

24 April 2019

Manager, Environmental Offsets Review  
Department of Environment and Science  
*Sent via email only:* offsetsreview@des.qld.gov.au

Dear Manager,

### **Submission to the Review of Queensland's Biodiversity Offsets Framework**

Thank you for the opportunity to provide a submission on the Queensland biodiversity offset framework.

#### **About EDO Qld**

EDO Qld is a non-profit community legal centre with clients from both rural and urban areas and backgrounds. Our solicitors provide legal advice to over a thousand individuals and groups every year, including through educational events we organise in partnership with community groups and in response to specific advice requests by clients. We run a small number of public interest court cases in state and federal courts to assist those who have good grounds to use their legal rights under our laws to defend the interests of the environment and their community. Our legal work covers a range of planning, environmental and resource law topics, including vegetation protection.

In addition to the joint submission made on behalf of other groups and the recommendations provided therein, this submission on behalf of EDO Qld provides further detail and background to the recommendations in that submission that is not inconsistent with those submissions.

#### **Firstly, we implore the government to:**

- (a) ensure that this review is an *all of government* review of the offset framework, that includes reviewing the operation of our planning and development laws, and not just our *Environmental Offsets Act 2014* (Qld) (**EO Act**); and
- (b) undertake the necessary changes to our framework with urgency this term of government.

#### **Urgency is needed to ensure key reforms made this term of government**

This review is significantly overdue. As noted in the joint submission, the Labor Party has been committing to this review since at least the 2015<sup>1</sup> This commitment in 2015 was off the back of the former government having introduced the EO Act and Labor providing significant critique on the flaws of the framework while in Opposition. The second reading speech on the EO Bill provided

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<sup>1</sup> Queensland Labor State Policy Platform 2015, commitment 5.101.

by the Honourable Ms Jackie Trad as Shadow Minister for Environment and Heritage Protection is highly detailed in pointing out the obvious flaws in this Act.<sup>2</sup> This speech was provided 5 years ago.

Most recently, the [2018 ALP Queensland Party Platform](#) provided a public commitment as follows: ‘5.126 Labor will ***review and amend*** the *Queensland Environmental Offsets Act 2014 (Qld)* to ensure that offsets:

- *Are only utilized as a last resort*
- *Deliver an actual benefit for affected species and ecosystems*
- *Are applied strategically and are legally secure.*’ (our emphasis)

In order to meet this clear commitment, which Queenslanders have been waiting to be achieved for too long, the government must ensure that amendments of the EO Act are undertaken this term of government.

There is a plethora of information in the public domain on best practice in environmental offset frameworks.<sup>3</sup> The government also has the benefit of considerable submissions on the EO Act and supporting framework since the introduction of the EO Bill, let alone the detailed submissions of the current Deputy Premier, then Shadow Environment Minister, when the Bill was being debated. We further note the clear recommendations made by the government commissioned Koala Expert Panel as to improvements being needed to our offsets framework to ensure the survival of koalas in our state, as provided in their Final Report.<sup>4</sup> We trust that these recommendations are in the package of reforms that the government implements after this review is finalised.

We typically support community consultation. However undertaking broad consultation as if the matter has never been considered, when clear failings of the framework have been pointed out since its introduction, and the government already has received and compiled these previous submissions, is a drain on the limited resources of government and the community and environmental sectors.

Further, there is an abundance of data to demonstrate that our native species populations are in serious declining. The Queensland Audit Office Report into Conserving Threatened Species<sup>5</sup> and the Senate Inquiry into Faunal Extinction,<sup>6</sup> both in the last year, demonstrate alone the dire state of our environmental health and the need for urgent action to prevent this decline from continuing.

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<sup>2</sup> Queensland Parliamentary Debates. Queensland Parliament. 22 May 2014. Shadow Minister Jackie Trad, pp 1873-1878.

<sup>3</sup> [Business and Biodiversity Offsets Programme](#), particularly this helpful [Report on Standards of Biodiversity Offsets](#), page 17 onwards provides a helpful list of principles and indicators for best practice offset frameworks; [IUCN Policy on Biodiversity Offsets](#) – a helpful summary of best practice and clear articulation that offsets should not be used to justify inappropriate development; [OECD Policy Highlights – Biodiversity Offsets](#) – see table 2, page 7 for a useful table of best practice key design and implementation features of biodiversity offset programs.

