Qld) Inc (EDO Qld) is a non-profit community legal centre which helps Queenslanders living in coastal, rural and urban areas understand and access their legal rights to protect the environment. EDO Qld has over 20 years of experience in interpreting environmental laws to deliver community legal education and to inform law reform.

The idea that impacts on such unique matters of national, state and local significance can simply be offset, is deeply concerning. In many cases it will not be possible to offset impacts on specific unique places and species. However, EDO Qld provides these comments recognising that offsets are a part of Queensland and the Commonwealth's approval laws.

Comment on the Bill and not the Policy

We note that EHP made available the Policy online five business days before the submissions to this Inquiry were due, which means that we have not had sufficient resources to consider the Policy and provide comments to the Inquiry. However we consider such comments on the Policy are necessary as the Bill is 'framework' legislation with most of the important criteria appearing in the Policy. EDO Qld will endeavour to provide comments on the Policy to the Committee at the public hearing scheduled for 2 April 2014.

We make a single preliminary observation that a maximum capped ratio of 1:4 remains in the Policy. Nearly all conservation groups in Queensland oppose this maximum cap on the basis that it is not scientifically based. Its only purpose is to limit the liability of those who are responsible for significant impacts on Queensland's protected species in cases where the science warrants a higher ratio to be applied. It is concerning that this maximum cap remains in the Policy, despite not being a feature of the EPBC offsets policy (which the Bill seeks to replace) and that certainty for developers already exists with the use of the offsets calculator. EDO Qld continues to object to the maximum capped ratios.

Productivity Commission's recommendations regarding offsets

We note that the Productivity Commission recently recommended that, "A dedicated and independent review of offset arrangements is warranted to examine: offset policy objectives,

the quantitative methodologies used to identify suitable offsets, the merits of offset markets and the case for establishing a single, national offsets framework. The Commission is recommending that COAG commission a national and public review of offsets, to report by the end of 2014".[1] EDO Qld supports an independent review for the purpose of a single national offsets framework that implements best practice. We submit that Queensland should consider the outcome of such a review before passing the Bill.

It should go without saying that sound environmental policy should be supported by rigorous, scientific data. It was also identified by the Commission that offsets policies may not be delivering outcomes due to, amongst others, a lack of transparency and scientific rigour in decision-making processes.[2]

Outline of EDO Qld's concerns and key reforms needed

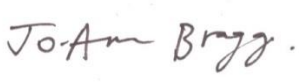
Our submissions set out 16 main points of concern with the Bill. Of those, the 10 most critical points are as follows:

1. The Bill needs to strengthen the assessment of avoidance and mitigation measures and ensure unacceptable impacts are not made acceptable with the use of offsets;
2. The Coordinator General should be bound by offsets requirements as a minimum;
3. Offsets for damage to protected areas should be primarily focussed on a conservation gain, not merely viability;
4. Offsets should not be restricted only to residual impacts;
5. 'Viability' and 'Conservation outcome' need robust definitions;
6. Decreased requirements for offsets will ultimately decrease Queensland's biodiversity;
7. The public register is strongly supported, however it must provide transparent information and be easily publically accessible;
8. Proponent-driven offsets must be legally secured prior to development/impacts;
9. Rigorous assessment of proponent-driven offsets are required; and
10. There should be strong criteria for declaring and revoking offset areas.

We note EHP's comments at the departmental briefing on 19 March 2014 that EHP will undertake further consultation on the various guidelines supporting the policy. We request EHP to engage with conservation peak bodies such as the Queensland Conservation Council and EDO Qld on the development of the guidelines and refinement of the Policy.

Should you require any further information, please contact Rana Koroglu or Evan Hamman on (07) 3211 4466 or at edoqld@edo.org.au. We would welcome the opportunity to present to the Committee at the public hearing.

