

# Chapter 4

## Processes for developing environmental offsets

4.1 While Chapter 3 has explored some of the principles underlying environmental offsets, this chapter examines some of the key issues raised in relation to the processes for the development and assessment of environmental offsets in federal environmental approvals, such as:

- timing of approvals in relation to offsets;
- the need for greater transparency;
- methods for assessing and calculating offsets; and
- the need for more strategic and consistent approaches to environmental offsets.

4.2 Many of these issues relate to principle 7 in the EPBC Act Offsets Policy, which states that suitable offsets must be 'efficient, effective, timely, transparent, scientifically robust and reasonable'.<sup>1</sup>

### Timing of approvals in relation to offsets

4.3 The EPBC Act Offsets Policy states that:

Offsets must also be timely. That is, an offset should be implemented either before, or at the same point in time as, the impact arising from the action. This timing is distinct from the time it will take an offset to yield a conservation gain for the protected matter, which may be a point in the future.<sup>2</sup>

4.4 As explained in Chapter 2, the Department of the Environment (the department) submitted that environmental offsets are considered during the detailed environmental impact assessment process, following the exploration of all potential avoidance and mitigation measures. Offsets may then be included as part of the conditions of approval for a particular action, where residual, unavoidable impacts are considered significant.<sup>3</sup>

4.5 However, several submitters and witnesses raised concerns in relation to the timing of the consideration of offsets. As outlined in Chapter 3, there were concerns that avoidance and mitigation measures aren't being fully considered, and offsets are used as a first, rather than last, resort. Additional concerns were raised that approvals are being given prior to offsets being fully identified and/or secured.

4.6 Submitters and witnesses stressed that there is a need to ensure that offsets are fully identified and in place earlier in the process, and in particular, prior to approval

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1 EPBC Act Offsets Policy, p. 6.

2 EPBC Act Offsets Policy, p. 23.

3 Department of the Environment, *Submission 79*, pp 2–3; EPBC Act Offsets Policy, p. 7.

being given.<sup>4</sup> For example, Mr Des Boyland of the Wildlife Preservation Society of Queensland (Wildlife Queensland) told the committee that 'offsets should be clearly identified at the time approval is given for the development'.<sup>5</sup>

4.7 However, Mr Brendan Sydes of Environmental Justice Australia, told the committee that conditions on approval are often 'framed around offsets that are yet to be found and yet to be delivered'. Mr Sydes suggested that the process should be changed to 'to insist that the offset actually be there and secured and available prior to the activity occurring'.<sup>6</sup>

4.8 Ms Georgina Woods of the Lock the Gate Alliance described the granting of approvals prior to securing offsets as a 'systematic and repeated failure of the offset policy', suggesting that:

...the signing of an approval by the minister should be the last thing that happens before an impact occurs, before a development begins. But increasingly approvals are given with elaborate conditions that then entail 18 months, two years of backroom negotiation between the Department of the Environment and the proponent of the development to continue massaging the impact.<sup>7</sup>

4.9 Lock the Gate Alliance also pointed to comments from the UNESCO Monitoring Mission for the Great Barrier Reef World Heritage Area that in relation to offsets from projects impacting on the World Heritage Area:

Notwithstanding the mission's concern...regarding the principle of offsets, it is not clear why the offset plan is not to be prepared and approved before dredging is authorised to proceed.<sup>8</sup>

4.10 The Friends of Ken Hurst Park submitted that 'an environmental offset must be implemented or commenced prior to any development occurring'.<sup>9</sup> Friends of Grasslands agreed that offset programs should be in place 'in advance of any development commencing':

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4 See, for example, Ms Georgina Woods, Policy Coordinator, Lock The Gate Alliance, *Committee Hansard*, 5 May 2014, pp 5–6; Mr Brendan Sydes, Chief Executive Officer, Environmental Justice Australia, *Committee Hansard*, 5 May 2014, p. 18; Ms Sue Higginson, Principal Solicitor, NSW, ANEDO, *Committee Hansard*, 5 May 2014, p. 34; Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth Australia, *Committee Hansard*, 7 May 2014, p. 43; Friends of Grasslands, *Submission 13*, p. 2; Greenpeace, *Submission 61*, p. 1.

5 Mr Des Boyland, Policies and Campaigns Manager and Secretary, Wildlife Queensland, *Committee Hansard*, 7 May 2014, p. 20.

6 Mr Brendan Sydes, Chief Executive Officer, Environmental Justice Australia, *Committee Hansard*, 5 May 2014, p. 18.

7 Ms Georgina Woods, Policy Coordinator, Lock the Gate Alliance, *Committee Hansard*, 5 May 2014, p. 6 and see also p. 2.

8 Lock the Gate, *Submission 20*, p. 6.

9 Friends of Ken Hurst Park, *Submission 65*, p. 7.

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Unfortunately, the reverse is generally true; offsets may be decided at the time of the decision to proceed with the development, in some cases requiring only that a nebulous offset package be developed in the future...<sup>10</sup>

4.11 Greenpeace Australia Pacific (Greenpeace) agreed that offsets 'should be established prior to approval of destructive activities'.<sup>11</sup> Mr Walters from Greenpeace expressed concern that 'offsets are often developed after the approval is given under the EPBC Act' and that approval conditions often require an offset plan or strategy to be developed after the EPBC approval is given.<sup>12</sup>

4.12 Indeed, a commonly raised concern was that approvals often only require an offsets plan or strategy to be developed, rather the offset itself to be identified and secured.<sup>13</sup> For example, the National Environmental Law Association (NELA) submitted that approval for clearing for the Galilee Coal project (discussed further in Appendix 4) was 'conditional upon completion of the Offsets Management Plan, but not on securing the offsets themselves, which could be done up to two years after the area was destroyed'.<sup>14</sup>

4.13 Submitters and witnesses gave other examples of development approvals being given without the offsets needing to be in place prior to the development commencing.<sup>15</sup> This included the Abbot Point development, discussed further in Appendix 6, where 'the condition of approval on an offset was to prepare an offset strategy'.<sup>16</sup>

4.14 The Whitehaven Coal Maules Creek Project, outlined in further detail at Appendix 3, was also highlighted, because it was suggested that the approval was worded in such a way that there was no need for offset conditions to be satisfied before clearing commenced.<sup>17</sup>

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10 Friends of Grasslands, *Submission 13*, p. 2.

11 Greenpeace, *Submission 61*, p. 1.

12 Mr Adam Walters, Research and Investigations Coordinator, Greenpeace, *Committee Hansard*, 5 May 2014, p. 22 and see also p. 27.

13 See, for example, NELA, *Submission 31*, p. 6; Friends of the Earth Australia, *Submission 58*, p. 6; Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth Australia, *Committee Hansard*, 7 May 2014, p. 40; Mr Jan Arens, President, Gladstone Conservation Council, *Committee Hansard*, 7 May 2014, p. 51.

14 NELA, *Submission 31*, p. 6.

15 See, for example, Friends of Grasslands, *Submission 13*, p. 2; Lock the Gate Alliance, *Submission 20*, p. 14; NELA, *Submission 31*, pp 5–6; Birdlife Australia, *Submission 77*, p. 6; Ms Georgina Woods, Policy Coordinator, Lock The Gate Alliance, *Committee Hansard*, 5 May 2014, p. 5.

16 Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth Australia, *Committee Hansard*, 7 May 2014, p. 40; see also Friends of the Earth Australia, *Submission 58*, pp 6–7.

17 For example, Lock the Gate Alliance, *Submission 20*, p. 12; Mr Philip Spark, President, Northern Inland Council for the Environment, *Committee Hansard*, 5 May 2014, p. 56; Ms Sue Higginson, Principal Solicitor, NSW, ANEDO, *Committee Hansard*, 5 May 2014, p. 34.

4.15 NELA noted that, for the Curtis LNG project (discussed further at Appendix 5), no deadline was imposed for actually securing offsets.<sup>18</sup> Mr Jan Arens, President of the Gladstone Conservation Council, further noted that, in the case of a project where a condition of approval was to develop an offset plan which was required to be made public, he had not been able to access it.<sup>19</sup> Transparency issues relating to offsets are discussed further later in this chapter.