<sup>4</sup> Rhodes, J.R., A.Hood, A.Melzer, and A.Mucci.(2017) Queensland Koala Expert Panel: A new direction for the conservation of koalas in Queensland. A report to the Minister for Environment and Heritage Protection. Queensland Government, Brisbane. <https://environment.des.qld.gov.au/wildlife/koalas/pdf/qld-koala-expert-panel-report-2017.pdf>

<sup>5</sup> Queensland Audit Office, Report 7: 2018-19 Conserving threatened species, <https://www.qao.qld.gov.au/reports-parliament/conserving-threatened-species>.

<sup>6</sup> Senate Standing Committees on Environment and Communications, (2019) Interim Report: Australia’s faunal extinction crisis, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Faunalextingtion/Interim\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Faunalextingtion/Interim_report).

As the Queensland Audit Office points out: “*Queensland alone is home to 85 per cent of Australia’s native mammals, 72 per cent of native birds, just over 50 per cent of native reptiles and frogs, and more than 11 000 plant species.*”<sup>7</sup> We have a duty to do our utmost to protect these species. Right now, under our current laws, we are failing them.

We have provided a summary of our key changes below and detailed submissions in the Appendix to this letter.

**Summary of key changes needed this term of government to end unnecessary, inappropriate environmental degradation – these are consistent with the recommendations provided in the joint submission with other conservation groups however with more detail:**

**Recommendation 1:**

**Prohibitions effective across all Qld laws to prevent impacts on our most vulnerable environmental values, avoiding the impact completely and therefore making the offset unnecessary (e.g. legal protection of critical habitat). This requires clear planning and development laws that specify when impacts must be ‘avoided’, due to the sensitivity of the species and/or due to the unessential nature of the development proposal threatening the impact, and also clarity on what mitigation action must be required by proponents.**

**Recommendation 2:**

**Require evidence and assessment of whether an impact can actually be offset during the application assessment process, to ensure that the ability to offset an impact is determined *prior* to a decision being made on whether to approve an impact. If it can’t, the project should be amended to avoid the impact or refused.**

**Recommendation 3:**

- (a) Remove the cap on the ratio of offset required.**
- (b) Scientifically valid ratios must be required to be determined for each species impacted if we are to have any legitimacy to our biodiversity offset framework.**

**Recommendation 4:**

- (a) Redefine the required conservation outcome for offsets, such that the offset required takes into account the degree of impact and the quality of the environmental value impacted**
- (b) Rather than having objectives of ‘no net loss’, or ‘net gain’, which are relative to a counterfactual of decline, we need a framework that leads to losses being compensated with tangible improvements for the matter being impacted such that there is no net decline, considering both the impact and the offset sites – that there is just as much habitat after the impact as before. Consider population targets for tangible, measurable outcomes that each offset can go towards achieving.**

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<sup>7</sup> Queensland Audit Office, Report 7: 2018-19 Conserving threatened species, <https://www.qao.qld.gov.au/reports-parliament/conserving-threatened-species>.

**Recommendation 5:**

**Require that all residual impacts, not just significant impacts, be offset where they cannot be avoided or mitigated and they are essential.**

**Recommendation 6:**

**Remove exemptions from the offset framework which currently allow significant tree clearing, urban development, community infrastructure, development assessed by the Coordinator-General and state government related development across Queensland to go ahead without requiring that these substantial impacts be offset.**

**Recommendation 7:**

**Require long term security of offsets – such that they cannot be impacted to remove the effect of their offset, or in circumstances where it is essential that the offset area is impacted require that this impact is required to be sufficiently offset with an even greater, appropriate area to compensate for this highly undesirable outcome.**

**Recommendations 8:**

- (a) Provide a clear standard in the EO Act against which the effective achievement of offsets can be enforced by government and through third party enforcement rights.**
- (b) Require timely implementation of offsets – ideally offsets should be commenced prior to the impact being undertaken.**
- (c) Update the Offsets Register to include trackable detail on the success and failures of offsets and measures undertaken to address failures, as well as local government provided offsets. Require regular reporting by the government or proponents as to the status of the offset.**
- (d) Ensure sufficient resources and mandates are provided to departments to effectively monitor and enforce the achievement of offsets.**
- (e) Ensure accountability of offset brokers by requiring that they be registered**

**Recommendation 9:**

**Return the concurrence agency power to the Department of Environment and Science for the assessment of offsets proposed during development assessment processes across all frameworks**

We would gladly clarify any matters raised in this submission as needed. We look forward to fast movement from here on in addressing the substantial failures of this framework, to avoid any further unnecessary environmental impacts.