Yours faithfully
Environmental Defenders Office (Qld) Inc



Jo-Anne Bragg
Principal Solicitor

EDO Qld's submissions on the Environmental Offsets Bill 2014

1. Need to strengthen the assessment of 'avoid and mitigate' and ensure unacceptable impacts are not made acceptable with offsets

The 'avoid-mitigate-offset' approach to environmental impact assessment and approvals appears in the two of the three main statutes for decision-making on environmental impacts, being the *Environmental Protection Act 1994* (EP Act) and the *Sustainable Planning Act 2009* (SPA). These sections permit offsets only where the decision maker is satisfied "that all cost-effective on-site mitigation measures for the development have been, or will be, undertaken."

The 'avoid-mitigate-offset' approach to environmental assessment is used at both a Queensland and Commonwealth level. It is also used in the United States and Canada. In all these models, offsets are considered to be a last resort, only to be used for compensating or counterbalancing residual impacts on the environment after avoidance and mitigation measures have taken place.

Offsets must never make, as the Commonwealth Government has said, "unacceptable impacts acceptable." The Bill does not reflect this important precept, nor does it strengthen the more important 'avoid and mitigate' steps. This could be achieved by amending the EP Act, SPA and the *State Development and Public Works Organisation Act 1971* (SDPWO Act) to include an independent review mechanism to determine whether all reasonable alternatives have been considered and to provide clear criteria for considering whether the residual impacts are acceptable or unacceptable, without moving straight to offsets.

Without strengthening the first two steps in the model, specifically, how and when those steps are to be applied, proponents will inevitably move to provide financial payments to compensate for their impacts on the environment without ever seriously trying to avoid or mitigate the impacts of their operations. This would be a very poor outcome for the environment and our communities and would be a complete failure of the avoid-mitigate-offsets framework, which does, in itself, have some merit.

EDO Qld has concerns over the proposed amendments to remove from principal assessing and approving legislation (section 207(1)(c) EP Act and s.346A(2) SPA) the requirement that an offsets condition may only be imposed "if the administering authority is satisfied all cost-effective on-site mitigation measures for a relevant activity have been, or will be, undertaken." If this amendment is passed, it will mean that the EP Act and SPA will not contain any requirement for the decision-maker to actively consider whether all cost-effective on-site mitigation measures will be undertaken. This is different to the EPBC Offsets Policy which simply provides for 'reasonable' on-site measures.

Whilst there is a similar provision in the Bill at clause14(2)(b), it is not sufficient to simply have this reference in the Offsets Bill. It must be front and centre in the consideration of the assessment under the EP Act or SPA without reference to another Act.

Hypothetical example: Proponent pays for offsets rather than avoiding and mitigating

CSG Pty Ltd is authorised by EHP to produce coal seam gas in Dalby. While CSG Pty Ltd is unable to avoid impacting on the environment, they could mitigate most

of the impacts through onsite mitigation measures through using new technology. However, CSG Pty Ltd is struggling financially and would prefer a proponent-driven offset to rehabilitate other land they own rather than paying for new technology. They believe that the onsite mitigation measures are not cost-effective on the basis of their financial distress. The decision maker is not provided any criteria in the Bill for determining cost-effectiveness.

Solution: Omit clauses 111 and 138 of the Bill so that under the EP Act and SPA, the decision maker is required to be satisfied that all mitigation measures will be or have been undertaken, and offsets conditions are 'as a last resort'.
Amend the objects of the Bill to reflect that offsets are one part of a broader management framework. The Bill should include guidance for decision makers regarding avoidance and mitigation of significant impacts.
Amend clause 14(2)(b) to remove the word 'cost-effective' and replace with 'reasonable'.

2. The Coordinator General is not bound by offsets requirements

Clause 5 of the Bill exempts the Coordinator General's decisions, meaning that this decision-maker is under no obligation to apply the standards in the Bill and is not bound to any standards regarding offsets.

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

Example: No Offset Standards for the Coordinator General

The Coordinator General has declared a mega-resort and casino north of Cairns to be a 'coordinated project' subject to an environmental impact assessment under the SDPWOA to redevelop 343 hectares of rural land into 9 luxury hotels, a casino and a 25,000-seat sports stadium. This is a large-scale development which will have significant environmental impacts.
While offset conditions may be imposed on the project by the Coordinator General (under part 4 division 8 SDPWOA), there are no set criteria that the Coordinator General must consider when imposing offsets. His decisions are totally unfettered and there is no requirement to deliver a conservation outcome or ecological equivalence in imposing an offset. As a result, the Coordinator General may, if he so chooses, impose lower offset standards than those provided by the Bill.

