

Coalition Senators' Dissenting Report

Introduction

History

1.1 The *Environment Protection and Biodiversity Conservation Act (EPBC Act)* *Environmental Offsets Policy (Policy)* and the *Offsets Assessment Guide (Guide)* were released by the former Government in 2012. The Policy and Guide outline the Federal Government's approach to offsets and how they are calculated. Since 2 October 2012, the Policy and Guide have been consistently applied to projects being assessed under the EPBC Act. The process is open, transparent and has bipartisan support, having been introduced by the former Government.

Current Arrangements

1.2 The Australian Government's Environmental Offsets Policy is among the most effective and sophisticated in the world. This system has, along with State environmental approval systems, served to protect matters of national environmental significance from undue harm. While effective, the Australian Government is committed to the ongoing improvement of its environmental offsets policy and will be progressing a One Stop Shop for environmental approvals with State Governments.

One Stop Shop for Environmental Approvals

1.3 The Coalition Government is committed to implementing a one-stop shop for environmental approvals. The One-Stop Shop will streamline environmental assessment and approval processes by removing duplication between the Australian Government and states and territories. Importantly, this will be achieved while maintaining high environmental standards.

1.4 The One-Stop Shop will be implemented through approval bilateral agreements under the EPBC Act. Approval bilateral agreements allow a state to conduct a single environmental assessment and approval process that satisfies both state and Australian Government requirements, but only where the state meets the high environmental standards demanded under the EPBC Act.

Ongoing Protections

1.5 The Australian Government, through formal agreements with the States, will ensure there is a strong assurance framework in place to continue to maintain the high environmental standards under the current EPBC Act.

1.6 The Australian Government has a dedicated and expanding compliance and enforcement team supported by recently updated investigative and intelligence support programmes. These arrangements give confidence that any environmental approval will be monitored for compliance with conditions.

1.7 The Australian Government is committed to continuous improvement, including through an appropriate and complete review of the EPBC Act offsets policy and guide following the implementation of the one-stop shop.

Support for the EPBC Act Offsets Policy

1.8 The Policy and Guide were developed following consultation with a range of stakeholders. **The Department of Environment** explained the process in their submission (Submission 79):

The policy and guide were developed following detailed research and stakeholder consultation. This included the release of a consultation draft for public comment, targeted stakeholder engagement with peak industry and environmental bodies and close collaboration with researchers from the Australian National University and University of Queensland through the National Environmental Research Program.

1.9 When this point was taken up by **Senator Williams (Hearing, 6th May)**, the **Minerals Council** noted there was a **high degree of consensus in relation to the Policy**.

Senator WILLIAMS: Looking back at the changes to the EPBC Act in 2012, as far as offsets go, were you happy with the amount of consultation carried out then with the businesses you represent?

Ms Stutsel: We were certainly very happy with the consultation process. We sat at many round tables face to face with scientific organisations, academia and environmental NGOs. It was a well run and collaborative process. We thought that the organisations that participated were very transparent around their expectations and what they thought the opportunities were with the policy process. Indeed, I think we ended up with a very high degree of consensus between the business organisations that the environmental NGOs that it was a good, strong policy for the Commonwealth to have.

The use of the Policy and Guide continue to have broad support.

1.10 **Dr Gibbons (Hearing, 6th May)** gave evidence that:

I think the offset assessment guide by the Commonwealth, even though it has its rough spots, is an improvement. We are probably having this discussion today because of the increased transparency in offset related development decisions. If implemented properly, the policy will result in less net loss of biodiversity, I believe. I believe the principles that the Commonwealth government have used in their policy are valid and reflect those supported internationally, but I think their execution warrants some close scrutiny.

1.11 **The Business Council of Australia (Submission 81)** noted that:

This new policy and associated calculator represents a major step forward – it clarifies that offsets should only be used to correct for residual impacts, and provides a transparent, predictable, science-based method for establishing required offsets.

1.12 **Rachel Walmsley from the Environmental Defender's Office (Hearing, 5th May)** stated that:

Even though none of these schemes is perfect, certainly ANEDO would support having in place robust scientific methodologies that are consistent, repeatable and transparent so that a proponent could pick them up, go and look at them and get an idea of what kinds of credits and what kinds of impacts might apply. A community member or a farmer could use these tools, and the same standard is applied and those standards are based on science.

1.13 **It was widely recognised that, although a useful tool, environmental offsets cannot make an unacceptable project acceptable. The Minerals Council** noted the 'fundamental principle in the application of environmental offsets is that an offset cannot make a project with unacceptable impacts acceptable. An offset proposal is no guarantee that a project will be approved'.

1.14 **The Department explained that (Submission 79):**

...the policy explicitly states that the provision of offsets does not mean that proposals with unacceptable impacts will be approved; they are another tool that operates through the impact assessment process to deliver environmental outcomes and sustainable development.

1.15 **Evidence was also presented that offsets can provide opportunities to improve conservation outcomes. The NSW Minerals Council (Submission 76)** noted that:

Whilst the use of environmental offsets should remain the final option, where offsetting is appropriate it can provide significant opportunities to harness private investment in conservation and make environmental gains. In the highly cleared landscapes of the Hunter Valley, Western and North Western NSW, offsetting provides opportunities to improve and connect remnant areas of vegetation, in combination with mine rehabilitation.

