Response by Megan Evans to question on notice from Senator Duniam

To Megan Evans: in your submission, you say that the way the Government has approached the establishment of this NRM scheme will ultimately "facilitate extinction of our most threatened species". Can you outline specifically why you say that?

Thank-you for your question. To answer, I will first briefly describe the economic and ecological rationale of offsets, how these are embedded in existing environmental regulation and policy, and I'll then explain why the changes to the EPBC Act flagged by the government – in combination with its linkage with the proposed Nature Repair Market - is likely to facilitate extinction of our most threatened species.

For several decades, environmental regulation has been underpinned internationally by the "mitigation hierarchy" – whereby impacts to environmental assets should first be avoided, then reduced, then mitigated and/or restored where possible on site, and then only after all those steps are exhausted, should remaining environmental impacts be offset at another location[1]. Adherence to the mitigation hierarchy is meant to both minimise costs to proponents (so offset requirements after first avoiding etc are minimised) as well as reduce environmental risks. Where offsets are financially costly and/or scarce, this is a "price on nature" that in theory is meant to drive human behaviour away from further destruction of that particular environmental asset, because further loss of that asset is likely to lead to its extinction.

Crucially, there are limits to the use of offsets – they are not appropriate to be used where environmental assets are so highly threatened, scarce, or slow to mature that the time delay between an impact occurring and an environmental benefit being delivered is far too long, and hence this delay is likely to hasten extinction[2]. For example, a bird species that relies on tree hollows to breed can't wait 400 years for those tree hollows to form again (and nest boxes don't usually work[3]). So, it's best to avoid losing the last few remaining hollow-bearing trees we have left to ensure the survival of such bird species.

How offsetting frequently fails in practice is when rules are introduced or "gamed" such that proponents are allowed by government to proceed with development impacts even when offsets are very expensive or difficult to find. This is a pervasive

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[1] In practice, offsets act more as the "tail wagging the dog", where proponents will typically jump towards that last step of the mitigation hierarchy, realise the financial expense, and then end up going through the first few steps (avoid, minimise) to reduce the cost of offsetting. This still serves the purpose of minimising the risk of extinction of highly scarce and/or threatened species and ecosystems.

[2] Business and Biodiversity Offsets Programme (BBOP), 2012. Resource Paper : Limits to What Can Be Offset. Washington, D.C.

[3] Lindenmayer, D., Maron, M., Evans, M.C., Gibbons, P., 2017. The plan to protect wildlife displaced by the Hume Highway has failed. The Conversation. http://theconversation.com/the-plan-to-protect-wildlife-displaced-by-the-hume-highway-has-failed-78087

practice that occurs both internationally and in Australia (the Warragamba Dam EIS is a good example[4]).

Under the current EPBC Act environmental offsets policy (2012), at least 90% of the environmental impact must be "directly" offset – that is, an environmental benefit is measurably delivered "on the ground". No more than 10% of the impact should be compensated by "other compensatory measures" – that is, financial contributions to research etc that doesn't directly benefit the MNES. But this 10% rule is routinely broken in practice:

> *"...if something is unoffsettable in direct terms you can look to do virtually all of your offset in indirect terms and compensatory terms"*
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> Source: Interviewee 8, pg. 9 of Evans, M.C., 2023. Backloading to extinction: Coping with values conflict in the administration of Australia's federal biodiversity offset policy. *Australian Journal of Public Administration* 82, 228–247. https://doi.org/10.1111/1467-8500.12581

The consequence of this practice is that the full "price on nature" is not being felt by proponents, environmentally destructive behaviour is not changed, and environmental impacts are being permitted by government in cases where available offsets are very limited – and therefore, environmental losses cannot feasible be compensated for. This practice disproportionately affects the most highly threatened and scarce MNES, because they have the least habitat remaining.

The changes to environmental offsetting arrangements flagged by the government in its Nature Positive Plan (NPP)[5] and the May 2023 draft overarching national environmental standard for MNES[6].**is likely to make this situation much worse**. The NPP proposes adding an additional step to the mitigation hierarchy, after the offset step, where proponents will be able to *"make conservation payments where they are unable to finalise proposed developments due to their inability to find suitable environmental offsets."* (NPP pg. 21).