Exempting the Coordinator General from the offsets framework directly breaches the fundamental principle that executive power ultimately rests with the people through those chosen by the people to represent them - that is the Parliament, not the total and unfettered discretion of an executive decision-maker - the Coordinator General.[3] The factors that the Coordinator General must take into account when imposing offset conditions, should be made

explicit in the Bill and not left to his discretion. This should also be viewed in the context that the legislation has made it clear that there is no statutory judicial review of the Coordinator General's decisions and conditions for Coordinated Projects in Queensland.[4]

This is broader than just coordinated projects in Queensland as the provisions also exempts State Development Areas, Private Infrastructure Facilities and Prescribed Projects all of which empower the Coordinator General under SDPWOA to manage land use and compulsorily acquire land. In making those decisions, where offsets may be relevant, the Coordinator General has no requirement to consider the Offsets Bill.

Whilst we are supportive of the Bill and standards applying to DSDIP's approvals, offset conditions for development applications under SPA are not determined and decided by EHP. Decision-making on environmental matters by DSDIP is inappropriate and does not reflect the Commonwealth approach of the Environment Minister making decisions on environmental impacts. The SARA model means that DSDIP is not required to obtain advice from EHP in relation to whether impacts are unacceptable, whether they could be avoided or mitigated in the first place, or regarding offset conditions.

Solution: Amend clause 5 of the Bill so that the legislation does not exempt the Coordinator General's decisions.

3. Offsets for damage to protected areas should be primarily focussed on a conservation gain

Clause 7(3) provides that significant residual impacts in protected areas may be offset through any activity that provides a social, cultural, economic or environmental benefit to any protected area. This means that the destruction of a national park may result in offsets that require a social or economic benefit rather than any environmental benefits. In addition, it does not need to be within that actual impacted protected area. We note that this clause relates to the protected area itself and not any prescribed environmental matters within the protected area (Policy p.6).

This is inconsistent with the main purpose of the act "to counterbalance the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets". If residual impacts in protected areas can be offset simply by providing a social, cultural or economic benefit (rather than an environmental benefit) to any protected area (rather than the protected area in question), this does not achieve counterbalance.

Hypothetical Example: Economic offsets for damage to national parks

The Department of National Parks, Recreation, Sport and Racing (DNPRSR) authorises Tawny Eco Resources Pty Ltd to clear land in Lamington National Park to construct a private eco-resort with 26 cabins. The company says they cannot avoid or mitigate the impacts of the development without significant costs to their business plan. The residual impacts will be significant on certain areas of the Lamington National Park, a protected area (s.8(2)). DNPRSR imposes an offset condition on the company's lease (an authority under ss.7(1), 7(3)). This offset condition only requires Tawny Resources Pty Ltd to transfer a one off payment of $50,000 which will be applied to the construction of a small bridge over a river crossing in the Palmer Goldfield Resources Reserve in Cape York (a

'protected area under Schedule 2 of the Bill and s.14(g) *Nature Conservation Act 1992*) in order to offset the impacts of the development. Whilst this provides a direct economic benefit to a different protected area (Palmer Goldfield Resources Reserve) and therefore the requirements of s.7(3) have been satisfied, the environmental impacts of Tawny Resources Pty Ltd on the Lamington National Park have not been counterbalanced at all. The net result for the Lamington National Park is a decrease in its environmental values.

Cl.7(3) does not import a 'like for like' requirement. EDO Qld does not support a framework that would allow offset payments for protected areas to be applied for activities that would ordinarily be the responsibility of DNPRSR – such a framework would fall well below community expectations of how offset payments to the Queensland Government should be applied.

This also calls into question whether the application of the payments will still meet the requirement of 'additionality'. It is essential that offsets are not approved unless they provide a conservation benefit additional to what would otherwise occur.