4.16 However, the NSW Minerals Council disputed this evidence. Ms Claire Doherty argued that offsets are developed 'while you are developing your approval and they get assessed...It is unusual to get to the end of a project, get an approval and not have any of your offsets identified'.<sup>20</sup> Ms Doherty also explained that:

Usually, by the time you get your approval, you have done a lot of work to either purchase those offset properties or have in place mechanisms like options so that you know that you are going to be able to purchase those offsets. If your approval is conditioned to allow you further time to look for offsets, it is usually in very low risk areas.<sup>21</sup>

4.17 Ms Melanie Stutsel from the Minerals Council of Australia told the committee that many companies 'actually work on identifying potential offset locations even prior to referral of projects' under the EPBC Act. She further advised that they would 'actually vary their referral if they did not consider that they would be in an appropriate position to secure the offsets'.<sup>22</sup>

4.18 At the same time, some submitters and witnesses expressed support for the 'staging' of offsets. For example, QGC submitted that:

Securing agreements for land based offsets are lengthy processes and the complications involved should be recognised in offsets frameworks...delivering offsets at the operational stage rather than at the application stage of a project is preferred, after impacts have been quantified. This gives a more accurate indication of the residual significant impact and therefore the required offset.<sup>23</sup>

4.19 Similarly, the Minerals Council suggested that:

...long-term development plans should be supported by alternative arrangements for delivery of offsets over a greater time scale. Specifically, staging of offsets enables proponents to deliver offsets for actual

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18 NELA, *Submission 31*, p. 6.

19 Mr Jan Arens, President, Gladstone Conservation Council, *Committee Hansard*, 7 May 2014, p. 51.

20 Ms Claire Doherty, Director, Community Development, NSW Minerals Council, *Committee Hansard*, 6 May 2014, p. 5.

21 Ms Claire Doherty, Director, Community Development, NSW Minerals Council, *Committee Hansard*, 6 May 2014, p. 2.

22 Ms Melanie Stutsel, Director, Health, Safety, Environment and Community Policy, Minerals Council of Australia, *Committee Hansard*, 6 May 2014, p. 5.

23 QGC, *Submission 74*, p. 2.

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disturbances rather than estimated impacts at the EIS [Environmental Impact Stage] stage.<sup>24</sup>

4.20 However, as is discussed in Chapter 5, it was suggested that this failure to fully identify and secure offsets prior to approval being granted has led to the renegotiation of the conditions of approval in some cases.<sup>25</sup>

4.21 A representative of the department confirmed that approvals are often constructed to allow for a 'staged provision of offsets where that is an appropriate thing from an ecological perspective':

What we usually do with the offset strategies that are subsequent to the initial approval is require them as a condition precedent for moving forward with the project—not always, but that is the general approach.<sup>26</sup>

4.22 A representative of the department further explained that, depending on the individual project, the conditions of approval normally contain 'a requirement of when the proponent is required to develop and have approved an offset strategy for their proposal. Quite often that is tied to the date of commencement'. He also noted that:

...we do not have a view as to which piece of land is secured, as long as the same environmental outcome occurs. That is why we write our conditions that way, understanding that yes, there is that remaining uncertainty with respect to what specific land will be secured.<sup>27</sup>

4.23 Another representative further advised that:

The intention of the EPBC Act is, among other things, to ensure that, where development is approved and will have an environmental impact, that impact is acceptable to the community. It is not the intention of the act to slow down the development of the economy or to impose costs on business at inappropriate stages of the cycle...<sup>28</sup>

4.24 She concluded that:

...as long as the ecological impact is managed in a timely manner, it is reasonable for a proponent to expect to progress with their project while they are simultaneously doing their work on their offset strategy or, indeed, providing their offsets.<sup>29</sup>

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24 Minerals Council of Australia, *Submission 35*, p. 7.

25 Ms Georgina Woods, Policy Coordinator, Lock the Gate Alliance, *Committee Hansard*, 5 May 2014, p. 6.

26 Dr Kimberley Dripps, Deputy Secretary, Department of the Environment, *Committee Hansard*, 6 May 2014, p. 29.

27 Mr Dean Knudson, First Assistant Secretary, Environment, Assessment and Compliance Division, Department of the Environment, *Committee Hansard*, 6 May 2014, pp 27 and 30.

28 Dr Kimberley Dripps, Deputy Secretary, Department of the Environment, *Committee Hansard*, 6 May 2014, p. 29.

29 Dr Kimberley Dripps, Deputy Secretary, Department of the Environment, *Committee Hansard*, 6 May 2014, p. 29.

4.25 The department acknowledged in its submission that its compliance audits have identified issues with delays in securing offsets, and in particular in 'ensuring protective mechanisms are attached to the title of a property in a timely fashion':

There are a number of causes of these delays, including the complexities and sensitivities of negotiating with land owners for the protection and management of areas as offsets as well as the legal complexities of registering a restrictive covenant on title.<sup>30</sup>

4.26 The department identified this as an area where there is opportunity for improvement, including 'for the Commonwealth to work with states and territories to streamline covenanting arrangements to achieve better outcomes for approval holders and the environment'.<sup>31</sup>

### ***Failure to find and/or secure offsets***

4.27 However, submitters and witnesses noted that in situations where approval is given to proceed with a project without the offsets in place and secured prior to the development commencing, there is a risk that offsets may not be found, or be able to be secured, to meet the requirements in the conditions of the approval.<sup>32</sup> Indeed, the committee received evidence of examples where conditions of approval were being amended because, for example, the offsets that were required by the approval have been unable to be secured.<sup>33</sup>

4.28 Ms Higginson, Principal Solicitor with the Australian Network of Environmental Defender's Offices (ANEDO) noted that, in this situation, 'there are some provisions in the EPBC Act to remedy' the situation 'by either penalty to the proponent, modification of the approval or ultimately revoking the approval'. However, as she pointed out, there is not much point in revoking the approval if a development has already occurred.<sup>34</sup>

4.29 Mr Sydes of Environmental Justice Australia explained that the difficulty in finding suitable offsets 'is a reflection of the fact that...you are dealing with rare and threatened species'. He noted that the 'difficulty of finding offsets puts enormous pressure on the offsetting system' which results in calls to make the regime more

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30 Department of the Environment, *Submission 79*, p. 14. The committee notes also that the department is in discussions with QGC about delays in relation to the Curtis LNG Project, outlined further in Appendix 5.

31 Department of the Environment, *Submission 79*, p. 14.

32 See, for example, Mr Brendan Sydes, Chief Executive Officer, Environmental Justice Australia, *Committee Hansard*, 5 May 2014, pp 18–19; Ms Sue Higginson, Principal Solicitor, NSW, ANEDO, *Committee Hansard*, 5 May 2014, p. 34; Friends of Grasslands, *Submission 13*, p. 2; Lock the Gate Alliance, *Submission 20*, p. 10.

33 See, for example, Ms Georgina Woods, Policy Coordinator, Lock The Gate Alliance, *Committee Hansard*, 5 May 2014, p. 5.

