

Chapter 2

Overview of the use of environmental offsets

2.1 This chapter provides an overview of the use of environmental offsets. This includes:

- an explanation of the definition of offsets and the different types of offsets;
- the legal and policy framework relating to offsets, primarily at the Commonwealth level; and
- relevant past reviews and reports relating to offsets.

2.2 This report necessarily focuses on Commonwealth policies and regulation, particularly the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) and its processes. However, state and territory offsets regimes are also briefly outlined and discussed where appropriate and relevant.

Environmental offsets

2.3 Essentially, an environmental offset involves compensating for impacts on the environment or biodiversity at one site through activities at another site.¹ At the Commonwealth level, offsets are defined as 'measures that compensate for the residual adverse impacts of an action on the environment'.² However, the Department of the Environment (the department) noted that 'under national environment standards all reasonable steps should first be taken to avoid and then mitigate adverse impacts on the environment'.³

2.4 The EPBC Act Environmental Offsets Policy (EPBC Act Offsets Policy) states that:

Offsets do not mean proposals with unacceptable impacts will be approved. They simply provide an additional tool that can be used during the environmental impact assessment process.⁴

2.5 The EPBC Act Offsets Policy requires that offsets be in place for the duration of the impact.

1 See, for example, Maron M, Hobbs RJ, Moilanen A, Matthews JW, Christie K, Gardner TA, Keith DA, Lindenmayer, DB and McAlpine CA, 'Faustian Bargains? Restoration Realities in the Context of Biodiversity Offset Policies' (2012) 155 *Biological Conservation*, p. 141.

2 Australian Government, *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy*, October 2012, p. 4, <http://www.environment.gov.au/resource/epbc-act-environmental-offsets-policy> (accessed 1 May 2014).

3 Department of the Environment, *Submission 79*, p. 1.

4 EPBC Act Offsets Policy, p. 7.

Types of environmental offsets

2.6 The EPBC Act Offsets Policy notes that 'an offsets package is a suite of actions that a proponent undertakes in order to compensate for the residual significant impact of a project'.⁵ The actions can comprise a combination of 'direct offsets' or 'other compensatory action/indirect offsets'.

Direct offsets

2.7 The department submitted that, in the past, direct offsets:

...have been defined as areas of land that are gazetted or covenanted as protected areas as to avert a future loss and ensure continued environmental management.⁶

2.8 The department noted that this approach, while playing an important role in securing remaining habitat in an ecosystem, had not always targeted the key conservation priorities of a particular species, ecosystem or place. As a consequence, in 2012, the offsets policy was amended so that 'direct' offsets are those actions that provide a 'measurable conservation gain for an impacted protected matter'.⁷

2.9 The EPBC Act Offsets Policy states that:

Conservation gain is the benefit that a direct offset delivers to the protected matter, which maintains or increases its viability or reduces any threats of damage, destruction or extinction.⁸

2.10 Some examples whereby a 'conservation gain' may be achieved include:

- improving existing habitat for the protected matter;
- creating new habitat for the protected matter;
- reducing threats to the protected matter;
- increasing the values of a heritage place; and/or
- averting the loss of a protected matter or its habitat that is under threat.⁹

2.11 The department submitted that, under the EPBC Act Offsets Policy, direct offsets may also include:

- the improvement and creation of new habitat through regeneration and rehabilitation activities across a landscape;
- implementing feral animal control programs that reduce predation of a particular threatened species;

5 EPBC Act Offsets Policy, p. 8.

6 Department of the Environment, *Submission 79*, p. 5.

7 Department of the Environment, *Submission 79*, p. 5; EPBC Act Offsets Policy, p. 8.

8 EPBC Act Offsets Policy, p. 8.

9 EPBC Act Offsets Policy, p. 8.

- improving the population of a species through captive breeding and release programs; or
- undertaking activities that improve the values of a heritage place or wetland of international importance, such as upstream management activities to improve estuarine water quality.¹⁰

2.12 Under the EPBC Act Offsets Policy, a minimum of 90 per cent of the offset requirements for any given impact must be met through direct offsets.¹¹

Indirect offsets or other compensatory measures

2.13 While many submissions refer to 'indirect offsets', the department advised that the term 'indirect offsets' is 'terminology that we have moved on from, because we tie things much more specifically to particular actions presently'.¹² The preferred term in the EPBC Act Offsets Policy is 'other compensatory measures' – that is, actions that do not directly offset the impacts on the protected matter but are anticipated to lead to benefits for the impacted protected matter, for example, funding for research or education programs.¹³ This report uses the term 'indirect offsets' interchangeably with 'other compensatory measures'.