Yours faithfully



**Revel Pointon**

*Senior Solicitor* - Environmental Defenders Office (Qld) Inc

## APPENDIX

### 1. Inappropriate impacts must be avoided altogether with clear legislative prohibitions

The hierarchy provided in the EO Act framework requires that proposed impacts are:

- first avoided,
- then if they cannot be avoided, they are mitigated,
- then only as far as they cannot be avoided or mitigated, significant residual impacts left must be offset, as far as they are within the jurisdiction of the EO Act.

Assessment officers have little to no guidance in our legal frameworks to assist them in determining:

- when is an impact so inappropriate or unnecessary that it must not be allowed – that it should be avoided altogether; or
- what actions are reasonable in determining how mitigation activities must be required of a proposed impact.

Currently there is no clear legal limit on when even our most threatened species or habitats can be impacted. This means our laws do not adequately ensure that inappropriate environmental impacts are avoided altogether; and are open to being used to justify inappropriate impacts which should be clearly prohibited.

No guidance material is provided under the EO Act framework to help assessors determine when impacts must be avoided, yet even if there was it would be able to be overridden by the key development assessment legislation applicable to the impact. Under our planning and development laws there is always a mechanism or weakness that can be used to allow any level of impact, no matter how inappropriate or unnecessary.

Our planning law framework under the *Planning Act 2016* (Qld) (**Planning Act**), that regulates the vast amount of urban development impacts, is based on a performance based framework.<sup>8</sup> This framework is explicitly designed to provide for flexibility and in effect reduces the ability of local governments to clearly prohibit inappropriate impacts posed from urban development on the local environment in an enforceable way.

State-led development that is exempt from the Planning Act, for example under a Priority Development Area<sup>9</sup> or State Development Area,<sup>10</sup> is subject to whatever development scheme criteria is developed for that particular area. This process is open to the discretion of the government of the moment, who can impose as strict or lax assessment terms as desired; submission processes are undertaken but submissions are not required to be heeded.

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<sup>8</sup> Queensland Government, 2016, *Queensland's new planning system: How it works*, <http://www.dlgrma.qld.gov.au/resources/planning/better-planning/new-planning-system-fact-sheet.pdf>

<sup>9</sup> Under the *Economic Development Act 2012* (Qld).

<sup>10</sup> Under the *State Development and Public Works Organisation Act 1971* (Qld).

The *Vegetation Management Act 2009* (Qld) provides for significant clearing to be allowed under ‘accepted development codes’, which put the onus back on the clearer themselves to determine whether the proposed clearing will be in line with the complex codes. By the time the legality and appropriateness of the clearing is assessed by the relevant Department, the clearing has occurred and the damage has been done. At least 20 percent of Queensland’s vegetation is classified as ‘Category X’,<sup>11</sup> meaning no regulatory oversight or guidance at all is provided under this Act for clearing of this vegetation.

The *Nature Conservation Act 1992* (Qld) (**NC Act**) is intended to provide for protection of our native flora and fauna species by making it unlawful to kill, injure or otherwise take protected wildlife without approval. However this Act also provides for quite broad exemptions against prosecution for offences under the Act, for example where the taking happened in the course of a lawful activity that was not directed towards the taking and the taking could not have been reasonably avoided.<sup>12</sup> This is therefore relying on the assessment processes of other Acts mentioned above to have properly considered the potential impact on the species, which we have established is not necessarily foolproof. Further, to our knowledge there is no guidance given to assessors, nor to the public, to help determine whether the impact could have been ‘reasonably avoided’ such that it was an offence under this Act.

Finally the federal *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) provides the Minister responsible for this Act with significant discretion in deciding whether an impact that falls within the jurisdiction of the EPBC Act should be allowed to go ahead and how.<sup>13</sup>

All of these environmental laws also fail to meaningfully consider *cumulative* impacts on protected species, instead only providing site-by-site, project specific assessment.<sup>14</sup>

If these are the frameworks we are relying on to provide for the first step of the framework – that impacts first be avoided – this first key step is clearly and significantly failing.

The first step in reforming Queensland laws to ensure the biodiversity offset framework is working therefore must be reforms across all of our development and planning laws to provide clear powers that prevent inappropriate or unnecessary environmental impacts. This should include protection of our most threatened or sensitive species from any impacts, and ensuring that unnecessary development is not allowed to go ahead on protected environmental values.

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<sup>11</sup> Queensland Government, 2019, Regulated Vegetation Management Version 2.10, 16 April 2019, <https://data.qld.gov.au/dataset/vegetation-management-act-series/resource/0051cfd6-937a-4a39-b524-f452ee78e8b6>

<sup>12</sup> See for example *Nature Conservation Act 1992* (Qld), s88(3).