34 Ms Sue Higginson, Principal Solicitor, NSW, ANEDO, *Committee Hansard*, 5 May 2014, p. 34.

flexible, and in turn 'undermines the integrity of the scheme'. He argued that 'something has to give':

...where approval is granted conditional on finding an offset some time later on, only to find later on, despite the best will in the world, that offsets are just not available...the commitment has already been made and the development of the project has already started. If you genuinely cannot find an offset, then you will need to introduce some sort of flexibility into the conditions, and that is often to the detriment of the objective behind granting the offset in the first place...<sup>35</sup>

4.30 However, Ms Doherty from the NSW Minerals Council argued that 'if your approval is conditioned to allow you further time to look for offsets, it is usually in very low risk areas'.<sup>36</sup> She suggested that, in the case of some of the examples put forward in this context, the modifications were to allow more time 'in order to get their legal mechanism in place, but that has not stopped them going ahead and implementing their biodiversity offset strategy'.<sup>37</sup>

4.31 Dr Anita Foerster and Professor Jan McDonald submitted that:

...where there is evidence from monitoring to suggest that initial predictions about the adequacy of offset arrangement are in fact inaccurate, proponents should be required to secure additional offsets. Arrangements should be made for the establishment of environmental bonds or other forms of financial guarantee to facilitate such an approach.<sup>38</sup>

4.32 In response to questioning as to what happens if an offset approval condition is unable to met due to the unavailability of a suitable offset, a representative of the department advised that 'that circumstance is unlikely to arise, due to the extensive analysis that is done before the project is approved in the first place'.<sup>39</sup>

## Transparency

4.33 Another key concern raised in evidence was the need for greater transparency in relation to environmental offsets. The EPBC Act Offsets Policy states that, in assessing the suitability of an offset, government decision-making will be 'conducted in a consistent and transparent manner'.<sup>40</sup> The department submitted that:

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35 Mr Brendan Sydes, Chief Executive Officer, Environmental Justice Australia, *Committee Hansard*, 5 May 2014, pp 18–19.

36 Ms Claire Doherty, Director, Community Development, NSW Minerals Council, *Committee Hansard*, 6 May 2014, p. 2.

37 Ms Claire Doherty, Director, Community Development, NSW Minerals Council, *Committee Hansard*, 6 May 2014, p. 8.

38 Dr Anita Foerster and Professor Jan McDonald, *Submission 23*, p. 7.

39 Dr Kimberley Dripps, Deputy Secretary, Department of the Environment, *Committee Hansard*, 6 May 2014, p. 33 and see also p. 34.

40 EPBC Act Offsets Policy, p. 6.

Where a project proceeds to assessment and potentially requires the provision of offsets, this information is published along with other relevant assessment documentation for public comment. Public comments are then addressed and summaries provided to decision makers to inform any approval decisions.<sup>41</sup>

4.34 The department submitted that 'any requirements for delivery of offsets are attached as conditions of approval' and that:

Certain types of conditions attached to approvals require the consent of the proponent prior to being attached, and these can include offset conditions. This requires the Department of the Environment to consult closely with project proponents on prospective offset requirements.<sup>42</sup>

4.35 However, submitters and witnesses argued that there could be improved transparency, including public consultation and reporting in both the development and implementation of offsets.<sup>43</sup> Many were concerned that the approach of requiring offsets to be developed after approval (as discussed in the previous section) undermines the transparency of the process. It was suggested that often this means that offsets are negotiated between the department and proponent, with little opportunity for public input or scrutiny.<sup>44</sup>

4.36 Greenpeace, for example, complained about a lack of transparency of negotiations between the department and the proponents in relation to offsets. Mr Walters from Greenpeace noted that the current approach makes it difficult to scrutinise the process due to a 'lack of transparency':

...the offsets are often developed after the approval is given under the EPBC Act. So the approval document says that the offset plan must be developed; it does not really allow us to fully scrutinise these projects. So there may very well be cases where there has been some good practice, but we would not be aware of it because the actual offsetting plan is developed—at least the final version is developed—after the EPBC approval is given.<sup>45</sup>

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

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

43 See, for example, Mr Jan Arens, President, Gladstone Conservation Council, *Committee Hansard*, 7 May 2014, p. 53; Mr Geoffrey Penton, Chief Executive, Queensland Murray-Darling Committee, *Committee Hansard*, 7 May 2014, p. 7; Regional Development Australia Hunter, *Submission 11*, p. 5; Urban Bushland Council WA, *Submission 53*, p. 4; Watson Community Association, *Submission 54*, p. 4; Dr Yung En Chee, *Submission 57*, p. 11; Conservation Council ACT region, *Submission 78*, pp 2–3.

44 See, for example, Ms Georgina Woods, Policy Coordinator, Lock the Gate Alliance, *Committee Hansard*, 5 May 2014, p. 6; Watson Community Association, *Submission 54*, p. 4; Friends of the Earth, *Submission 58*, p. 6.

45 Mr Adam Walters, Research and Investigations Coordinator, Greenpeace, *Committee Hansard*, 5 May 2014, p. 22.

4.37 Ms Woods of the Lock the Gate Alliance similarly expressed concern that that work is done and negotiations undertaken between bureaucrats and proponents 'outside of the public's view':

...it is only scrutiny that protects the process—that gives the process any transparency and rigour. If it is allowed to go on behind closed doors, as it so often is, it seems to be the case that there is no check or balance to ensure that the environment is being protected.<sup>46</sup>

4.38 In the same vein, Friends of the Earth Australia agreed that, in terms of the process used to develop and assess proposed offsets, 'basic tenets of transparency and accountability aren't being met'. Friends of the Earth described the practice of imposing a condition to develop an offsets strategy or plan post-approval as 'black box politics'. They argued that this approach means that the public are excluded from participating in this process. Mr Tager from Friends of the Earth Australia explained that work that 'needs to be done up-front', and made subject to public consultation, 'is now being moved to the back end of the process where it is in-house behind closed doors'.<sup>47</sup>

4.39 Mr Walters from Greenpeace noted that, in relation to one particular project that is in the final stages of EPBC approval:

...the offsetting properties that are being proposed there, the actual locations of those properties, are considered commercial information and are being withheld. There is absolutely no scrutiny possible of the quality of those offsets.<sup>48</sup>

4.40 The committee notes that the department advised in its submission that, in relation to the Curtis LNG Plant (discussed further in Appendix 5):

As the proposed offset is under commercial negotiation involving private landholders and the Queensland Government, it is currently classified as commercial-in-confidence at the request of the approval holders. The department is advised that commercial negotiations are expected to be completed by June 2014.<sup>49</sup>

4.41 Some witnesses and submitters further complained that offset plans and reports are not being made publicly available, even when they are finalised. For example, the ACT Conservation Council lamented the lack of public access to offsets

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46 Ms Georgina Woods, Policy Coordinator, Lock the Gate Alliance, *Committee Hansard*, 5 May 2014, p. 6.

47 Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth Australia, *Committee Hansard*, 7 May 2014, p. 40; see also Friends of the Earth Australia, *Submission 58*, pp 6–7.

48 Mr Adam Walters, Research and Investigations Coordinator, Greenpeace, *Committee Hansard*, 5 May 2014, p. 23; see also p. 27.

49 Department of the Environment, *Submission 79*, Attachment A, p. 11.

management plans or reports required in relation to Commonwealth approvals under the EPBC Act.<sup>50</sup>

4.42 Indigenous groups also called for increased public consultation in relation to the development of offsets. For example, the Indigenous Advisory Committee called for improved engagement of Indigenous peoples in developing offsets proposals.<sup>51</sup> The Gomeroi Traditional Custodians noted that the EPBC Act requires consultation with Indigenous peoples, but submitted that they 'cannot see this consultation in practice'.<sup>52</sup>

4.43 Ms Pethybridge of the Indigenous Land Corporation agreed:

...there is not a whole lot of consultation with Indigenous people in the design and development of offsets and the identification of potential offsets projects...they should be participating in those steps in that process, because there is a lot of value that they can add and a lot of opportunities that can be realised by Indigenous people in that space.<sup>53</sup>

4.44 The Department of Environment advised that it has been 'working constructively' with the Indigenous Advisory Committee to improve consultation with Indigenous peoples through environmental assessment processes, including consultation about the delivery and appropriate use of offsets.<sup>54</sup>

4.45 Other submissions also identified the difficulties in identifying areas that have already been used as offsets, and discussed the need for a public register of offsets. This is discussed further in the next chapter.

4.46 In contrast, other submitters noted that the publicly available EPBC Act Offsets Policy and accompanying Offsets Assessment Guide have made the development of offsets, and in particular the associated calculations and assumptions, more transparent and predictable.<sup>55</sup> For example, the Environmental Decisions Group submitted that the EPBC Act Offsets Policy 'is one of few that is accompanied by a transparent and logical accounting approach'.<sup>56</sup>

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50 Conservation Council ACT region, *Submission 78*, pp 2–3; see also, for example, Friends of the Earth Australia, *Submission 58*, pp 6–7.