2.14 Appendix A of the EPBC Act Offsets Policy outlines the criteria for research or educational programs under the policy.

Advanced offsets

2.15 The department noted that the EPBC Act Offsets Policy encourages the supply of offsets before an impact occurs, that is 'advanced offsets'. The EPBC Act Offsets Policy describes 'advanced offsets' as offsets for potential future use, transfer or sale, for example, protection or improvement of habitat for the conservation of a protected matter before an impact is undertaken.¹⁴

2.16 The EPBC Act Offsets Policy states that:

Advanced offsets are encouraged where practical, as a means to better manage the risks associated with the time delay in realising the conservation gain for a protected matter...

Advanced offsets must satisfy all requirements in this policy, including those relating to offsets being additional to other legislation and schemes...¹⁵

10 Department of the Environment, *Submission 79*, pp 5–6.

11 EPBC Act Offsets Policy, p. 8; Department of the Environment, *Submission 79*, p. 6.

12 Dr Kimberley Dripps, Deputy Secretary, Department of the Environment, *Committee Hansard*, 6 May 2014, p. 34.

13 EPBC Act Offsets Policy, p. 9; see also Department of the Environment, *Submission 79*, p. 6.

14 EPBC Act Offsets Policy, p. 9.

15 EPBC Act Offsets Policy, p. 9.

Offsets: the legal and policy framework

2.17 This section provides a brief background of the legal and policy framework relating to use of environmental offsets in federal environmental approvals in Australia.

Overview of the EPBC Act

2.18 Federal environmental approvals in Australia occur under the EPBC Act. The objects of the EPBC Act include:

- to provide for the protection of the environment, especially those aspects which are a matter of national environmental significance;
- to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
- to promote the conservation of biodiversity;
- to provide for the protection and conservation of heritage; and
- to promote a co-operative approach to the protection and management of the environment involving governments, the community, landholders and indigenous peoples.¹⁶

2.19 The EPBC Act also contains the following principles of ecologically sustainable development:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle, inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.¹⁷

2.20 In general, the EPBC Act requires a person taking an 'action' that is likely to have a significant impact on a matter of national environmental significance to obtain approval from the Minister for the Environment.

2.21 The nine matters of national environmental significance protected under the EPBC Act¹⁸ are:

16 EPBC Act, s. 3.

17 EPBC Act, s. 3A.

-
- world heritage properties;
 - national heritage places;
 - wetlands of international importance (listed under the Ramsar Convention);
 - listed threatened species and ecological communities;
 - migratory species protected under international agreements;
 - Commonwealth marine areas;
 - the Great Barrier Reef Marine Park;
 - nuclear actions (including uranium mines); and
 - water resources, in relation to coal seam gas and large coal mine developments.¹⁹

2.22 Actions that may have a significant impact on one of these matters are referred to the environment minister and, if they are considered to be a 'controlled action', undergo environmental assessment in accordance with the EPBC Act. The proponent of the action is responsible for the preparation of assessment documentation. At the completion of an assessment, the minister must decide whether to approve the action, and may approve the action subject to conditions. These conditions can include offsets.²⁰

Consideration of offsets under the EPBC Act

2.23 The department advised that environmental offsets have been included in conditions of approval since the EPBC Act was enacted in 2000, but their application has evolved and grown over the past decade. However, as water resources in relation to coal seam gas and large coal mine developments was added as a new matter of national environmental significance after the release of the EPBC Act Offsets Policy, the policy does not apply.²¹

2.24 Offsets are not required for all approvals under the EPBC Act—only where residual, unavoidable, impacts are considered to be significant.²² The department stated that:

18 Each matter of environmental significance is the subject of a subdivision (A–FB) of Chapter 2, Part 3, Division 1 of the EPBC Act, with any additional matters to be prescribed in Division 2.2 of Part 2 of the *Environment Protection and Biodiversity Conservation Regulations 2000*.

19 Department of the Environment, *What is protected under the EPBC Act?*, <http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/what> (accessed 1 May 2014). Note that other matters protected under the EPBC Act include the environment, where proposed actions involve Commonwealth land or Commonwealth agencies.

20 A flow chart of this process is contained in Figure 1 of the EPBC Act Offsets Policy, p. 13.

21 Department of the Environment, *Submission 79*, p. 1; see also Dr Kimberley Dripps, Deputy Secretary, Department of the Environment, *Committee Hansard*, 6 May 2014, p. 25.