We further note that this approach is inconsistent with the EPBC Offsets Policy, which provides that "While the primary consideration in determining suitable offsets is delivering a conservation gain for the impacted protected matter, the delivery of offsets that establish positive social or economic co-benefits is encouraged." This means that impacts on a Commonwealth protected area (such as a World Heritage Area) must primarily deliver a conservation gain, the delivery of other types of benefits is encouraged. This is vastly different to the current wording of clause 7(3) which does not require a primary consideration of a conservation gain.

Solution: Amend cl.7(3) to ensure that a consideration of each type of value is identified and a counterbalance provided for that type of value, e.g. environmental offsets for environmental impacts on protected areas.
Amend clause 14(3) to require 'additionality' based on clear criteria to ensure landowners or government entities will not simply be paid to do what they would ordinarily be required to do.

4. Only significant residual impacts can be offset

Clause 8 introduces the term 'significant' into what remaining impacts can be offset, which is a lower standard than the previous Queensland offsets policies, which referred to residual impacts.

By introducing the word 'significant', and with no cumulative assessment of incremental impacts on MSES and MNES, it is likely that many approvals where there are residual impacts on MNES and MSES will result in an overall decline of the prescribed environmental matters over time. A narrow definition of impacts will allow cumulative and incremental impacts on prescribed environmental matters to be ignored.

We note that guidelines are currently being developed for significant residual impact and if that is the case, we submit this is important criteria that should form part of the Bill. A strategic approach needs to consider what happens if 'insignificant' impacts become more significant over time due to an accumulation of impacts.

Clause 8(4) sets out the definition of 'significant residual impacts' on an area that has previously been secured for offsets (a legally secured offset area) and only refers to adverse impacts arising from prescribed activities on the area. This means that other activities that are not prescribed but that have direct or indirect adverse impacts on the offset area will not be required to be offset. A higher standard is required for legally secured offset areas, given their propensity to fail or not deliver their intended outcomes.

Solution: Omit the word 'significant' from the definition in clause 8. Alternatively define "significant residual impact" further and provide clear examples. Remove the word 'prescribed' from clause 8(4).

5. 'Viability' and 'Conservation outcome' need robust definitions

Clause 11 sets out the definition of "conservation outcome," which appears to be focussed on a process (selecting, designing, managing) and not focussed on an outcome of ensuring the ongoing survival. There is little evidence that environmental or biodiversity offsets work and it is unclear how a process-driven definition will assist in the development of the offset delivery plans and agreements.

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

The principles of 'no net loss' and 'ecological equivalence' are well-established, embedded in the current Qld Biodiversity Offsets Policy, and have been requested by conservation groups to be maintained.[5] A stronger definition of conservation outcome that includes these principles will deliver a stronger result for the species that are being significantly impacted by development.

As a minimum requirement, environment offsets must be required and generate a like for like ecological equivalence, and deliver a net environmental positive gain.

Solution: Amend the clause 11 definition of 'conservation outcome' to ensure the definition is outcome-focussed on the actual survival, improvement and enhancement of the environmental matter, not simply a process. Expressly provide for no net loss, ecological equivalence and a net environmental positive gain (or enhancing environmental quality) in the definition of 'conservation outcome' and remove reference to 'viability'.

6. Decreased list of prescribed environmental matters will decrease biodiversity

Clause 10 sets out definitions for MSES, MNES and MLES by reference to the regulations. We note that the Draft List of MSES has been recently posted on EHP's website. Impacts on Threatened and Vulnerable Wildlife[6] and Special Least Concern Animals will require offsets.

We strongly object to near threatened wildlife being excluded from the categories of environmental matters requiring protection. Section 28 of the Nature Conservation (Wildlife)

Regulation 2006 (NCWR) clearly sets out the importance of near threatened wildlife and this must be given due weight. Near threatened wildlife includes such native Australian animals as the:

- palm cockatoo
- lyrebird
- snubfin dolphin
- humpback dolphin
- Cape York rock wallaby; and the
- sooty owl.[7]

These are but a few examples of many other iconic native species in Queensland that will be exempt – in doing so, the Government is sending a message to Queenslanders, other Australians and the international community that Queensland does not consider these wildlife 'significant enough' to be considered.