51 Indigenous Advisory Committee, *Submission 82*, p. 6; see also Indigenous Land Corporation, *Submission 19*, p. 1; Gomeroi Traditional Custodians, *Submission 93*, p. 4.

52 Gomeroi Traditional Custodians, *Submission 93*, p. 10.

53 Ms Emma Pethybridge, Manager, Environment, Carbon and Heritage, Indigenous Land Corporation, *Committee Hansard*, 7 May 2014, p. 35.

54 Department of the Environment, *Submission 79*, p. 14.

55 See, for example, Dr Martine Maron, *Submission 7*, p. 2; Minerals Council of Australia, *Submission 35*, pp 5–6; Dr Su Wild-River, *Submission 38*, p. 5; Environmental Decisions Group, *Submission 50*, p. 3; Business Council of Australia, *Submission 81*, p. 1; Dr Philip Gibbons, *Committee Hansard*, 6 May 2014, p. 18.

56 Environmental Decisions Group, *Submission 50*, p. 3.

4.47 David Hogg agreed that the Offsets Assessment Guide and 'calculation process is easy to use and is transparent, making it relatively easy for other people to review the offset calculations and test their own variations'.<sup>57</sup>

4.48 Witnesses from the Minerals Council of Australia concurred that the EPBC Act Offsets Policy and guide have resulted in 'much clearer policy' and greater transparency around the science being used for offset determinations.<sup>58</sup> Those witnesses also suggested that this had resulted in greater certainty, as well as better coordination and less fragmentation of offsets.<sup>59</sup>

4.49 A representative of the department told the committee that 'the development of the EPBC Act environmental offsets policy and Offsets Assessment Guide represents substantial progress in establishing robust policy settings for regulating offsets in Australia'. The representative further advised that, prior to the development of the EPBC Act Offsets Policy, the department had received complaints 'related to the fact that expert judgement was being exercised by assessment officers in a way that was not transparent and obvious to industry'.<sup>60</sup>

### **Methods for assessing and calculating offsets**

4.50 The EPBC Act Offsets Policy states that, in assessing the suitability of an offset, government decision-making will be 'informed by scientifically robust information and incorporate the precautionary principle in the absence of scientific certainty'.<sup>61</sup> Submitters and witnesses were generally supportive of the principle that robust science should form the base of the development of offsets.<sup>62</sup> However, a number of concerns were expressed in this regard, including:

- the independence of scientific advice and information underpinning the assessment process;
- issues with the methodology for identifying and developing offsets; and
- whether there is sufficient data and certainty in relation to the science underpinning offsets.

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57 David Hogg Pty Ltd, *Submission 16*, pp 5–6.

58 Ms Melanie Stutsel, Director, Health, Safety, Environment and Community Policy, Minerals Council of Australia, *Committee Hansard*, 6 May 2014, p. 4.

59 Mr Chris McCombe, Assistant Director, Environmental Policy, Minerals Council of Australia, *Committee Hansard*, 6 May 2014, p. 4; Ms Melanie Stutsel, Director, Health, Safety, Environment and Community Policy, Minerals Council of Australia, *Committee Hansard*, 6 May 2014, p. 4.

60 Dr Kimberley Dripps, Deputy Secretary, Department of the Environment, *Committee Hansard*, 6 May 2014, p. 26.

61 EPBC Act Offsets Policy, p. 6.

62 See, for example, Ms Rachel Walmsley, Policy and Law Reform Director, NSW, ANEDO, *Committee Hansard*, 5 May 2014, p. 31; Queensland Murray-Darling Committee, *Submission 22*, p. 5.

### ***Independence of advice and information***

4.51 In terms of the independence of the process for the assessment and development of offsets, some submitters and witnesses noted that it is the proponent who is responsible for the preparation of environmental assessment documentation and the identification and development of offset arrangements.<sup>63</sup>

4.52 Several submitters and witnesses suggested that this resulted in an inherent conflict of interest for proponents in relation to the assessment of impacts and the identification and development of offsets.<sup>64</sup> For example, Mr Philip Spark, of the Northern Inland Council for the Environment, suggested that the offsets policy and planning process is 'open to abuse and manipulation by developers, their consultants and government' and that 'there is a major problem with conflicts of interest: consultants working for developers mostly prioritise the client's project ahead of the environment'.<sup>65</sup>

4.53 Greenpeace agreed that there is 'a conflict of interest inherent in the assessment process' if proponents commission and pay for the scientific assessments:

This is because consultants are open to the risk that, should they make a scientific finding that does not serve the best interests of their client, then the potential for future work may be compromised.<sup>66</sup>

4.54 Birdlife Australia concurred, noting that it is:

...aware of a number of examples where data has been interpreted or omitted in a manner that may deliver more favourable outcomes for the project proponent. That this process is unregulated and underpinned by financial motivations of both proponent and consultant represents a conflict of interest and must be addressed...<sup>67</sup>

4.55 Ms Beverley Smiles, Central West Environment Council, was similarly concerned at the 'lack of an independent body of consultants that are not influenced by proponents of major developments to provide the information on which decisions are

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63 See, for example, Ms Beverley Smiles, Secretary, Central West Environment Council, *Committee Hansard*, 5 May 2014, pp 9 and 12; Ms Anna Christie, *Committee Hansard*, 5 May 2014, p. 40; EIANZ, *Submission 88*, pp 7–8.

64 See, for example, Mr Philip Spark, President, Northern Inland Council for the Environment, *Committee Hansard*, 5 May 2014, p. 50; Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth Australia, *Committee Hansard*, 7 May 2014, p. 39.

65 See, for example, Mr Philip Spark, President, Northern Inland Council for the Environment, *Committee Hansard*, 5 May 2014, p. 50.

66 Greenpeace, *Submission 61*, p. 6.

67 Birdlife Australia, *Submission 77*, p. 7.

made'.<sup>68</sup> Some even described the assessment document as 'promotional material' for proponents.<sup>69</sup>

4.56 On a similar note, the Environment Institute of Australia and New Zealand (EIANZ) noted that proponents are required to prepare offsets management plans and strategies but that 'proponents are not in the business of conserving biodiversity values'. They submitted that, as a result, offsets are 'generally developed on an ad-hoc basis, often under extreme time pressures and with little strategic planning'.<sup>70</sup> The need for a more strategic approach to offsetting is discussed later in this chapter.

4.57 However, Ms Stutsel from the Minerals Council of Australia disagreed with the assertion that there is an inherent conflict of interest in the assessment process:

Just because someone pays the bill of an independent scientist does not necessarily mean that they have influence over the science. I am a scientist by training and I would hate to think that, if I were undertaking science on behalf of a third party, the professional norms around my expectations as a scientist would be in any way compromised in that process.<sup>71</sup>

4.58 Mr Chris McCombe from the Minerals Council of Australia further told the committee that:

Ultimately, government agencies are responsible for vetting and checking proposals, including the science behind it, as part of their assessment and approval process.<sup>72</sup>

4.59 Dr Martine Maron similarly observed that 'the role of the Department in checking the information used to assess offsets is crucial'.<sup>73</sup>

4.60 However, Mr Philip Spark of the Northern Inland Council for the Environment queried whether departmental staff have 'the knowledge and understanding of the landscape to question consultants' findings'.<sup>74</sup>

4.61 For these reasons, several submitters and witnesses called for a more independent assessment process. In particular, it was suggested that that assessment

68 Ms Beverley Smiles, Secretary, Central West Environment Council, *Committee Hansard*, 5 May 2014, p. 9.

69 Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth Australia, *Committee Hansard*, 7 May 2014, p. 39; see also, for example, Ms Beverley Smiles, Secretary, Central West Environment Council, *Committee Hansard*, 5 May 2014, p. 9.

70 EIANZ, *Submission 88*, pp 7–8.

71 Ms Melanie Stutsel, Director, Health, Safety, Environment and Community Policy, Minerals Council of Australia, *Committee Hansard*, 6 May 2014, p. 5.

72 Mr Chris McCombe, Assistant Director, Environmental Policy, Minerals Council of Australia, *Committee Hansard*, 6 May 2014, p. 5.