<sup>13</sup> April E. Reside, Anita J. Cosgrove, Revel Pointon, James Trezise, James E.M. Watson, Martine Maron, (2019) How to send a finch extinct, *Environmental Science & Policy*, Volume 94, 163-173; Hawke, A. (2009). *The Australian Environment Act: Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*. Department of the Environment, Water, Heritage and the Arts, Canberra, ACT

<sup>14</sup> Hawke, A. (2009). *The Australian Environment Act: Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*. Department of the Environment, Water, Heritage and the Arts, Canberra, ACT; Mortberg, U.M., Balfors, B. & Knol, W.C. (2007). Landscape ecological assessment: a tool for integrating biodiversity issues in strategic environmental assessment and planning. *Journal of Environmental Management*, 82, 457-470.

**Recommendation 1: Prohibitions effective across all Qld laws to prevent impacts on our most vulnerable environmental values, avoiding the impact completely and therefore making the offset unnecessary (e.g. legal protection of critical habitat). This requires clear planning and development laws that specify when impacts must be ‘avoided’, due to the sensitivity of the species and/or due to the unessential nature of the development proposal threatening the impact, and also clarity on what mitigation action must be required by proponents.**

**2. Assessment of whether an offset is possible must occur prior to deciding whether to approve the impact**

Currently our planning and development laws are allowing environmental impacts to be approved with a condition that they must develop an offset plan post-approval. This means that at the time of approval of the impact there is no assessment being required as to whether the environmental impact is capable of being offset at all. This is a clear failing of the current framework that could easily be rectified by requiring demonstration of the ability to offset a residual impact in the development application upfront.

**Recommendation 2: Require evidence and assessment of whether an impact can actually be offset during the application assessment process, to ensure that the ability to offset an impact is determined *prior* to a decision being made on whether to approve an impact. If it can’t, the project should be amended to avoid the impact or refused.**

**3. Scientifically accurate ratios must be used, without a cap**

*‘Potentially the biggest concern the opposition has with this bill is the imposition of an arbitrary cap on the size of the offset.’<sup>15</sup> ‘Science, not commercial interests, should dictate the size of an offset’<sup>16</sup>*

A maximum capped ratio of 1:4 remains in the Environmental Offsets Policy. We, along with prominent scientists,<sup>17</sup> strongly oppose this maximum cap as it is not scientifically based. The current ratio required for offsets provided has no scientific relationship to what is actually needed to adequately ‘counterbalance’ an impact. Its only purpose is to limit the liability of those who are responsible for significant impacts on Queensland’s protected species in cases where the science warrants a higher ratio to be applied. It is concerning that this maximum cap remains in the Policy, despite not being a feature of the EPBC offsets policy. Certainty for developers already exists with the use of the offsets calculator, it is not necessary to provide a cap which significantly hinders the effectiveness of the offset.

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<sup>15</sup> Queensland Parliamentary Debates. Queensland Parliament. 22 May 2014. Shadow Minister Jackie Trad, p1875.

<sup>16</sup> Ibid. p1876

<sup>17</sup> Martine Maron, (2014) Submission to the Queensland Parliament Agriculture, Resources and Environment Committee Inquiry into the Environmental Offsets Bill 2014 (Qld), 19 March 2014, <https://www.parliament.qld.gov.au/documents/committees/AREC/2014/21-EnvironmentalOffsets/submissions/002-Maron.pdf>.



As stated by then Shadow Minister Trad, “*when you set a cap on the ratio you cannot expand the offset area to ensure that the offset is effective and delivers the conservation outcomes that are intended by the offset.*”<sup>18</sup>

As Professor Martine Maron at the University of Queensland provided in her submission to the EO Bill: ‘Such a ratio is, on its own, meaningless. It is merely the ratio of impact area to the area over which offset actions will be done. This cannot tell us if ‘improve or maintain’ is being achieved. Instead, what is of relevance is the ratio of impact to benefit. The Bill does not address this. Reliance on simple and arbitrarily-capped multipliers means that the approach will fail to achieve ‘improve or maintain’.’<sup>19</sup>

As highlighted by then Shadow Minister Trad in debating the EO Bill, offset assessment done properly can have dramatically different ratios required to truly prevent net population loss – such as the ratio of 19 times the area required for the green and golden bell frogs of Sydney Olympic Park in the 1990s.<sup>20</sup> As stated by then Shadow Minister Trad, “*This should be evidence to everyone that a ratio of one is to four is manifestly inadequate to ensure appropriate conservation outcomes.*”<sup>21</sup>

### **Recommendation 3:**

**(a) Remove the cap on the ratio of offset required.**

**(b) Scientifically valid ratios must be required to be determined for each species impacted if we are to have any legitimacy to our biodiversity offset framework.**

#### **4. Require conservation outcomes that achieve effective offsets, not net decline in environmental values**

We are greatly concerned that the current design of the offset framework is leading to exacerbated environmental decline, at a time when we need a framework that assists in *reversing* environmental decline and leads to improved environmental outcomes for our threatened species and ecosystems.