22 EPBC Act Offsets Policy, p. 7; Department of the Environment, *Submission 79*, p. 3.

Environmental offsets are considered during the detailed environmental impact assessment process of an action undertaken through Part 8 of the EPBC Act, following the exploration of all potential avoidance and mitigation measures.²³

2.25 Offsets can also be considered as part of strategic assessments, which consider matters of national environmental significance at a landscape or regional scale, rather than on a project-by-project basis.²⁴

Commonwealth policy on environmental offsets

2.26 The development of the Offsets Policy was part of a package of reforms to the EPBC Act as part of the Government's response to the independent review (Hawke review) of the EPBC Act led by Dr Allan Hawke which reported in 2009.²⁵

2.27 The Hawke review contained a discussion of 'biobanking' schemes, and recommended, amongst other matters, that national biodiversity banking systems and standards be developed, and that the EPBC Act be amended to 'facilitate and promote the use of biobanking as part of project approvals'.²⁶ The Government agreed in principle to this recommendation and indicated that it would be releasing an Environmental Offsets Policy.²⁷

2.28 The EPBC Act Offsets Policy and Offsets Assessment Guide were finalised and released in October 2012, following 'detailed research and stakeholder consultation'.²⁸ The then Minister, the Hon Tony Burke, stated that the policy would 'better explain to proponents and the community how offsets are assessed and what would be acceptable under specific proposals'.²⁹

23 Department of the Environment, *Submission 79*, p. 2.

24 Department of the Environment, *Submission 79*, p. 3; see further Department of the Environment, *Strategic Assessments*, <http://www.environment.gov.au/topics/environment-protection/environment-assessments/strategic-assessments> (accessed 21 May 2014).

25 Department of the Environment, Water Heritage and the Arts, *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999* (Hawke review), October 2009, <http://www.environment.gov.au/legislation/environment-protection-and-biodiversity-conservation-act/epbc-review-2008> (accessed 21 May 2014).

26 Hawke review, October 2009, recommendation 7 and also pp 117–122.

27 Australian Government, *Australian Government Response to the Report of the Independent Review of the EPBC Act*, August 2011, p. 21, <http://www.environment.gov.au/resource/australian-government-response-report-independent-review-environment-protection-and> (accessed 21 May 2014).

28 Department of the Environment, *Submission 79*, p. 2.

29 The Hon Tony Burke MP, then Minister for Sustainability, Environment, Water, Population and Communities, 'Reforms better for the environment, better for business', *Media Release*, 24 August 2011, at: <http://www.environment.gov.au/minister/archive/burke/2011/mr20110824.html> (accessed 21 May 2014).

2.29 In addition to the Hawke review, the development of the EPBC Act Offsets Policy also considered the Business and Biodiversity Offsets Program (BBOP) *Standard on Biodiversity Offsets*, published in 2012.³⁰ The BBOP is an international collaboration between companies, financial institutions, government agencies and civil society organisations. The members are developing best practice in following the mitigation hierarchy (avoid, minimise, restore, offset) to achieve no net loss or a net gain of biodiversity.³¹

2.30 The department submitted that the EPBC Act Offsets Policy now 'articulates the role offsets play under the EPBC Act and how suitable offsets are determined' and the Offsets Assessment Guide is a metric that 'measures an offset against a relevant impact to determine whether the offsets proposal is suitable'.³² The policy 'provides additional detail and guidance regarding how the department determines what constitutes a suitable offset' and 'an increased focus on the conservation gain that is delivered by an offset'.³³

2.31 The EPBC Act Offsets Policy states that its five key aims are to:

1. ensure the efficient, effective, timely, transparent, proportionate, scientifically robust and reasonable use of offsets under the EPBC Act
2. provide proponents, the community and other stakeholders with greater certainty and guidance on how offsets are determined and when they may be considered under the EPBC Act
3. deliver improved environmental outcomes by consistently applying the policy
4. outline the appropriate nature and scale of offsets and how they are determined
5. provide guidance on acceptable delivery mechanisms for offsets.³⁴

Principles in the Commonwealth EPBC Act Offsets Policy

2.32 The EPBC Act Offsets Policy sets out a number of principles that are applied in determining the suitability of offsets. That is, suitable offsets must:

- deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment that is protected by national environmental law and affected by the proposed action;

30 Department of the Environment, *Submission 79*, p. 2.

31 Business and Biodiversity Offsets Programme, *Standard on Biodiversity Offsets*, http://www.forest-trends.org/documents/files/doc_3078.pdf and see also <http://bbop.forest-trends.org/> (accessed 29 May 2014).

32 Department of the Environment, *Submission 79*, p. 1.

33 Department of the Environment, *Q&A offsets under national environmental law*, June 2013, p. 2, <http://www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-faq.pdf> (accessed 21 May 2014).