73 Dr Martine Maron, *Submission 7*, p. 3; see also Mr Philip Spark, President, Northern Inland Council for the Environment, *Committee Hansard*, 5 May 2014, p. 56.

74 Mr Philip Spark, President, Northern Inland Council for the Environment, *Committee Hansard*, 5 May 2014, p. 50 and see also pp 56–57.

documentation and information and calculations relating to offsets should be independently verified.<sup>75</sup> Birdlife Australia suggested that the Commonwealth establish a 'tender process by which environmental assessments are conducted in an impartial manner so as project proponents are unable to influence the outcome or result'.<sup>76</sup> Other witnesses suggested that there needs to be a register or pool of independent consultants.<sup>77</sup>

4.62 The Whitehaven Coal Maules Creek Project (as outlined in further detail at Appendix 3) case study was put forward by some submitters and witnesses as an example of the need for such independent verification.<sup>78</sup>

### ***Methods for assessing and calculating offsets***

4.63 As noted in chapter 2, the EPBC Act Offsets Policy is accompanied by an Offsets Assessment Guide, which is described as a 'decision support tool' used to determine the suitability of offsets for listed threatened species and ecological communities. The department's submission states that 'the offsets policy and guide were developed to systemise the judgments that go into determining suitable offsets'.<sup>79</sup>

4.64 Several submitters were very positive about the Offsets Assessment Guide. In particular, as noted elsewhere in this report, it was suggested that the guide has greatly improved transparency in relation to the methodology underlying offsets.<sup>80</sup>

4.65 At the same time, some submitters and witnesses identified some weaknesses and limitations in the application of the Offsets Assessment Guide.<sup>81</sup> As Dr Su Wild-River cautioned, tools such as the Offsets Assessment Guide 'necessarily over-simplify complex ecosystems':

An offset may look perfect on the spreadsheet, but still fall short of acceptable in real life.<sup>82</sup>

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75 See, for example, Mr Des Boyland, Policies and Campaigns Manager and Secretary, Wildlife Queensland, *Committee Hansard*, 7 May 2014, p. 14; Regional Development Australia Hunter, *Submission 11*, p. 4; Birdlife Australia, *Submission 77*, p. 9.

76 Birdlife Australia, *Submission 77*, p. 9.

77 Ms Beverley Smiles, Secretary, Central West Environment Council, *Committee Hansard*, 5 May 2014, p. 9; Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth Australia, *Committee Hansard*, 7 May 2014, p. 39.

78 See, for example, Mr Philip Spark, President, Northern Inland Council for the Environment, *Committee Hansard*, 5 May 2014, p. 50; The Australia Institute, *Submission 37*, p. 9.

79 Department of the Environment, *Submission 79*, pp 7–8.

80 Association of Mining and Exploration Companies, *Submission 40*, p. 5; see also, for example, Mr Chris McCombe, Assistant Director, Environmental Policy, Minerals Council of Australia, *Committee Hansard*, 6 May 2014, p. 4; David Hogg Pty Ltd, *Submission 16*, p. 5.

81 See, for example, Dr Martine Maron, *Submission 7*, p. 3; David Hogg Pty Ltd, *Submission 16*, pp 5–7; Association of Mining and Exploration Companies, *Submission 40*, p. 5; Environmental Decisions Group, *Submission 50*, p. 4.

82 Dr Su Wild-River, *Submission 38*, p. 5.

4.66 The Environmental Decisions Group were concerned that there are cases where implausibly high assumptions have been made in the calculation of offsets. For example, several submitters were critical of a development in the ACT where an existing protected area was assumed to have a 70% likelihood of loss.<sup>83</sup>

4.67 The Victorian National Parks Association (VNPA) discussed concerns in relation to the offsets calculations in the recently completed strategic assessment for Melbourne's Urban Growth Boundary.<sup>84</sup> They claimed that 'due to the use of simplified assessment methodologies, the offsets in the case of grasslands, are not the same ecologically as those used as offset' nor are they of the same quality. The VNPA further expressed concern that there are often 'various, often unsupported, criteria or weightings used in calculation of offsets'.<sup>85</sup>

4.68 NELA submitted that:

The assessment methodologies and tools currently used under Commonwealth, state, and territory offset schemes assume that it is possible to objectively measure biodiversity values, effectively compare losses and gains, and demonstrate the "ecological equivalence" of offset sites and lost values. They attempt to make offset calculations as objective and scientifically defensible as possible, but in doing so they risk underplaying the ultimately subjective value judgments involved.<sup>86</sup>

4.69 At the same time, Mr David Hogg submitted that:

The assessment of biodiversity offsets should also include a subjective process based on sound scientific knowledge of the relevant species or ecological community in its full context, rather than just 'number-crunching'.<sup>87</sup>

4.70 Mr Philip Stark of the Northern Inland Council for the Environment told the committee that the offsets calculator is 'particularly open to manipulation and abuse'. He claimed that, in the Maules Creek development (discussed further in Appendix 3):

The existing threats to the offset habitat were overstated to achieve greater gain through management. The confidence of achieving the conservation gain was unrealistically high. The risk of failure was underestimated. There was no application of the precautionary principle, particularly in relation to compensating for loss of known habitat for endangered species and the

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83 Environmental Decisions Group, *Submission 50*, p. 4; see also Dr Martine Maron, *Submission 7*, p. 3.

84 See further, Department of the Environment, *Strategic assessment of Melbourne's urban growth boundary*, <http://www.environment.gov.au/node/18604> (accessed 30 May 2014).

85 VNPA, *Submission 9*, p. 2.

86 NELA, *Submission 31*, p. 6.

87 David Hogg Pty Ltd, *Submission 16*, p. 7.

critically endangered ecological community. The starting value was often underestimated to increase the conservation gain.<sup>88</sup>

4.71 However, Ms Stutsel from the Minerals Council rejected suggestions that environmental offsets are a 'magic pudding' calculation rather than based on sound science and expert opinion. She suggested that such comments 'are dismissive of the significant work of experts and leading institutions in the development of the Commonwealth's offsets calculator'.<sup>89</sup>

4.72 The need for independent verification of offsets calculations, as well as greater transparency, again arose in this context. For example, Dr Philip Gibbons submitted that there needs to be:

...greater instruction and oversight on the figures that are used in the Offset Assessment Guide. Assessments under this Guide should be made available to the public for all decisions to improve transparency and ultimately ensure that a greater level of rigour is applied to assessments.<sup>90</sup>

4.73 Mr David Hogg similarly suggested that the use of the Offsets Assessment Guide be subject to peer review, particularly, for example, in relation to the estimates of the probability of extinction for each relevant species or ecological community.<sup>91</sup>

4.74 A representative of the department explained that the Offsets Assessment Guide 'uses a balance sheet approach to quantify the benefit that an offset may provide' and was 'developed in close collaboration with academic experts'. She further told the committee that the guide:

...provides a robust and transparent means to calculate gains and losses from offsets and development activities. The guide is available, with relevant instructional material, for use by the public and proponents in estimating any potential offset requirements.<sup>92</sup>

4.75 The department's submission further states that:

Since its release the guide has been highlighted as one of the only offset metrics globally that explicitly accounts for 'additionality', uncertainty, and time lags in calculating an offset requirement.<sup>93</sup>

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88 Mr Philip Spark, President, Northern Inland Council for the Environment, *Committee Hansard*, 5 May 2014, p. 51.

89 Ms Melanie Stutsel, Director, Health, Safety, Environment and Community Policy, Minerals Council of Australia, *Committee Hansard*, 6 May 2014, pp 1–2.