The Federal Government has recently acknowledged that we are currently facing a biodiversity crisis in Australia, with 100 unique species have already become extinct in Australia and 1,500 under threat. Queensland has an opportunity to halt this decline by considering all categories of protected wildlife in Australia, not just the ones that are almost extinct. Federal Environment Minister, Greg Hunt has announced the appointment of a Threatened Species Commissioner as a part of a recovery plan to save native wildlife species from extinction.[8]

The definition of MSES is wholly contrary to the statutory management intent for near threatened wildlife (section 29 NCWR): "to take action to prevent the further population decline of the wildlife".

The Bill will not protect least concern animals other than the 'special least concern animals' (section 34(3) NCWR). How then are these categories protected if significant residual impacts are acceptable?

Hypothetical Example: The Snubfin dolphin

A Port Authority proposes a significant expansion of its port operations near Townsville. The area is famous for families and tourists spotting Snub Nose dolphins. Local tourism operators take regular boats out onto the reef to show tourists the peculiar looking animals.

The dolphin uses its sonar to hunt fish, but the dredging and dumping from the Port Development are likely to significantly interfere with their sonar. The dolphin numbers are likely to dwindle over time as they are forced out of the area where the port expansion is planned.

There is no requirement for the State Government to consider significant residual impacts on the Dolphin as it is not considered by the Government to be a Matter of State Environmental Significance.

Five years on, and in addition to the shark nets which have a significant impact on bycatch of dolphins, dugongs and sea turtles, dolphin numbers start to dwindle, and their status is soon declared by the Federal Government's new *Threatened Species Commissioner* to be 'endangered'.

Additionally, not all of the matters in the previous offsets policies have been picked up in the new draft list of MSES. For example, the new policy only applies to wetlands in protection areas, of high ecological significance or in high ecological value waters. The new policy also only applies to watercourses in high ecological value waters. The old policy did not include these limitations and the terms wetlands and watercourse were not restricted in any way.

The effect of recent changes to the *Vegetation Management Act 1999* (VMA) mean that vegetation previously protected and now no longer protected, are not the subject of any offsets. This comes at a cost to biodiversity in Queensland. We note previous advice to the Commonwealth Minister that:

> *… land clearance has been the most significant threatening process in Australia since European settlement. [It] continues to be a significant threatening process and … if it is not controlled it will lead to additional species becoming endangered, to additional species being listed … and to ecological communities being listed …*[9].

At the same time, the highest categories of protected matters should not be eligible for offsetting as significant residual impacts on these matters would be unacceptable. For example, EDO Qld believes that any matter with the conservation status of 'endangered wildlife' under the *Nature Conservation Act 1992* (NCA) or endangered regional ecosystems under the VMA should not be allowed to be offset. Offsetting should not be used as a means of making unacceptable significant impacts acceptable.

Solution: Amend list of MSES to include near threatened wildlife under the NCA. Consider cumulative impacts of degradation of other categories of wildlife and vegetation listed under NCA and VMA.

7. Public register must ensure transparent information and be publically accessible

EDO Qld is supportive of the public register at clause 89, however it needs to include all relevant data including offset delivery plans and agreements. The public has a right to access this information and know the details of how the offset is planned to be achieved.

Setting out all the relevant information about offsets available to the public means that the Government will not receive a great deal of Right to Information requests nor have to potentially deal with litigation started by concerned residents and community groups who are unsure of what projects have been approved and on what basis.

If there are issues around confidentiality of the proponent, then a summary complete with sufficient detail should be provided for in the register as it is currently for mining tenures in Queensland (public enquiry reports).

Transparency is vital to ensure community confidence. If EHP is providing significant amounts of money to landowners then the public should be providing transparent data on such details. There is no administrative burden to government for doing so as the data is already available. It is consistent with the Premier's open and transparent government policy and reform. If details are not made available, it will reduce community confidence in the framework and increase the public's suspicion of secretive agreements.

Additionally, the community can also assist EHP with monitoring and enforcement if the public is aware of the offset requirements.