34 EPBC Act Offsets Policy, p. 6.

- be built around direct offsets but may include other compensatory measures;
- be in proportion to the level of statutory protection that applies to the protected matter;
- be of a size and scale proportionate to the residual impacts on the protected matter;
- effectively account for and manage the risks of the offset not succeeding;
- be additional to what is already required, determined by law or planning regulations or agreed to under other schemes or programs;
- be efficient, effective, timely, transparent, scientifically robust and reasonable; and
- have transparent governance arrangements, including being able to be readily measured, monitored, audited and enforced.³⁵

Application of the policy

2.33 As noted above, the EPBC Act Offsets Policy can be applied in relation to all protected matters of national environmental significance, with the exception of water resources in relation to coal seam gas and large coal mine developments. The EPBC Act Offsets Policy applies to offsetting requirements in both terrestrial and aquatic (including marine) environments and for both project-by-project assessments and strategic assessments approved under the EPBC Act. The policy has effect for all referrals made since 2 October 2012, and applies to projects that were undergoing assessment and had not had a proposed approval decision made by 2 October 2012.³⁶

Offsets Assessment Guide

2.34 The EPBC Act Offsets Policy is accompanied by an Offsets Assessment Guide, which is described as a decision support tool used by regulators within the department 'to determine the suitability of offsets for listed threatened species and ecological communities'. The department noted that the offset assessment only applies to assessing offsets for threatened species and ecological communities, which form the majority of offset requirements under the EPBC Act.³⁷

2.35 The department went on to note that an important feature of the assessment guide is that it accounts for delays in the delivery of any conservation benefit.³⁸

Size and scale of offsets

2.36 The department stated that the EPBC Act Offsets Policy and guide were developed to 'systemise the judgments that go into determining suitable offsets'. The

35 EPBC Act Offsets Policy, p. 6.

36 Department of the Environment, *Submission 79*, p. 1.

37 Department of the Environment, *Submission 79*, pp 1 and 8.

38 Department of the Environment, *Submission 79*, p. 9.

size and scale of an offset under the EPBC Act are determined by a number of different variables, including:

- the overall size of the residual impact on the matter of national environmental significance;
- the specific attributes of the protected matter, or its habitat, being impacted, including its listing status;
- the quality or importance of the habitat or area attributes being impacted with regard to ongoing viability of the relevant matter of national environmental significance;
- the duration of any impacts, that is, permanent or temporary;
- the level of threat that a proposed offset site may be under;
- the time it may take for any management, rehabilitation or restoration activities to deliver a benefit; and
- the risk of any conservation gain not being delivered, including scientific certainty in relation to the proposed activities.³⁹

2.37 So, for example, the Offsets Assessment Guide uses data on the annual probability of extinction for different threatened species categories to ensure that 'the more threatened a species or community is the larger the offset requirement'.⁴⁰

Additionality

2.38 The department also noted that:

The principle of 'additionality' ensures that a particular offset cannot be used for more than one action, and that activities already required by law cannot be used to meet offset obligations under the EPBC Act...Environmental offsets must also be additional to what has been paid for under other schemes or programs on a pro rata basis, for example, an environmental grant program funded by the Australia Government.⁴¹

2.39 The department commented that additionality policy requirements do not preclude the recognition of state or territory offsets that may be suitable as offsets under the EPBC Act for the same action.⁴²

39 Department of the Environment, *Submission 79*, p. 7 and see also pp 8–10.

40 Department of the Environment, *Submission 79*, p. 7.

41 Department of the Environment, *Submission 79*, p. 8.

42 Department of the Environment, *Submission 79*, p. 8.

Past reviews and inquiries in relation to offsets

2.40 This section considers a number of reviews and inquiries that are relevant to the issue of offsets.

Inquiry into the operation of the EPBC Act

2.41 This committee has been considering the issue of environmental offsets for some time. In 2009, the committee undertook an inquiry into the operation of the EPBC Act and concerns were raised about the increasing use of environmental offsets under the EPBC Act. The committee noted that there was a 'degree of disquiet amongst submitters about offsets'. The committee recognised that:

...the use of offsets must only be applied as an adjunct to avoidance and mitigation. Offsets must not be used as a tool to get projects, which would otherwise be unacceptable, 'over the line'.⁴³

2.42 The committee recommended that government policy regarding the use of offsets for habitation conservation state that the use of offsets:

- is a last resort;
- must deliver a net environmental gain; and
- should not be accepted as a mitigating mechanism in instances where other policies or legislation (such as state vegetation protection laws) are already protecting the habitat proposed for use as an offset.⁴⁴

2.43 The Government agreed in part to this recommendation and stated that it would 'release a policy on environmental offsets to provide greater certainty for business and improve environmental outcomes'.⁴⁵

Inquiry into the effectiveness of threatened species and ecological communities' protection in Australia, August 2013

2.44 During its inquiry into the effective of threatened species and ecological communities, one of the two key issues raised with the committee relating to environmental assessment and approval processes was the use of offsets. Submitters raised the use of biodiversity offsets and expressed concern about their potential to adversely impact on threatened species and communities. It was noted that offsets are

43 Senate Standing Committee on Environment, Communications and the Arts, *The operation of the Environment Protection and Biodiversity Conservation Act 1999, First Report*, March 2009, p. 70.