90 Dr Philip Gibbons, *Submission 21*, p. 3; see also Dr Philip Gibbons, *Committee Hansard*, 6 May 2014, p. 23.

91 David Hogg Pty Ltd, *Submission 16*, p. 7.

92 Dr Kimberley Dripps, Deputy Secretary, Department of the Environment, *Committee Hansard*, 6 May 2014, p. 25.

93 Department of the Environment, *Submission 79*, p. 10.

### *The science behind offsetting*

4.76 Several submissions and witnesses were concerned about the uncertainties involved in the science of environmental offsetting. For example, Greenpeace described the related science of restoration ecology as a relatively new and evolving area of research and practice.<sup>94</sup> Mr Adam Walters of Greenpeace told the committee that:

... offsetting and restorative ecology generally is quite an infant science, yet it is being used in a very significant way to allow very large developments that will have a very significant impact on matters of national environmental significance...the state of the science does not really seem to be up to the task of providing a certain mitigation of that damage.<sup>95</sup>

4.77 Greenpeace concluded that, 'given the current state of the science', it is:

...at best misleading, and at worst, incorrect to claim that the BOP [EPBC Act Offsets Policy] can deliver a 'robust' environmental outcome. In general, the approval decisions using offsets is based on a science that is either non-existent or insufficient to the task.<sup>96</sup>

4.78 However, a representative of the department told the committee that the EPBC Act Offsets Policy is 'based on the best available scientific literature'.<sup>97</sup>

### *Offsets in the marine environment*

4.79 A particular issue raised in this context was offsetting in the marine environment, and whether it is appropriate for the EPBC Act Offsets Policy to apply to both land-based and marine ecosystems.<sup>98</sup> For example, Dr Megan Saunders and Dr Justine Bell submitted that it needs to be recognised that 'marine ecosystems are fundamentally different to those on land'. They recommended that:

...offsets not be used widely in marine habitats until the science underpinning restoration in these important ecosystems is developed further, particularly with regard to seagrass ecosystems.<sup>99</sup>

4.80 In particular, Dr Justine Bell told the committee that:

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94 See, for example, Greenpeace, *Submission 61*, p. 4.

95 Mr Adam Walters, Research and Investigations Coordinator, Greenpeace, *Committee Hansard*, 5 May 2014, p. 22.

96 Greenpeace, *Submission 61*, p. 5.

97 Dr Kimberley Dripps, Deputy Secretary, Department of the Environment, *Committee Hansard*, 6 May 2014, p. 25.

98 See, for example, Dr Megan Saunders and Dr Justine Bell, *Submission 24*, p. 1; NELA, *Submission 31*, pp 10–11; Australian Institute of Marine Science, *Submission 43*, p. 1; Mr Chris Walker, *Submission 47*, p. 2; Environmental Decisions Group, *Submission 50*, p. 4; Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth Australia, *Committee Hansard*, 7 May 2014, p. 41.

99 Dr Megan Saunders and Dr Justine Bell, *Submission 24*, p. 1.

...techniques for rehabilitating marine environments are still being developed. There is significant uncertainty as to whether offset outcomes and requirements can be achieved.<sup>100</sup>

4.81 The Environmental Decisions Group similarly submitted that there should be a separate offsets policy approach to adequately protect marine ecosystems for a number of reasons, including that:

- marine environments are subject to larger scales of ecological connectivity, are highly prone to environmental disturbance;
- marine environmental restoration techniques, such as those used for seagrass habitats, are in early developmental stages, with highly variable success rates; and
- the influence of diffuse impacts from activities occurring on land, which are currently not accounted for in offset accounting.<sup>101</sup>

4.82 NELA recommended that the EPBC Act Offsets Policy be revised to include 'separate requirements for marine habitats'.<sup>102</sup> NELA further noted the Abbot Point project (outlined in further detail at Appendix 6) as an example of issues with offsets in the marine environment. In that case, the offsets plan is required to address the direct loss of seagrass and indirect losses as the result of the dredge plume.<sup>103</sup>

4.83 The Minerals Council of Australia also acknowledged that 'there are important distinctions to be drawn between land-based offsetting and marine offsets' and noted the difficulty in the context of the marine environment of 'defining and quantifying the impacts at an ecosystem level'.<sup>104</sup>

4.84 The Australian Institute of Marine Science (AIMS) similarly highlighted problems in developing offsets in the marine environment, and suggested that, in the case of marine ecosystems, 'greater consideration needs to be given to the value that targeted, independent research programs can provide as an offset'.<sup>105</sup> Such 'indirect offsets' or 'compensatory measures' were discussed in the previous chapter.

#### *Uncertainty and availability of data*

4.85 Others pointed to a lack of data and information underpinning offsets, such as vegetation mapping or species for which there is little data available. For example, NELA submitted that:

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100 Dr Justine Bell, *Committee Hansard*, 7 May 2014, p. 1.

101 Environmental Decisions Group, *Submission 50*, p. 4; see also Dr Megan Saunders and Dr Justine Bell, *Submission 24*; NELA, *Submission 31*, pp 10–11.

102 NELA, *Submission 31*, p. 11; see also Mr Chris Walker, *Submission 47*, p. 2.

103 NELA, *Submission 31*, p. 11.

104 Minerals Council of Australia, *Submission 35*, p. 8.

105 AIMS, *Submission 43*, p. 2.

Vegetation mapping is typically used as the basis for calculating the standard and quantum of offset required, yet there is considerable debate about accuracy, scale and quality of vegetation maps. Inadequate mapping means that areas identified for offsets may not in fact meet the attributes or condition of the area being destroyed.<sup>106</sup>

4.86 In this context, Mr Tager of Friends of the Earth illustrated this point by pointing a development where the conditions of approval required an offsets strategy which included funding for research relating to the snubfin dolphin. He noted that the snubfin dolphin is a relatively newly-discovered species about which there is little data. He queried 'how can you have an offset when you know so little about the species that you are trying to protect in that offset?'.<sup>107</sup>

4.87 The committee also heard evidence that the principles that underpin the use of offsets should also 'factor in climate change...and the ecological viability or conservation importance of the offset in changing environmental conditions'.<sup>108</sup>

4.88 As Dr Yung En Chee concluded:

The concept of offsets is simple. But their function is to address complex, imperfectly understood ecological characteristics and processes to improve or maintain the viability of impacted protected matters. The difficulty of this task is compounded when the protected matters in question are poorly known and/or subject to a range of dynamic threatening processes. This makes offsets complex to design, assess, and successfully deliver in practice, particularly given the attendant risks and uncertainties.<sup>109</sup>

4.89 Other submitters pointed to the Whitehaven Coal Maules Creek Project (as outlined in further detail at Appendix 3) as an example of the problems of insufficient data, and in particular accurate vegetation mapping, relating to suitable offsets.<sup>110</sup>

4.90 Dr Foerster and Professor McDonald also commented that offsets schemes are based on a number of assumptions, which are 'not borne out in the published research on offsets'. They emphasised the need for a precautionary approach was emphasised in this context. They submitted that:

...there is growing evidence that the quality of existing biodiversity at project sites is not well understood, that restoration activities often achieve

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106 NELA, *Submission 31*, pp 6–7; see also, for example, Ms Beverley Smiles, Secretary, Central West Environment Council, *Committee Hansard*, 5 May 2014, pp 9 and 12.

107 Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth Australia, *Committee Hansard*, 7 May 2014, pp 40–41; see also Friends of the Earth Australia, *Submission 58*, p. 7.