As noted above, financial compensation in lieu of appropriate environmental compensation already occurs under current policy. However, the introduction of the compensation payment option will both legitimise and supercharge this practice, but crucially – <u>the payments do not need to benefit the MNES being impacted.</u> The NPP

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[4] Slezak, M., Timms, P., 2021. NSW government accused of "double game" in bid to avoid paying $1 billion in dam compo. ABC News. URL: https://www.abc.net.au/news/2021-09-30/warragama-dam-matt-kean-eis-viability/100500612

[5] Department of Climate Change, Energy, the Environment and Water, 2022. Nature Positive Plan: better for the environment, better for business. Commonwealth of Australia, Canberra. URL: https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf

[6] Department of Climate Change, Energy, Environment and Water (2023). Draft National Environmental Standard for Matters of National Environmental Significance. URL: https://consult.dcceew.gov.au/draft-nes-for-mnes. Evans, MC (2023) The Draft EPBC Act National Environmental Standard won't achieve Nature Positive. URL: https://www.linkedin.com/pulse/draft-epbc-act-national-environmental-standard-wont-achieve-evans/

says this will deliver *"better overall environmental outcomes"* (pg. 21), but what this actually means, who decides, or how they decide whether benefits to MNES A and losses to MNES B is "better overall", is not known. This is a clear policy regression from the international offsetting best practice of "like for like"[7] – whereby losses to species A must be compensated by gains to species A. Deviations from "like for like" are only appropriate under very limited circumstances[8] to ensure the most highly threatened and scarce species and ecosystems are not further imperilled by offsetting.

How does the Nature Repair Market fit into this? The most financially lucrative nature repair projects are likely to be those that can be delivered quickly, at scale, and in a predictable and repeatable manner. But ecology is rarely fast or predictable, especially for the most threatened species and ecosystems. This means that nature repair projects for highly threatened species and ecosystems are rarely going to be "investable" (the private sector's limited interest in the 2017 Threatened Species Prospectus is an example), and so nature repair projects (and certificates) will be geared towards more common and faster growing species and ecosystems.

The Nature Repair Market Bill contains provisions for the Commonwealth to purchase certificates. For EPBC proponents who choose to use the conservation payment option in lieu of offsets, the Commonwealth will pool those resources into a trust fund (pg. 21 NPP) and purchase nature repair certificates for a "better overall environmental outcome". This function, in combination with proposed conservation payment option, the policy regression from "like for like", and the cheap, fast and uniform environmental benefits likely delivered by the Nature Repair Market (especially in absence of an investment strategy and accessible finance to enable new market participants to enter the market), all sets the stage for the homogenisation of nature and therefore loss of biodiversity.

Homogenisation of nature and the extinction of our most threatened species may provide short-term economic benefits. But it massively increases the risks associated with biodiversity loss, including financial risks for corporates and other businesses who will within the next 3 to 5 years be expected to report on their biodiversity dependencies, impacts, risks and opportunities under the Taskforce for Nature-related Financial Disclosures (TNFD) framework. There are also risks for all market participants around the issuance and use of financial products (such as biodiversity certificates) where, for example, claims are made regarding "nature positive" but it becomes known that individual species and ecosystems are being driven to extinction.

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[7] Business and Biodiversity Offsets Programme (BBOP), 2009. Biodiversity Offset Design Handbook-Updated. Forest Trends, Washington, D.C; Miller, K.L., Trezise, J.A., Kraus, S., Dripps, K., Evans, M.C., Gibbons, P., Possingham, H.P., Maron, M., 2015. The development of the Australian environmental offsets policy: from theory to practice. Environmental Conservation 42, 306–314. https://doi.org/10.1017/S037689291400040X

[8] See guidance on "out-of-kind" offsets on pg. 62 and 76 in BBOP in fn 7 above