Currently the EO Act provides a vague standard for conservation outcomes required, with no reference to the actual level of impact on an environmental matter, and no ability to make up for whole-of-ecosystem and genetic loss. EO Act section 11 provides that: “A conservation outcome is achieved by an environmental offset for a prescribed activity for a prescribed environmental matter if the offset is selected, designed and managed to maintain the viability of the matter.” (our emphasis). This definition does not refer to or require the magnitude of the impact and the benefit to be at least the same, providing a very low threshold for the outcome an offset must achieve.

This is extrapolated upon somewhat in the EO Policy which states: “That is, to maintain the status quo of the matter as if the development and offset had not occurred.” While this provides a somewhat improved standard of the offset, given the declining state of our environmental values in

<sup>18</sup> Queensland Parliamentary Debates. Queensland Parliament. 22 May 2014. Shadow Minister Jackie Trad, p1877.

<sup>19</sup> Martine Maron, (2014) Submission to the Queensland Parliament Agriculture, Resources and Environment Committee Inquiry into the Environmental Offsets Bill 2014 (Qld), 19 March 2014, 1, <https://www.parliament.qld.gov.au/documents/committees/AREC/2014/21-EnvironmentalOffsets/submissions/002-Maroon.pdf>.

<sup>20</sup> Queensland Parliamentary Debates. Queensland Parliament. 22 May 2014. Shadow Minister Jackie Trad, p1875.

<sup>21</sup> Ibid.



Queensland we question whether in fact the offsets framework should be requiring more positive impact to halt this continued decline. This decline is being heightened by the assumptions that sit behind our offsets framework calculations.

An important report led by Professor Maron in 2015 concluded that crediting baselines in offset schemes around Australia, including Queensland, risk exacerbating biodiversity loss. This is explained in the abstract to the paper as follows:<sup>22</sup>

*“Determining whether an offset can compensate for a given impact requires assumptions about the counterfactual scenario—that which would have happened without the offset—against which the gain at an offset site can be estimated. Where this counterfactual scenario, or ‘crediting baseline’, assumes a future trajectory of biodiversity decline, the intended net outcome of the offset trade is maintenance of that declining trajectory. If the rate of decline of the crediting baseline is implausibly steep, biodiversity offset trades can exacerbate biodiversity decline.”... “The near-ubiquitous use of declining crediting baselines risks ‘locking in’ biodiversity decline across impact and offset sites, with implications for biodiversity conservation more broadly.”<sup>23</sup>*

Offset objectives of ‘no net loss’, or ‘net gain’, which are relative to a counterfactual of decline, are leading to the decline of species. This important research argues from these findings that we need a framework that leads to losses being compensated with tangible improvements for the matter being impacted, such that there is no net decline, considering both the impact and the offset sites – that there is just as much habitat after the impact as before.

More certainty of beneficial conservation outcomes could perhaps be provided by tangible figures around the percentage improvement or species population targets we need to reach in each species to ensure its long term, healthy survival. This will lead us away from the inherent decline of species to having tangible goals that can be measured and reported against more transparently, to assist with their achievement.

Even in the parliamentary committee inquiry report for the EO Bill, the committee recommended that the definition of ‘conservation outcome’ be revised to strengthen and clarify the outcome to be achieved, recommending as follows: *“The committee recommends that clause 11 be revised in order that the meaning of conservation outcome accords with the Commonwealth offsets policy as outlined below: A conservation outcome is achieved by an environmental offset for a prescribed activity for a prescribed environmental matter if the offset is selected, designed and managed to:*

- a) maintain or increase the viability of the impacted matter; and*
- b) where maintaining the viability of a species increases the likelihood of its survival in the long term or reduces any threat of damage, destruction or extinction.”<sup>24</sup>*

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<sup>22</sup> Maron, M., et al. (2015) Locking in loss: Baselines of decline in Australian biodiversity offset policies. *Biological Conservation*.