108 Humane Society International, *Submission 28*, p. 2; see also Ms Sonya Duus, *Submission 67*, pp 3–4.

109 Dr Yung En Chee, *Submission 57*, p. 12.

110 NELA, *Submission 31*, pp 6–7; see also Interdisciplinary Conservation Science Research Group, *Submission 34*, p. 3; Response from Ms Alison Martin, Greenloaning Biostudies, to comments made in Northern Inland Council for the Environment, *Supplementary Submission 90.1*, p. 11.

limited success, and a wide range of environmental and institutional uncertainties can affect the attainment of the 'no net loss' objective... In this context, a precautionary approach to the use of offsets is appropriate.<sup>111</sup>

4.91 However, a representative of the department advised that the EPBC Act Offsets Assessment Guide deals with uncertainty:

...there is a calculation specifically derived from the offsets policy into the offsets calculator, which looks at the likelihood of the success of the proposed offsets for being effective with respect to the desired environmental outcomes. So explicitly that is built into the calculator in terms of determining the likely value of the proposed offsets.<sup>112</sup>

### **Strategic and consistent approaches to offsets**

4.92 Another key issue raised during the committee's inquiry was the need for more strategic and consistent approaches to environmental offsetting. In particular, a number of submitters recommended that offsets should be considered in the broader context of strategic planning.<sup>113</sup> Dr Gibbons recommended 'a more holistic strategy' to the use of offsets, advising that 'there are bigger things happening that are affecting the loss of biodiversity':

It is incorrect to blame offsets for ongoing loss in matters of national environmental significance. It is like blaming the fuel gauge when the tank is empty.<sup>114</sup>

4.93 The EIANZ submitted that 'project-specific offsets are generally developed on an ad-hoc basis, often under extreme time pressures and with little strategic planning'. The EIANZ therefore called for 'government to provide greater strategic planning for the identification and delivery of offsets that provides proponents with greater certainty of their required contributions'.<sup>115</sup>

4.94 Several submitters and witnesses, such as the Wentworth Group, commented that there is a need to consider the cumulative impacts of individual projects:

Most offsets schemes operate at an individual project scale. The major flaw of this system is that it does not effectively manage biodiversity, nor does it effectively manage the cumulative impact of multiple developments. Individual developments, when considered in isolation, may have a minor

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111 Dr Anita Foerster and Professor Jan McDonald, *Submission 23*, p. 5; see also Nature Conservation Society of South Australia, *Submission 89*, p. 3.

112 Mr Dean Knudson, First Assistant Secretary, Environment, Assessment and Compliance Division, Department of the Environment, *Committee Hansard*, 6 May 2014, p. 26.

113 David Hogg Pty Ltd, *Submission 16*, p. 1; Dr Anita Foerster and Professor Jan McDonald, *Submission 23*, p. 5; Mr Gary Middle, *Submission 27*, p. 2; NELA, *Submission 31*, p. 9; Chamber of Minerals and Energy of Western Australia, *Submission 33*, pp 3–4; Canberra Ornithologists Group, *Submission 36*, p. 2; QGC, *Submission 74*, p. 1; NSW Minerals Council, *Submission 76*, p. 11; Wentworth Group, *Submission 85*, p. 2; EIANZ, *Submission 88*, p. 5.

114 Dr Philip Gibbons, *Committee Hansard*, 6 May 2014, p. 18.

115 EIANZ, *Submission 88*, pp 7–8.

impact on the environment, but when combined, their cumulative impact can result in long term damage to Australia's land, water and marine ecosystems. Therefore, by far the most effective way to promote development and deliver better environmental outcomes is to invest in long-term, landscape-scale planning to determine where, and under what conditions, development can safely occur.<sup>116</sup>

4.95 The department submitted that it 'considers whether offsetting is possible and appropriate on a case-by-case basis'.<sup>117</sup> However, the Wilderness Society submitted that this 'case-by-case approach':

...reinforces an ineffective piecemeal approach to the conservation of important national environmental values and community assets.<sup>118</sup>

4.96 Mr David Hogg similarly observed that 'it appears that most offsets are based on a piecemeal approach and lack a strategic context'.<sup>119</sup>

4.97 The EPBC Act Offsets Policy states that a registration system for offsets, will 'allow strategic planning, and streamline processes with state and territory requirements and schemes'.<sup>120</sup> However, as discussed in Chapter 5, the department advised that this register has not yet been implemented.<sup>121</sup>

### ***Consistency in offsetting regimes***

4.98 Another issue raised was the variability across state, territory and local government regimes in terms of offsets policies, and the need for greater consistency across all Australian jurisdictions.<sup>122</sup> For example, Mr Martin Fallding of Lake Macquarie City Council told the committee that 'biodiversity offsetting arrangements are different and inconsistent between the three levels of government'.<sup>123</sup> As such, he

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116 Wentworth Group, *Submission 85*, p. 2; see also Dr Peter Cosier, Director and Founding Member, Wentworth Group, *Committee Hansard*, 6 May 2014, pp 11 and 15; Ms Beverley Smiles, Secretary, Central West Environment Council, *Committee Hansard*, 5 May 2014, p. 9; Lock the Gate Alliance, *Submission 20*, p. 14.

117 Department of the Environment, *Submission 79*, p. 5. Although as noted in Chapter 2, offsets can also be considered as part of strategic assessments.

118 The Wilderness Society, *Submission 84*, p. 3.

119 David Hogg Pty Ltd, *Submission 16*, p. 3.

120 EPBC Act Offsets Policy, p. 24.

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

122 See, for example, Tasmanian Farmers and Graziers Association, *Submission 10*, p. 5; Ms Rachel Walmsley, Policy and Law Reform Director, NSW, ANEDO, *Committee Hansard*, 28 May 2014, p. 29; ANEDO, *Submission 60*, p. 1; Mr Martin Fallding, Environmental Planner, Lake Macquarie City Council, *Committee Hansard*, 5 May 2014, p. 42; NELA, *Submission 31*, pp 2–3; Alliance to Save Hinchinbrook, *Submission 85*, Attachment 2; Wentworth Group, *Submission 86*, p. 1. Note that a brief summary of some aspects of state and territory offsetting regimes is contained in Chapter 1.

123 Mr Martin Fallding, Environmental Planner, Lake Macquarie City Council, *Committee Hansard*, 5 May 2014, pp 42–43.

identified the need for a consistent, legislated set of offset principles to apply at Commonwealth, state and local government level.<sup>124</sup>

4.99 The NSW Minerals Council told the committee that its members operate under two different systems for offsetting under the EPBC Act and also under the NSW Offsets Principles and that 'frequently different offsets are required to achieve the outcomes required by the two different jurisdictions'.<sup>125</sup>

4.100 The ACT Conservation Council also expressed concern about the lack of clarity as to responsibility and coordination between the ACT government and the Commonwealth government, particularly in relation to compliance with offsets required under the EPBC Act.<sup>126</sup>

4.101 There was therefore some discussion during the committee's inquiry about the government's proposal for a 'one stop shop' for environmental approvals in Australia. As outlined in Chapter 2, under the proposal the Commonwealth will accredit state and territory planning processes under the EPBC Act. The department submitted that, under the 'one stop shop' proposal, states and territories 'will be required to meet the published Standards for Accreditation of Environmental Approvals under the EPBC Act'. According to the department, these standards:

...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.<sup>127</sup>

4.102 Other submitters expressed support for the 'one stop shop' proposal. For example, the National Farmers' Federation submitted that it 'is an opportunity to further align the offset policies' of the states and the Commonwealth and that 'such alignment will avoid the current confusion of separate offset requirements by the different jurisdictions'.<sup>128</sup>

4.103 For example, the Minerals Council of Australia called for 'greater alignment and accreditation of offsets processes between the Commonwealth and the State/Territory jurisdictions'.<sup>129</sup> The Chamber of Minerals and Energy Western Australia agreed, and suggested that 'any offsets requirements imposed under both

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124 Mr Martin Fallding, Environmental Planner, Lake Macquarie City Council, *Committee Hansard*, 5 May 2014, p. 43; see also Lake Macquarie City Council, *Submission 17*, p. 2.

125 NSW Minerals Council, *Submission 76*, p. 7.

126 Conservation Council ACT region, *Submission 78*, p. 3.

127 Department of the Environment, *Submission 79*, p. 13; see also Dr Kimberley Dripps, Deputy Secretary, Department of the Environment, *Committee Hansard*, 6 May 2014, p. 25.

128 National Farmers' Federation, *Submission 15*, p. 2.

129 Minerals Council of Australia, *Submission 35*, p. 7; see also, for example, Chamber of Minerals and Energy Western Australia, *Submission 33*, p. 6.