Opportunities for public comment on these offset delivery details must form part of the EA process. The existing EA submissions and objections allow for a degree of community involvement that could run concurrently with the opportunity for public input into offset delivery details.

Solution: Amend cl.89(1)(a) to include:
(v) the agreed delivery arrangement;
(vi) the environmental offset delivery agreement, if any;
(vii) the offset delivery plan, if any.
Amend cl.89 to provide for opportunities for public comment.
Amend cl.89(2) to require the administrating agency to make the register available for public inspection in an electronic form online (currently this is only provided as an example).

8. Proponent-driven offsets must be legally secured prior to development/impacts

Part 6 Division 3 of the Bill sets out requirements for proponent-driven offsets. There is no apparent requirement in the Bill to ensure that the proponent legally secures the offset area prior to destroying the environmental matter.

There is an equivalent provision in clause 23 for financial settlement offsets that requires the payment upfront – the same should be required of proponent-driven offsets to secure the area upfront. This would give certainty to EHP and the community that the area has been legally secured prior to the area being destroyed.

Solution: Amend clause 21 to require the proponent to legally secure the offset area prior to the impacts. Destruction of the environmental matter cannot proceed until EHP is satisfied that the area has been legally secured, e.g. a title search evidencing the security.

9. Rigorous assessment of proponent-driven offsets are required

Part 6 Division 3 sets out requirements for proponent-driven offsets. There is no requirement in the Bill for EHP to undertake its own research about the suitability of the sites identified under a proponent-driven offset. A recent example of where this has resulted in unsatisfactory outcomes is at Maules Creek in NSW.

Example: unsuitable offsets approved

An open-cut coal mine at Maules Creek (south of Moree, NSW) has been approved which will destroy critically endangered old growth White Box woodland, down to 0.1 per cent of its original extent. This specific type of vegetation provides remnant habitat for three nationally-listed species, the Swift Parrot, the Regent Honeyeater and Corben's Long-eared Bat. The proponent identified other parcels of land and these proponent-identified sites were approved as the offset sites on the basis that it was the same prescribed environmental matter (critically endangered old growth white box gum woodland). However it

has since been revealed that the approved offset site is unsuitable as it did not contain the same vegetation being destroyed and the NSW Government did not undertake any research of their own to determine suitability.[10]

Solution: EHP should be required to independently research the suitability of offset areas for proponent-driven offsets.

10. Criteria needed for declaring and revoking offset areas

The EPBC Offsets Policy requires that the area be under some level of threat of being destroyed or degraded before being secured as an offset area. This should be reflected in the Bill as a precondition for legally secured environmental offset areas. It is an essential component of suitable offsets and important criteria such as this should be in the Bill itself, not in the Policy or Regulations.

Solution: Amend Part 8 to reflect a precondition that legally secured offset areas must have been at risk of some being degraded or destroyed prior to being identified as a suitable offset.

Clause 32 provides that a regulation can set out how the chief executive can revoke a declaration of an environmental offset protection area. As best practice offsets frameworks require offset areas to be in perpetuity, further information is needed on how or why the registrar would revoke a declaration of an offset area.

Objectives of an ecologically equivalent offset area are rarely achieved unless the area is protected from further development. Very limited exceptions might apply to this necessary rule. The contemplation of significant impacts on areas already legally secured as offsets areas, is problematic. Often there are unavoidable delays in conservation gains being achieved, e.g. it may take up to nine years for newly planted vegetation in grassy eucalypt woodlands to restore previous ecosystem values and for seagrasses, the time lags for full recovery to achieve particular ecosystem functions can be anywhere between 10-50 years.[11]

Solution: Omit clause 32(c). At the very least, consult with conservation groups about clear criteria in the Bill (not the regulations) regarding what circumstances a revocation would be warranted. The Bill should reflect the general rule is that offset areas need to be fully protected from development and very limited exceptions might apply to this necessary rule.