<sup>23</sup> Ibid, abstract.

<sup>24</sup> Queensland Parliament, Agriculture, Resource and Environment Committee Report No 40, Environmental Offsets Bill 2014, <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2014/5414T5077.pdf>.

#### **Recommendation 4:**

- (a) Redefine the required conservation outcome for offsets, such that the offset required takes into account the degree of impact and the quality of the environmental value impacted**
- (b) Rather than having objectives of ‘no net loss’, or ‘net gain’, which are relative to a counterfactual of decline, we need a framework that leads to losses being compensated with tangible improvements for the matter being impacted such that there is no net decline, considering both the impact and the offset sites – that there is just as much habitat after the impact as before. Consider population targets for tangible, measurable outcomes that can each offset can go towards achieving.**

#### **5. Require offsetting of all residual impacts, not just subjectively determined ‘significant’ residual impacts, to ensure no cumulative loss of our environmental values**

In the words of then Shadow Minister Trad in debating the EO Bill (pp1874-1875):

“Under the terms of the bill, an offset will only be required if both of the following criteria are met: firstly, the prescribed activity will or is likely to have a significant residual impact on the prescribed environmental matter; and, secondly, all cost-effective on-site mitigation measures for the prescribed activity have been or will be undertaken. While I am happy to see that the avoid, mitigate, offset hierarchy will continue to be observed, I am concerned by the new threshold that is being inserted into the act requiring a significant residual impact before an offset is mandated. This lowers the existing threshold which is one of ecological significance. A paper produced by two solicitors at Norton Rose Fulbright—the Minister for Science’s old firm—points out that this is a clear lowering of the existing standards. Rebecca Hoare and Andrew Muir from Norton Rose state— This proposed new threshold of ‘significant residual impact’ indicates a substantial lowering of the current standard of ‘ecological equivalence’ under existing Queensland biodiversity and vegetation offset arrangements. As a result, project proponents would no longer have to offset all residual impacts of a proposed development, but rather, only offset impacts that are likely to be ‘significant’. It is likely that this will lead to a reduction in the number of environmental matters requiring offsets. It is clear from the bill and the policy circulated by the minister that fewer projects will be required to offset their environmental impact. Labor will not support the reduction in environmental protections that this bill entails.”

The EO Act introduced the standard that only ‘significant’ residual impacts must be offset, which is a lower standard than the previous Queensland offsets policies, which referred to residual impacts. By introducing the word ‘significant’, and with no cumulative assessment of incremental impacts on matters of local, state or national significance, it is inevitable that Queensland will experience an overall decline of the prescribed environmental matters over time. A narrow definition of impacts allows cumulative and incremental impacts on prescribed environmental matters to be ignored.

This was the policy of this government in the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 and therefore this should be an outcome of this reforms undertaken under this review now that the government has a majority in Parliament to ensure its success. Otherwise the attempt at this policy change in 2016 will appear to have been disingenuous.

As stated by then Shadow Minister Trad, “The bill increases the threshold of what activity will require offsets, meaning more environmental damage can be done without requiring an offset. It also removes the requirement to provide an offset which is at least equivalent to the damage done by imposing an unscientific and arbitrary cap on the ratio of an offset. Further, it fails to provide the consistency the minister claims. This is, in fact, a pay-and-go act that allows proponents to damage, to pay, to go. In short, this bill not only reduces the number of projects that will be required to offset their environmental damage, but the projects that do will not even need to offset the full damage of their actions. This is an absolute disgrace.<sup>25</sup> (our emphasis)

**Recommendation 5: Require that all residual impacts, not just significant impacts, be offset where they cannot be avoided or mitigated and they are essential.**

## **6. Remove exemptions from offsets – require all residual impacts be offset, for all development impacts**

Under our current planning and development laws, there are numerous environmental impacts that are exempt from being required to be offset, including for urban development, community infrastructure, for the vast amount of unregulated vegetation clearing allowed in Queensland, and for state government related development and development assessed by the Coordinator-General. There is no reason to exempt any development impacts from being required to provide offsets – if this is allowed we are guaranteed to ensure the decline of our environmental values in Queensland.

### Vegetation clearing exempt from needing assessment or offsets

Schedule 21 of the *Planning Regulation 2017* (Qld) lists various exemptions for the purposes of the VMA, either with or without reference to the land tenure of the site to be cleared (see parts 1 and 2). If an exemption applies then the clearing of that native vegetation is not assessable development under the Planning Regulation and therefore a development permit is not required and an environmental offset cannot be required. However, other approvals may still be required under local government, state, or Commonwealth laws to clear the vegetation, even where an exemption applies.