44 Senate Standing Committee on Environment, Communications and the Arts, *The operation of the Environment Protection and Biodiversity Conservation Act 1999, First Report*, March 2009, pp 66–70.

45 Australian Government, *Australian Government Response to the Senate Standing Committee on Environment, Communications and the Arts Committee Report: Operation of the Environment Protection and Biodiversity Conservation Act 1999 (First, Second and Final Reports)*, September 2011, p. 6.

'not specifically addressed within the EPBC Act', but that their use 'has developed as an administrative practice over a number of years'.⁴⁶

2.45 The then Department of Sustainability, Environment, Water, Population and Communities (SEWPAC) told the committee that EPBC Act Offsets Policy was 'proving useful', by 'giving a clear guide as to how to calculate offsets and when, and how to determine where they would best deliver the broader ecological and biodiversity outcome'. This was compared to the past practice, which SEWPAC representatives described as 'ad hoc and project specific'.⁴⁷

2.46 In its report on the inquiry, the committee:

- welcomed the publication of a formal policy guiding the use of offsets under the EPBC Act, acknowledging evidence that it was designed to improve transparency around how offsets are determined;
- considered that offsets should be used with great caution where threatened species and ecological communities are involved; and
- noted with concern that SEWPAC is only now reviewing offsets that have been granted in the past.⁴⁸

2.47 The committee recommended that SEWPAC:

...conduct an audit and evaluation of the offsets granted under the *Environment Protection and Biodiversity Conservation Act 1999* to date, and make the results of this audit publicly available.⁴⁹

2.48 In additional comments to the report, the Australian Greens added:

We are also supportive of the proposal of an audit of all offsets granted under the EPBC Act to date – and we urge that this audit be independent, subject to public input, and result in a public register of offsets that is kept up to date. The Greens have serious concerns about the use of offsets to wave through otherwise inappropriate developments, and hope that a thorough audit will bring more credibility to the system, and clearly identify where offsetting should not be allowed.⁵⁰

2.49 In a related recommendation (given that offsets are often a condition of approval under the EPBC Act), the committee recommended that the Australian National Audit Office (ANAO) conduct an audit of monitoring of compliance with

46 Senate Environment and Communications References Committee, *Effectiveness of threatened species and ecological communities' protection in Australia*, August 2013, p. 185.

47 Senate Environment and Communications References Committee, *Effectiveness of threatened species and ecological communities' protection in Australia*, August 2013, p. 187.

48 Senate Environment and Communications References Committee, *Effectiveness of threatened species and ecological communities' protection in Australia*, August 2013, p. 196.

49 Senate Environment and Communications References Committee, *Effectiveness of threatened species and ecological communities' protection in Australia*, August 2013, p. 207.

50 Senate Environment and Communications References Committee, *Effectiveness of threatened species and ecological communities' protection in Australia*, August 2013, p. 207.

approval conditions under the EPBC Act.⁵¹ The committee notes that the ANAO has conducted this audit, and the report was published in June 2014.⁵²

2.50 The report identified a number of concerns with the Department of the Environment's compliance monitoring activities. The ANAO found that:

...compliance monitoring undertaken by the department has, generally, been insufficient to provide an appropriate level of assurance of proponents' ongoing compliance with their conditions of approval.⁵³

2.51 The ANAO further noted that:

The increasing workload on compliance monitoring staff over time has resulted in Environment adopting a generally passive approach to monitoring proponents' compliance with most approval conditions.⁵⁴

2.52 The ANAO made five recommendations to address the identified shortcomings in the department's compliance monitoring activities. The Department of the Environment agreed to all the recommendations. More specifically, the ANAO recommended that the department:

...develop a compliance intelligence capability and undertake periodic risk assessments; develop and implement annual compliance monitoring programs that target the greatest risk areas; update investigation procedures and improve the documentation of enforcement responses; and improve record-keeping and performance reporting related to the compliance monitoring function.⁵⁵

Productivity Commission research report on Major Project Development Assessment Processes

2.53 In December 2013, the Productivity Commission released a research report on its study to benchmark Australia's major project development assessment processes.⁵⁶ The study considered the extent to which major project development assessment processes across all levels of government affect the costs incurred by business, deliver good regulatory outcomes for the public and provide transparency and certainty to promote business investment.