11. Publication of the environmental offsets policy online should be mandatory

Clause 12 of the Bill allowing the chief executive or local government to make policies available 'however they see fit' is an inappropriate means of ensuring public access to this important information. For example, the chief executive could "see fit" to leave a copy of policy for inspection at EHP or a local government could 'see fit' to leave a hardcopy for inspection at a local government office. This is inconsistent with the Premier's policy of "open data". Including the option to make the policy available in hardcopy only would significantly reduce public accessibility.

The Explanatory Notes suggest that publication online is the policy intent, if so then it should be reflected in the Bill. We note that in practice, the policy will almost always be posted online – this being the case, it is unclear why an option is needed whereby the administering agency does not need to make the policy available online. Ensuring the offsets policy is online will not be an administrative burden on state or local governments.

Solution: Amend clause 12(2)-(3) to "...the [chief executive/local government] must make the policy available for inspection by making the document available in an electronic form on the [relevant agency's] website" or words to that effect, as well as providing an option for another means if that is appropriate.

12. The Bill should require regular reporting of the effectiveness of offsets

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

Solution: Insert a new clause into the Bill to require offsets performance reporting in the State of the Environment Report.

13. Appropriate investment needed of financial settlement funds

EDO Qld is supportive of a fund for offsets that is separate from other funds of the administering agency, which appears at Part 11 Division 2 for local governments, however it does not appear the same requirement is imposed on EHP under Division 1.

EDO Qld submits that there should be no time-lags between the impact and offset. In circumstances where a proponent makes a payment in advance of the impact and there will be no time lag between the impact and the offset, there is an opportunity to invest those funds appropriately. We note that investments can be made with those funds under cl. 85(c). EDO Qld submits that it is appropriate for such investments to be in ethical investments until such time as the administering authority or EHP requires it, to ensure that the money is not inappropriately used to support industries that contribute to the destruction of the environment.

Solution: Amend cl.85-86 to ensure that an investment made under cl.85(d) is not invested in industries that destroy the environment.

14. Clearer drafting needed for provisions regarding the duplication of offsets

Clause 14(3) and the Policy at pages 4-5 provide that where an offset condition has been imposed under another Act for the same prescribed environmental matter, the decision-maker

can have regard to that relevant offset condition when determining an offset condition for the matter at hand.

The words 'on an authority' need to be clarified. We understand the policy intent is that this clause applies where an authority for the same project (e.g. an authority is required from EHP for an EA under the EP Act and also for a clearing permit under the NCA for a vulnerable plant – see also page 14 of the Explanatory Notes). However the drafting of this clause needs to be amended to make clear it relates to the one applicant and the one project.

Solution: Amend cl.14(1) and (3) to make clear that this would only occur if it is the same applicant and the same project.

Similarly to clause 14, the wording of clause 15 (1) and (4) and the Policy pages 4-6 are to avoid a duplication of offsets between Commonwealth and State conditions, and also between State and Local Government conditions. This is a similar concern as above however it refers to where there is the same or substantially the same impact. Again, there is no specific direction that it relates to the same project.

Solution: Amend cl.15(1) and (4) to make clear that this would only occur if it is the same applicant and the same project.

Clauses 15(2) and (5) and the Policy at pages 4-6 provide that if a decision maker considers the impacts are greater than the other offset condition, then that decision maker should be prevented from conditioning the project. The purpose of this clause is to avoid duplication of multiple offset conditions for the same (or 'substantially the same') activity and impact whereby a decision maker is restrained from imposing further conditions if a 'higher' jurisdiction has already imposed an offset for the same or substantially the same impact and area.

The word 'substantially' has the potential to create argument, confusion and discretion where there is variation between the first impact and area and a second impact and area. To avoid this loophole where there is damage or destruction that is not identical to the first impact and matter, the word 'substantially' should be removed from cl.15(1) and (3).

15. Application to damage to the Great Barrier Reef World Heritage Area

Clause 10(3) defines MNES firstly by reference to the EPBC Act Chapter 2. We consider that a reference to Part 3 is sufficient as Part 4 relates to management processes and is irrelevant for the purpose of identifying protecting matters which covers Part 3 protected matters.