Common exempt clearing activities:

- clearing under a development approval for a material change of use or reconfiguring a lot, where SARA has been a concurrence agency for the approval;
- clearing of vegetation for a resource activity or for an extractive industry in a key resource area;
- clearing vegetation, for an airport-related purpose, on airport premises;
- clearing vegetation on land in an area for which an AMP under the VMA exists in certain circumstances;
- clearing vegetation that is necessary to remediate contaminant land recorded in the environmental management register or contaminant land register;
- clearing in an area shown on a regulated vegetation management map as a Category X area (which is currently 20 percent of Queensland’s vegetation);

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<sup>25</sup> Queensland Parliamentary Debates. Queensland Parliament. 22 May 2014. Shadow Minister Jackie Trad, p1878.

- clearing for an urban purpose in an urban area (this is the most commonly used exemption allowing clearing for development in urban areas); or
- clearing under an accepted development code other than if the vegetation is in an area shown on a regulated vegetation management map as Category A area.

Coordinated projects and state government development impacts must also be offset under accountable, transparent framework

Coordinated projects are some of the biggest developments in Queensland by their nature under the *State Development and Public Works Organisation Act 1971* (Qld). While we understand these projects are often assessed by the Coordinator-General using the environmental offsets framework as a guide, this is not mandatory, therefore it provides no certainty and transparency around this process and could just as easily be ignored by the Coordinator-General. We understand that the Coordinator-General has in fact provided offset conditions which go above and beyond the EO Act framework, which is to be applauded. Rather than this being used as a reason to maintain the exclusion of the Coordinator-General from the EO Act framework, this should rather be seen as good impetus to strengthen the EO Act framework so that it provides for the improved provision of offsets that the Coordinator-General is providing, while being in a transparent, mandatory framework.

As then Shadow Minister Trad stated in debate on the EO Bill: “If the government were sincere in its attempt to provide consistency, then this offset framework would extend to the Coordinator-General and projects of state significance.”...”Projects that have been declared major projects are likely to have significant environmental effects, which should be offset if they cannot be avoided or mitigated. The Coordinator-General will continue to have the capacity to apply the new Queensland environmental offsets policy on a discretionary basis. That fails to provide the consistency that the minister claims is a reason for this bill”<sup>26</sup>

The above reasoning applies equally to all state government infrastructure and development, including community infrastructure under the Planning Act, which all pose significant threats to the environment that should be required to be offset.

**Recommendation 6: Remove exemptions from the offset framework which currently allow significant tree clearing, urban development, community infrastructure, development assessed by the Coordinator-General and state government related development across Queensland to go ahead without requiring that these substantial impacts be offset.**

## **7. Restrict the ability to offset an offset, or if possible ensure it is effective**

Currently we understand there is little in the way of legal security over offsets that would bring absolute certainty that an offset area was not able to be impacted. Also there is insufficient certainty that where an offset area that is not yet legally secured is impacted, this impact will be required to be counterbalanced with an effective offset for both the original impact and the impact

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<sup>26</sup> Ibid, p1876.

to the offset area. This suggests that one developer's obligation is temporary and appears to ignore the difficulty in establishing biodiversity offsets.

**Recommendation 7: Require long term security of offsets – such that they cannot be impacted to remove the effect of their offset, or in circumstances where it is essential that the offset area is impacted require that this impact is required to be sufficiently offset with an even greater, appropriate area to compensate for this highly undesirable outcome.**

## **8. Significant improvements needed in accountability, transparency and timeliness to meet best practice in offsets and ensure their effective delivery**

Currently there are significant flaws in the transparency, accountability and timeliness provided by the offsets framework.

### Enforceability of achievement of effective offsets must be ensured

One of the key failings in accountability is the lack of clear standards which require that offsets be achieved to truly ensure that the impact is counterbalanced, as mentioned above. Without this requirement being stated in the EO Act and referenced by planning and development laws that are applicable, it is difficult to impossible for the government and the community to enforce the achievement of offsets. The ability to enforce an offset is only currently as strong as the conditions of any related approval, which as we have noted above, may only require that an offset plan be produced, rather than that an offset be achieved successfully which would be enforceable.