Government should be looking to take advantage of the opportunities provided by offsetting for environmental, social and economic gains. Any consideration of the environmental offsets policy needs to be cognisant of those opportunities and be informed by an appreciation of the importance of this tool in the continued economic growth of Australia.

One stop shop – applying a national environmental standard

1.16 A number of submissions raised concerns with differences in offset approaches around Australia and the complexities that result from the application of both State and Federal policies.

1.17 **Dr Anita Foerster and Professor Jan MacDonald (Submission 23)** explained that:

In addition to offsets under the Environmental Protection and Biodiversity Conservation Act 1999 [EPBC Act], all states and territories operate various offsetting programs many of which have recently been reformed or are in the process of reform. The Commonwealth should take a leadership

role in coordinating the development of a national biodiversity offsets standard that affords high levels of protection for Australia's biodiversity.

1.18 **The NSW Minerals Council (Submission 76)** noted that:

NSWMC members operate under two different systems for offsetting: where matters of national environmental significance are proposed to be impacted, the Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy (Commonwealth Offsets Policy) applies; where NSW listed species and communities are impacted, the NSW Offset Principles for Major Projects (State significant development and State significant infrastructure) (NSW Offset Principles) applies. Frequently different offsets are required to achieve the outcomes required by the two different jurisdictions.

1.19 The Coalition Government is committed to implementing a one-stop shop for environmental approvals. The One-Stop Shop will streamline environmental assessment and approval processes by removing duplication between the Australian Government and states and territories. Importantly, this will be achieved while maintaining high environmental standards.

1.20 The One-Stop Shop will be implemented through approval bilateral agreements under the EPBC Act. Approval bilateral agreements allow a state to conduct a single environmental assessment and approval process that satisfies both state and Australian Government requirements, but only where the state meets the high environmental standards demanded under the EPBC Act.

1.21 In relation to offsets, the **Department of Environment's submission (Submission 79)** notes that:

Through this process States and territories will be required to meet the published *Standards for Accreditation of Environmental Approvals* under the EPBC Act. The standards are based on requirements of Commonwealth law and will facilitate the maintenance of environmental outcomes through the one stop shop.

The standards also specify that any offsets delivered through an accredited process must achieve long-term environmental outcomes for matters protected under the EPBC Act and be consistent with either the EPBC Act Environmental Offsets Policy, or another policy accredited by the Minister as achieving the objects of the EPBC Act to an equivalent or better level.

1.22 **The National Farmers' Federation (Submission 15)** gave evidence that:

With the establishment of the one-stop shop model, there is an opportunity to further align the offset policies of the State and the Commonwealth. Such alignment will avoid the current confusion of separate offset requirements by the different jurisdictions.

1.23 The one-stop shop will deliver a single assessment process, a single approval with a single set of conditions. This means that project proponents will only need to comply with one set of offset requirements that deliver equivalent, or better, outcomes than those that would be required under the EPBC Act. In appropriate cases, states and

territories will be required to lift their standards to meet the high standards under the EPBC Act.

Appropriate review of the Offsets Policy

1.24 **Some submitters questioned the motivations of the Senate Inquiry and noted that formal review of the offsets policy would be more appropriate. The Minerals Council of Australia** submitted that:

The *EPBC Act* offsets policy and guide has been in operation for less than 18 months which is a very short timeframe for the development, implementation and validation of environmental offsets. Accordingly, the MCA considers a general review of the effectiveness of this policy through the Inquiry process at this juncture, is unnecessary, premature and unlikely to reveal whether it is yet achieving its stated aims.

1.25 **The Department of Environment's** submission noted that:

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

Evaluating the effectiveness of the EPBC Act Policy and Guide is challenging

1.26 **Dr Gibbons (Hearing, 6th May)** noted that there are challenges in evaluating the offsets policy:

I think it is difficult to evaluate the effectiveness of the federal offset policy to date. This is because, in terms of implementation, the Department of the Environment does not maintain in an accessible form a register containing all of the information relevant to an assessment...I acknowledge that this is very challenging task and that the policy has only been in place for just over a year. But I think that this task needs to be undertaken by a qualified, appropriate third party as it is too much to ask of a proponent to do this at the individual project level.

Summary

1.27 While there are challenges in implementing the EPBC Act Offsets Policy and Guide the Coalition Government is committed to consistently applying the policy to projects being assessed under the EPBC Act. It is a transparent, open process that continues to have broad support.

1.28 The Coalition Government is also committed to implementing a one-stop shop for environmental approvals. The one-stop shop will maintain high environmental standards whilst streamlining environmental assessments and approvals by removing unnecessary duplication between the Australian Government and states and territories. The one-stop shop will be supported by a strong assurance framework to ensure that high environmental standards are maintained.

1.29 The Australian Government has a dedicated and expanding compliance and enforcement team supported by recently updated investigative and intelligence support programmes. These arrangements give confidence that any environmental approval will be monitored for compliance with conditions.

1.30 The Australian Government is committed to continuous improvement, including through an appropriate and complete review of the EPBC Act offsets policy and guide following the implementation of the one-stop shop.

Senator John Williams
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