51 Senate Environment and Communications References Committee, *Effectiveness of threatened species and ecological communities' protection in Australia*, August 2013, p. 155.

52 ANAO, 'Managing Compliance with EPBC Act 1999 Conditions of Approval', *Performance Audit Report No. 43 2013–14* (ANAO Audit Report), <http://www.anao.gov.au/Publications/Audit-Reports/2013-2014/Managing-Compliance-with-EPBC-Act-1999-Conditions-of-Approval> (accessed 19 June 2014).

53 ANAO Audit Report, p. 16.

54 ANAO Audit Report, p. 16.

55 ANAO Audit Report, p. 18 and see pp 26–28 for the recommendations in full.

56 Productivity Commission, *Major Project Development Assessment Processes*, Research Report, December 2013, <http://www.pc.gov.au/projects/study/major-projects> (accessed 20 May 2014).

2.54 The Commission considered offsets as part of Australia's project development assessment processes and made a number of relevant recommendations, including a review of environment assessment policies and practices, legislation to enable amendments to offsets, and monitoring and compliance activities for offsets:

RECOMMENDATION 8.2

COAG should commission an independent and public national review of environmental offset policies and practices to report by the end of 2014. The review should:

- survey the consistency of offset policy objectives against the principles of ecologically sustainable development
- critically assess the methodologies used for measuring and valuing offsets
- examine the role of market-based offset approaches, including offset funds
- consider the case for greater national consistency and linkages between offset regimes, including the potential for a single national scheme.

RECOMMENDATION 10.2

Governments should ensure legislation enables regulatory agencies to amend conditions and offsets, provided that there is a strong case, the proponent is consulted and the proposed change is publicly announced.

RECOMMENDATION 10.3

Regulators should produce an annual major projects compliance statement that reviews monitoring and compliance activities and identifies redundant or ineffective conditions on approvals.⁵⁷

Relationship between Commonwealth, state and territory offset regimes

2.55 The Commonwealth EPBC Act Offsets Policy explains the relationship between Commonwealth, state and territory legislation and the use of environmental offsets. The policy notes that:

The majority of proposed actions that need approval under the EPBC Act also require environmental approval from the relevant state or territory government before they can proceed.⁵⁸

2.56 The policy further states that:

...while there are many similarities between the environmental laws of the states and territories and the EPBC Act, they also differ in a fundamental way. The EPBC Act focuses on protecting matters of national

⁵⁷ Productivity Commission, *Major Project Development Assessment Processes, Research Report*, December 2013, <http://www.pc.gov.au/projects/study/major-projects> (accessed 20 May 2014).

⁵⁸ EPBC Act Offsets Policy, p. 23.

environmental significance and only protects the broader environment in certain circumstances. State and territory laws on the other hand usually protect the environment as a whole (for example air quality, noise pollution, water quality, biodiversity, and heritage values). These differing legislative objectives result in different assessment processes and can result in different offset requirements.⁵⁹

2.57 As a consequence of different assessment processes and offset requirements, it is noted that:

...some proponents may need to provide offsets under both state or territory laws and the EPBC Act for the same action. A state or territory offset will count toward an offset under the EPBC Act to the extent that it compensates for the residual impact to the protected matter identified under the EPBC Act.⁶⁰

'One stop shop' proposal

2.58 In addition, the Commonwealth Government is committed to delivering a 'one stop shop' for environmental approvals. The department stated that the delivery of a 'one stop shop' will accredit state and territory approval processes to meet environmental standards required by the Commonwealth.⁶¹ The 'one stop shop':

...will accredit state planning systems under national environmental law, to create a single environmental assessment and approval process for nationally protected matters. The one stop shop policy aims to simplify the approvals process for businesses, lead to swifter decisions and improve Australia's investment climate, while maintaining high environmental standards.⁶²

2.59 Part 5 of Chapter 3 of the EPBC Act makes provision for the Commonwealth environment minister to enter into bilateral agreements subject to conditions set out in the Act. The EPBC Act provides for two types of bilateral agreement:

- an assessment agreement – where state or territory processes are used to assess the environmental impacts of a proposed action, but the approval decision is made by the minister under the EPBC Act;⁶³ and
- an approval agreement – where actions that are subject to a bilaterally accredited management arrangement or authorisation process in place under

59 EPBC Act Offsets Policy, p. 23.

60 EPBC Act Offsets Policy, p. 23.

61 Department of the Environment, *Submission 79*, p. 13.

62 Department of the Environment, *'One stop shop' for environmental approvals*, <http://environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/one-stop> (accessed 23 May 2014).