Secondly the extended definition of MNES to section 146B EPBC Act contemplates the application of the Bill and policy to the Great Barrier Reef Strategic Assessment. EHP should undertake a more comprehensive consultation with environment and community groups regarding a specific application of offsets policy and legislation to impacts concerning the Great Barrier Reef. We note that the public has not had an opportunity to comment on this application as the public submissions on the Reef strategic assessments closed before EHP released the Bill and the Policy.

Solution: Amend clause 10(3)(a) to refer to Part 3 EPBC Act. Ensure the development of Great Barrier Reef-specific offsets options is undertaken in partnership with conservation and environment groups.

16. Ecological Sustainable Development must be part of the objects

The object of 'counterbalancing residual impacts' is arguably not as strong as the 'compensation' object under the EPBC Offsets Policy.[12] A clear statement in the objects that reflects the EPBC offsets principles (EPBC Offsets Policy page 6) would be an appropriate expression of the aim of offsets and would show a clear line of sight between Commonwealth and State offsets.

The objects at clause 3 do not refer to the principles of Ecologically Sustainable Development (ESD). ESD principles[13] have been used in State and Federal legislation in Australia for over 20 year, requiring the effective integration of economic and environmental considerations in the decision-making process. ESD principles also involve the concept of the current generation maintains or enhances the health, diversity and productivity of the environment for future generations (inter-generational equity). The Queensland Government is obliged to implement ESD principles under the Intergovernmental Agreement with the Commonwealth.[14] It is also in the objects of the EPBC Act, the Commonwealth legislation under which offset conditions are currently made.[15]

Solution: Bring the Bill more in line with Commonwealth terminology by amending the objects to refer to the principles of ESD and referring to 'compensation' rather than 'counterbalancing significant residual impacts'.

Endnotes

[1] Productivity Commission 2013, *Major Project Development Assessment Processes*, Research Report, Canberra, at page 213, available here: http://www.pc.gov.au/__data/assets/pdf_file/0015/130353/major-projects.pdf
[2] Ibid.
[3] Office of the Queensland Parliamentary Council, Fundamental Legislative Principles: The OQPC Notebook at 144: https://www.legislation.qld.gov.au/Leg_Info/publications/FLPNotebook.pdf
[4] SDPWO Act, section 27AD
[5] See https://www.parliament.qld.gov.au/documents/committees/AREC/2014/21-EnvironmentalOffsets/cor-dept-14Mar2014.pdf
[6] We note that the State Planning Policy does not protect vulnerable wildlife which is contrary to the NC (Wildlife) Regulation 2008 (NCWR) and international obligations.
[7] NCWR, Schedule 5
[8] SBS News, 'Government announces role of Threatened Species Commissioner', 21 March 2014, available here: http://www.sbs.com.au/news/article/2014/03/21/government-announces-role-threatened-species-commissioner
[9] Threatened Species Scientific Committee, 'Advice to the Minister for the Environment and Heritage from the Threatened Species Scientific Committee on a public nomination of a Key Threatening Process under the Environment Protection and Biodiversity Conservation Act 1999', available here: http://www.environment.gov.au/biodiversity/threatened/ktp/clearing.html Accessed 24.03.2014
[10] For further background information, see ABC Radio National's Background Briefing, 16 March 2014, available here: http://www.abc.net.au/radionational/programs/backgroundbriefing/2014-03-16/5312944
[11] Bell J, Saunders M I, Lovelock C E, Possingham H P, "Legal frameworks for unique ecosystems – how can the EPBC Act offsets policy address the impact of development on seagrass?" (2014) 31 Environmental and Planning Law Journal, 34 at 38.
[12] EPBC Offsets Policy, p.4.
[13] Namely: the precautionary principle when dealing with scientific uncertainty; biodiversity and ecological integrity as a fundamental consideration; intergeneration and intragenerational equity; and improved valuation, pricing and incentive mechanisms.
[14] Under the IGAE, all levels of Government should use 'the concept of ecologically sustainable development [and its principles – see cl. 3.5 and Sch. 2] … in the assessment of natural resources, land use decisions and approval processes.' See also: http://www.environment.gov.au/node/13029.
[15] Section 3A EPBC Act.