State and Commonwealth legislation should be complementary and should not impose additional costs on industry'.<sup>130</sup>

4.104 NELA suggested that the 'one stop shop' proposal provides an opportunity to address the different approaches to offsets across the Commonwealth and states and territories. As with other submitters, NELA supported the development of a national standard to 'facilitate alignment' between the different schemes. NELA noted that the EPBC Act Offsets Policy is a 'benchmark' for discussions between the Commonwealth, states and territories. However, NELA suggested a more comprehensive national standard that 'affords high levels of protection for Australia's biodiversity', and that the Commonwealth take 'a leadership role' in coordinating the development of this standard.<sup>131</sup>

4.105 However, other submitters and witnesses were very concerned about the 'one stop shop' proposal.<sup>132</sup> For example, ANEDO suggested that standards might be lowered as a result of the proposal, and submitted that the 'Australian Government must retain a leadership and approval role to protect and enhance matters of national environmental significance'. They further submitted that:

Now is not the time to rush through State policies that are based on reducing approval timeframes rather than robust science.<sup>133</sup>

4.106 The Wentworth Group were concerned that state environmental planning laws are not able to 'satisfy national standards' and submitted that:

...it is irresponsible for the Commonwealth government to hand over national EPBC assessment and approval powers to state governments without a transparent science-based national standard.<sup>134</sup>

4.107 Other witnesses suggested that the 'one stop shop' proposal could actually make matters more complicated. For example, Mr Sydes of Environmental Justice Australia described the 'one stop shop' as 'effectively eight or nine one stop shops':

...if you think about it, we are displacing the current Commonwealth leadership role to state and territory governments all around the country.

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130 Chamber of Minerals and Energy Western Australia, *Submission 33*, p. 6.

131 NELA, *Submission 31*, pp 3–4.

132 See, for example, Mr Des Boyland, Policies and Campaigns Manager and Secretary, Wildlife Queensland, *Committee Hansard*, 7 May 2014, p. 14; Mr Jeremy Tager, Nanotechnology Campaigner, Friends of the Earth Australia, *Committee Hansard*, 7 May 2014, p. 39; Wildlife Queensland, *Submission 39*, p. 2; Blue Mountains Conservation Society, *Submission 52*, p. 2; ANEDO, *Submission 60*, p. 1; WWF-Australia, *Submission 73*, p. 3; BirdLife Australia, *Submission 77*, p. 12; The Wilderness Society, *Submission 84*, p. 4; Nature Conservation Society of South Australia, *Submission 89*, p. 2.

133 ANEDO, *Submission 60*, p. 1; see also BirdLife Australia, *Submission 77*, p. 12.

134 Wentworth Group of Concerned Scientists, *Submission 85*, p. 2; see also Mr Peter Cosier, Director and Founding Member, Wentworth Group of Concerned Scientists, *Committee Hansard*, 6 May 2014, p. 11.

We really need to think about whether or not that fragmented approach is the best way to go about protecting biodiversity, because I think it is not.<sup>135</sup>

4.108 Mr Martin Fallding of Lake Macquarie City Council suggested that the 'one stop shop' proposal was a good idea 'in principle' but cautioned that 'it is probably going to make things more complicated' and added that:

...the fact that there are different legislative frameworks which have different responsibilities means that it is very difficult to achieve that without significant legislative reform. The fact is that, particularly at the state and Commonwealth level, there are conflicts of interest between those two levels of government, and between the legislative requirements that they are facing, that mean that it is not actually going to simplify things.<sup>136</sup>

4.109 Mr Fallding also noted that 'local government is a significant player in offsets because of its on-the-ground relationship to land and the capacity to manage land'. He was concerned that local councils 'are more likely to be excluded' from the offsetting process under the 'one stop shop' proposal, which he described as a 'retrograde step'.<sup>137</sup>

4.110 Ms Rachel Walmsley from ANEDO described the proposed one stop shop as 'a very piecemeal approach', confusing and unclear. She gave the example of the disparity in the approach to the use of indirect offsets across different jurisdictions, and queried, for example, how the Commonwealth could accredit state systems that do not meet the national policy of a 10 per cent cap on the use of indirect offsets.<sup>138</sup>

4.111 In this context, some submitters and witnesses identified concerns about proposed reforms to offsetting arrangements in Queensland and New South Wales.<sup>139</sup> For example, ANEDO were concerned that Queensland and New South Wales are 'lowering offset standards by relaxing the fundamental principles' and placing greater emphasis on the use of indirect offsets.<sup>140</sup> Ms Walmsley of ANEDO suggested that, given the imminent accreditation of state standards under the one stop shop policy, 'these changes are of serious concern'.<sup>141</sup>

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135 Mr Brendan Sydes, Chief Executive Officer, Environmental Justice Australia, *Committee Hansard*, 5 May 2014, p. 18.

136 Mr Martin Fallding, Environmental Planner, Lake Macquarie City Council, *Committee Hansard*, 5 May 2014, p. 45.

137 Mr Martin Fallding, Environmental Planner, Lake Macquarie City Council, *Committee Hansard*, 5 May 2014, pp 43 and 45.

138 Ms Rachel Walmsley, Policy and Law Reform Director, NSW, ANEDO, *Committee Hansard*, 28 May 2014, p. 29.

139 See, for example, Mr Des Boyland, Policies and Campaigns Manager and Secretary, Wildlife Queensland, *Committee Hansard*, 7 May 2014, p. 14; Wildlife Queensland, *Submission 39*, p. 3; Friends of the Earth Australia, *Submission 58*, p. 6; ANEDO, *Submission 60*, p. 1; BirdLife Australia, *Submission 77*, p. 12.

140 ANEDO, *Submission 60*, p. 7 and see further pp 7–13; see also BirdLife Australia, *Submission 77*, p. 12.

141 Ms Rachel Walmsley, Policy and Law Reform Director, NSW, ANEDO, *Committee Hansard*, 28 May 2014, p. 29.

4.112 Mr Sydes of Environmental Justice Australia told the committee that any concerns about problems of offsets under the EPBC Act' can be multiplied tenfold when it comes to state based offsetting regimes'. He further advised that:

In Queensland, in New South Wales and in Victoria there are, under development or in fact already being implemented, offset regimes that are even further from the really important principles that the ecologists in particular say are essential to a credible offsetting regime. And yet it is these very state based regimes that the government is currently looking to accredit as approvals regimes under its one stop shop policy.<sup>142</sup>

4.113 In contrast, the Minerals Council of Australia described the new Queensland legislation as a 'significant advance in ensuring offsetting conditions are not duplicated between multiple levels of government'.<sup>143</sup>

4.114 Several submitters and witnesses expressed support for a clear national standard for offsets, and noted the recent Productivity Commission recommendations, as outlined in Chapter 2. ANEDO suggested that, consistent with the recent recommendations of the Productivity Commission, a comprehensive independent review of offsets be conducted, with a view to developing a rigorous, best practice national standard. ANEDO suggested that state standards and relevant legislation should be amended to meet the national standard, and that accreditation of state processes should not occur until this happens.<sup>144</sup>

4.115 WWF-Australia also expressed support for the Productivity Commission's recommendations, and agreed that a nationally consistent offsets framework is needed which will 'not only ensure better outcomes for the environment but a more streamlined and consistent process'.<sup>145</sup>

4.116 In response to questions as to the status of the EPBC Act Offsets Policy under the one stop shop proposal, a representative of the department explained that it will remain the Commonwealth's offset policy and that states and territories 'will be expected to deliver equivalent or better outcomes' in relation to offsets. However, she advised that if the states introduced equivalent legislation 'then there would not be a need for a Commonwealth offsets policy'. However, the representative also explained that 'the Commonwealth would continue to undertake some assessments even after the one stop shop' in relation to actions on Commonwealth land and that the 'current policy would be the baseline for that'.<sup>146</sup>

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142 Mr Brendan Sydes, Chief Executive Officer, Environmental Justice Australia, *Committee Hansard*, 5 May 2014, p. 15 and see also p. 16.

143 Minerals Council of Australia, *Submission 35*, p. 6.

144 ANEDO, *Submission 60*, p. 2; Ms Rachel Walmsley, Policy and Law Reform Director, NSW, ANEDO, *Committee Hansard*, 28 May 2014, p. 29; see also, for example, Birdlife Australia, *Submission 77*, p. 2.

145 WWF-Australia, *Submission 73*, p. 2.

146 Dr Kimberley Dripps, Deputy Secretary, Department of the Environment, *Committee Hansard*, 6 May 2014, pp 28–29.