63 EPBC Act, s. 47.

state or territory law do not require further assessment or approval under the EPBC Act.⁶⁴

2.60 The department explained that the 'one stop shop' will be achieved through a three-stage process with each willing state/territory. First, memoranda of understanding have been signed with all states and territories before assessment bilateral agreements will be agreed or updated. This will be followed by the negotiation of an approval bilateral agreement, which would 'enable states and territories to be the sole approver of projects'.⁶⁵

2.61 In terms of progress towards the 'one stop shop' proposal, memoranda of understanding have been signed with each state and territory. The Commonwealth Government has entered into assessment bilateral agreements with all state and territory governments.⁶⁶ Draft approval bilateral agreements have been published for Queensland and New South Wales, and were open for public comment until 13 June 2014.⁶⁷

State and territory regimes

2.62 State and territory legislation and policy also provides for use of environmental offsets in certain circumstances. These are outlined briefly for each state and territory below.

New South Wales

2.63 The public consultation for the *Draft NSW Biodiversity Offsets Policy for Major Projects* closed on 9 May 2014. The policy will apply to state significant development and state significant infrastructure under the *Environmental Planning and Assessment Act 1979* (NSW). The policy, which is accompanied by a Biodiversity Offsets Credit Calculator, aims to 'strike an effective balance between the needs of proponents, communities and the environment' by:

- providing clear, efficient and certain guidance for stakeholders;
- improving outcomes for the environment and communities; and
- providing a practical and achievable offset scheme for proponents.⁶⁸

64 EPBC Act, s. 29, s. 46.

65 Department of the Environment, *Submission 79*, p. 13.

66 Copies of the current assessment bilateral agreements may be found on the website of the Department of the Environment: <http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements> (accessed on 04/06/2014). Note that Queensland and New South Wales have recently entered into new assessment bilateral agreements. The ACT, Northern Territory, South Australia and Western Australia have published new draft assessment agreements.

67 See further Department of the Environment, *'One stop shop' for environmental approvals*, <http://environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/one-stop> (accessed 23 May 2014).

68 Environment and Heritage NSW, *Draft NSW Biodiversity Offsets Policy for Major Projects*, <http://www.environment.nsw.gov.au/biodivoffsets/biooffsetspol.htm> (accessed 21 May 2014).

2.64 For other projects, the 'Principles for the use of biodiversity offsets in NSW' continue to apply and provide a framework for assessing offset proposals for other approvals under the *Environmental Planning and Assessment Act 1979*.⁶⁹

2.65 In NSW, formal offset arrangements are already a feature of:

- the NSW Biodiversity Banking and Offsets Scheme, introduced in 2007;⁷⁰
- land-use planning through biodiversity certification of land under the *Threatened Species Conservation Amendment (Biodiversity Certification) Act 2010* (NSW);⁷¹ and
- the regulation of native vegetation under the *Native Vegetation Act 2003*.⁷²

Queensland

2.66 On 23 May 2014, the Queensland Parliament passed the Environmental Offsets Bill 2014⁷³ which had the purpose of coordinating Queensland's environmental offsets framework. The five separate previous Queensland offsets policies are to be replaced with a single Queensland offsets policy.⁷⁴

Victoria

2.67 In Victoria, an offset can be required if a permit to remove native vegetation is granted. Offset requirements are determined in accordance with the *Permitted clearing of native vegetation – Biodiversity assessment guidelines*. A 'native vegetation gain scoring manual' contains standards for first- and third-party offsets.⁷⁵

69 Environment and Heritage NSW, *OEH principles for the use of biodiversity offsets in NSW*, <http://www.environment.nsw.gov.au/biodivoffsets/oehoffsetprincip.htm> (accessed 21 May 2014).

70 See further Environment and Heritage NSW, *Biobanking*, <http://www.environment.nsw.gov.au/biobanking/index.htm> (accessed 21 May 2014).

71 Environment and Heritage NSW, *Biocertification*, <http://www.environment.nsw.gov.au/biocertification/index.htm> (accessed 21 May 2014).

72 Environment and Heritage NSW, *Biodiversity Offsets*, <http://www.environment.nsw.gov.au/biodivoffsets/index.htm> (accessed 21 May 2014).

73 <https://www.legislation.qld.gov.au/Bills/54PDF/2014/EnvironmentalOffsetsB14.pdf>

74 Queensland Minister for Environment and Heritage Protection, 'New offset legislation delivers for Queensland's environment', *Media statement*, 23 May 2014, see also <http://statements.qld.gov.au/Statement/2014/5/23/new-offset-legislation-delivers-for-queenslands-environment> (accessed 28 May 2014); see also Clayton Utz, 'Queensland's single State environmental offsets policy', 6 March 2014, http://www.claytonutz.com/publications/edition/6_march_2014/20140306/queenslands_single_state_environmental_offsets_policy.page (accessed 28 May 2014); and Department of Environment and Heritage Protection, *Environmental offsets*, <https://www.ehp.qld.gov.au/management/environmental-offsets/environmental-offsets.html> (accessed 21 May 2014).