**Recommendation 8(a): Provide a clear standard in the EO Act against which the effective achievement of offsets can be enforced by government and through third party enforcement rights.**

### Timeliness in serious question with heavy use of financial settlement

As stated in the Discussion Paper for this Review, since the EO Act commenced in 2014, 97 percent of environmental offsets have been provided via financial settlement, with only \$1.5 million of the total \$9.6 million received for these offsets having been “contracted, committed or spent delivering offset projects”. This raises serious questions around the timeliness of delivery of the offsets under the EO Act framework. Timeliness is a key aspect of best practice offset frameworks. While we understand the reason for this delay is a need to spend time setting up an effective framework for the use of the funds received, we hope that this process is now ready to be implemented to avoid any further delay. Offsets typically can take significant time to come into full effect, so delaying their commencement will provide even greater time that we are in deficit to our environment.

**Recommendation 8(b): Require timely implementation of offsets – ideally offsets should be commenced prior to the impact being undertaken.**

Register of Offsets

We commend the government for maintaining a register of state level offsets – this provides some level of transparency. Further information that could be helpfully provided on this register could include:

- Reporting as to the status of the offset, including any failure to achieve the offset and changes made to ensure the offset was able to be achieved, including for financial settlement offsets. Achievement of an offset can only be assisted by regular reporting on the status of the offset; and
- Local government provided offsets – which would be facilitated by providing a trigger for state government assessment of proposed impacts to matters of state or national significance and proposed offsets for these impacts, and concurrence agency power for the Department of Environment and Science.

We may provide further recommendations with respect to improvements needed to the Register shortly.

**Recommendation 8(c): Update the Offsets Register to include trackable detail on the success and failures of offsets and measures undertaken to address failures, as well as local government provided offsets. Require regular reporting by the government or proponents as to the status of the offset.**

Enforcement and proper assessment requires a well-resourced, well-structured Department of Environment and Science (DES)

As noted by then Shadow Minister Trad in EO Bill debate, p.1877: “The Auditor-General’s report, *Environmental regulation of the resources and waste industries Report 15: 2013-14*, was scathing of the department. Whilst it dealt primarily with environmental authorities, it stands to reason that similar issues will affect EHP’s ability to monitor offsets. Specifically, the report found— EHP is not fully effective in its supervision, monitoring and enforcement of environmental conditions and is exposing the state to liability and the environment to harm unnecessarily.” ... “Poor data and inadequate systems continue to hinder EHP’s planning and risk assessments. As a result, EHP cannot target its monitoring and enforcement efforts to where they are most needed.”

As stated in the quote, this is specific to DES, however similar questions might be raised as to the enforcement action taken by the Department of State Development, Infrastructure, Manufacturing and Planning. We are heartened that the Department of Natural Resources, Mines and Energy has invested in better technology and processes to facilitate the detection and action to address illegal clearing. To fully address this issue, we recommend that a 24h hotline be provided by DES or DNRME to ensure that illegal clearing around Queensland can be addressed quickly. Illegal clearing is often outside of business hours and therefore outside of local government office hours and therefore goes unaddressed. This must be addressed.

**Recommendation 8(d): Ensure sufficient resources and mandates are provided to departments to effectively monitor and enforce the achievement of offsets.**

Accountability of offset brokers

Shadow Minister Trad recommended the following in EO Bill debate: “With the increasing use of offset brokers we should seriously consider the regulatory framework in which brokers work. An

effective way to ensure brokers deliver what they promise could be to require them to be registered. This would reduce the incidence of fly-by-night traders and give the government an ability to levy fines on brokers if they do not deliver offsets or to strike them off the register entirely and make sure they never engage in offset brokering again.”<sup>27</sup> If this has not yet been provided for we recommend this matter be addressed by ensuring that offset brokers are registered and able to be made accountable to ensure the achievement of effective offsets.

**Recommendations 8(e): Ensure accountability of offset brokers by requiring that they be registered**

**9. Provide a trigger for DES concurrence agency oversight for impacts and offsets for matters of state and national significance**

Currently assessment of whether an impact should or can be avoided, mitigated or offset is generally being undertaken by departmental officers across many different departments. These officers are likely applying the assessment under this hierarchy in vary diverse and inconsistent and possibly inadequate means. For this reason, we submit that providing DES with concurrence agency power to assist with the assessment of development against the offset hierarchy for all departments would provide far greater consistency, and also better assessment of potential cumulative impacts of proposed and existing developments against species population targets. DES would of course have to be sufficiently resourced and supported to undertake this role.

**Recommendation 9: Return the concurrence agency power to the Department of Environment and Science for the assessment of offsets proposed during development assessment processes across all frameworks**

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<sup>27</sup> Ibid.