75 Victorian Department of Environment and Primary Industries, *Native vegetation offsets* <http://www.depi.vic.gov.au/environment-and-wildlife/biodiversity/native-vegetation/native-vegetation-permitted-clearing-regulations/native-vegetation-offsets> (accessed 1 May 2014).

2.68 Victoria also has a 'BushBroker' scheme which 'helps landowners to generate native vegetation credits by permanently protecting and managing their native vegetation and assists permit holders clearing native vegetation to find a matching third party offset site'.⁷⁶

South Australia

2.69 In South Australia, the Department of Environment, Water and Natural Resources (DEWNR) and the Native Vegetation Council assess all applications to clear native vegetation in line with the *Native Vegetation Act 1991* (SA). The DEWNR website states that, in most situations, when a clearance application is approved, conditions are attached to ensure that the clearance is offset by restoration work that provides a 'significant environmental benefit'.⁷⁷ It also states that the government is 'committed to protecting native vegetation as part of a broader nature conservation strategy' which includes the No Species Loss strategy.⁷⁸

Western Australia

2.70 The Western Australian Government's Environmental Offsets Policy has been in place since September 2011. The policy explains that:

Environmental offsets are most often applied to proposals subject to environmental impact assessment and as a condition of permits for clearing of native vegetation under the *Environmental Protection Act 1986*, but may be considered in relation to other legislation, including planning developments under the *Planning and Development Act 2005* and mining proposals under the *Mining Act 1978*.⁷⁹

Tasmania

2.71 In Tasmania, the website of the Department of Primary Industries, Parks, Water and Environment states that development planning should consider the mitigation hierarchy (avoid, minimise, mitigate, offset), and that 'where impacts on natural values are unavoidable an appropriate form of offset may be required from the proponent'. Any proposed offsets must be developed in consultation with DPIPWE

76 See further Victorian Department of Environment and Primary Industries, *Bushbroker*, <http://www.depi.vic.gov.au/environment-and-wildlife/biodiversity/native-vegetation/native-vegetation-permitted-clearing-regulations/native-vegetation-offsets/bushbroker> (accessed 5 June 2014).

77 South Australian Department of Environment, Water and Natural Resources, *Significant environmental benefit*, http://www.environment.sa.gov.au/managing-natural-resources/Native_vegetation/Managing_native_vegetation/Significant_environmental_benefit (accessed 5 June 2014).

78 South Australian Department of Environment, Water and Natural Resources, *Native vegetation*, http://www.environment.sa.gov.au/managing-natural-resources/Native_vegetation; see also *No species loss*, http://www.environment.sa.gov.au/managing-natural-resources/Ecosystem_conservation/No_species_loss (accessed 5 June 2014).

79 WA Environmental Protection Authority, *WA Environmental Offsets Policy*, p. 1, <http://www.epa.wa.gov.au/EPADocLib/WAEnvOffsetsPolicy-270911.pdf> (accessed 21 May 2014).

and will be assessed against the principles outlined in their General Offset Principles.⁸⁰

Northern Territory

2.72 The Northern Territory's Environmental Assessment Act makes no provision for imposition of an environmental offset, or social or other community benefit, as a part of an assessment or approval process. The Northern Territory Environment Protection Authority provides 'Guidelines on environmental offsets and associated approval conditions' which are 'confined to generic matters' rather than 'more proposal-specific issues'.⁸¹

Australian Capital Territory

2.73 The ACT Government is currently developing an environmental offsets policy. Offsets have also been identified in the ACT as part of approvals under the EPBC Act. Some of these offsets fall on land managed by the ACT Government.⁸²

80 <http://dipwe.tas.gov.au/Documents/General-Offset-Principles.pdf> (accessed 1 May 2014).

81 Northern Territory Environment Protection Authority, *Guidelines on environmental offsets and associated approval conditions*, http://www.ntepa.nt.gov.au/_data/assets/pdf_file/0008/349937/guideline_assessment_environmental_offsets.pdf (accessed 1 May 2014).

82 ACT Department of Territory and Municipal Services, Environmental Offsets, http://www.tams.act.gov.au/parks-recreation/parks_and_reserves/environmental-offsets (accessed 18 June 2014); see also Conservation Council ACT Region, *Submission 78*, p. 2.