



19 October 2011

Secretariat  
Regulatory Reform Branch  
Australian Government Department of Sustainability, Environment, Water, Population and Communities  
GPO Box 787  
Canberra ACT 2601

Via email: [epbc.reform@environment.gov.au](mailto:epbc.reform@environment.gov.au)

Dear Sir/Madam

**RE: Australian Government EPBC Act Environmental Offsets Policy – Consultation Draft**

Thank you for the opportunity to provide this submission to the Australian Government's Environmental Offsets Policy – Consultation Draft.

The Association of Mining and Exploration Companies (AMEC) is the peak industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises over 330 explorers, emerging miners and the companies servicing them.

AMEC's strategic objective is to secure an environment that provides certainty and clarity for mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

It is in this context that the attached submission is made.

If you have any queries please do not hesitate to contact me. I would also be pleased to meet with you should you require further clarification from any of the points made.

Yours sincerely

**Simon Bennison**  
Chief Executive Officer

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# Submission to

Department of Sustainability, Environment, Water,  
Population and Communities

Consultation on EPBC Act Environmental Offsets  
Policy

October 2011



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## Introduction

1. Thank you for the opportunity to provide this submission to the Department of Sustainability, Environment, Water, Population and Communities (Department) on the Consultation on EPBC Act Environmental Offsets Policy.
2. The Association of Mining and Exploration Companies (AMEC) is the peak industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises over 330 explorers, emerging miners and the companies servicing them.
3. AMEC's strategic objective is to secure an environment that provides certainty and clarity for mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

## Executive Summary

4. AMEC made a number of submissions through the EPBC Review process and wrote to the relevant Minister for Environment outlining its concerns. The key concerns AMEC raised with respect to offsets included:
  - A clear and unambiguous definition of "significant impact",
  - Adoption of a quantitative approach to environmental impact assessments,
  - A publically available offsets register which consolidates all approved offsets.
5. AMEC welcomes the commitment in the Environmental Offsets Policy to publish an offsets register and that the release of the offsets calculator is a step in the right direction towards meeting the first two concerns.
6. AMEC recognises that the offsets calculator is primarily for the use of the Department's Assessment Officers. AMEC understands that the offsets calculator will be publically available and this is welcomed. The publication of the calculator will improve the transparency of the Department's decision making process. However, the Department will need to be vigilant in keeping both the internal assessment calculator and the publically available calculator identical as it will undoubtedly change as new information is added.
7. AMEC attended the offset workshop of 29 September 2011 and in light of this has only focused this submission on the issues it considers are still outstanding or where improvements could be made.

## Recommendations

8. AMEC recommends the Department:
  - Expands the Offsets framework to include avoidance and mitigation measures in the calculation of residual impact,
  - Utilises the work in developing the offsets calculator to develop Guidelines for Environmental Offsets,
  - Revises the '*Significant impact guidelines -- matters of national environmental significance*' to incorporate a quantitative risk based assessment framework, and

- Places a cap on the cash contribution that can be provided to meet a proponents offset obligations.

### Quantitative Risk-Based Environmental Impact Assessment

9. AMEC has been clear in its desire to see the environmental impact assessments (including the determination of a 'significant impact'), avoidance and mitigation and environmental offsets policies exist under a quantitative risk-based assessment framework.
10. In its submission to the EPBC Act Review in December 2008, AMEC stated that *'adoption of a risk based approach in the environmental impact assessment process should also be afforded priority consideration as it would provide an informed, transparent, consistent, systematic, accountable and defensible decision making process'*.
11. The current assessment of environmental impacts has been in the main, in AMEC's opinion, a process too open to subjectivity. Science should underpin protection of all eight matters of national environmental significance and therefore AMEC sees no reason why this cannot be used to support the development of a quantitative risk-based assessment framework.

### Offsets Calculator

12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]



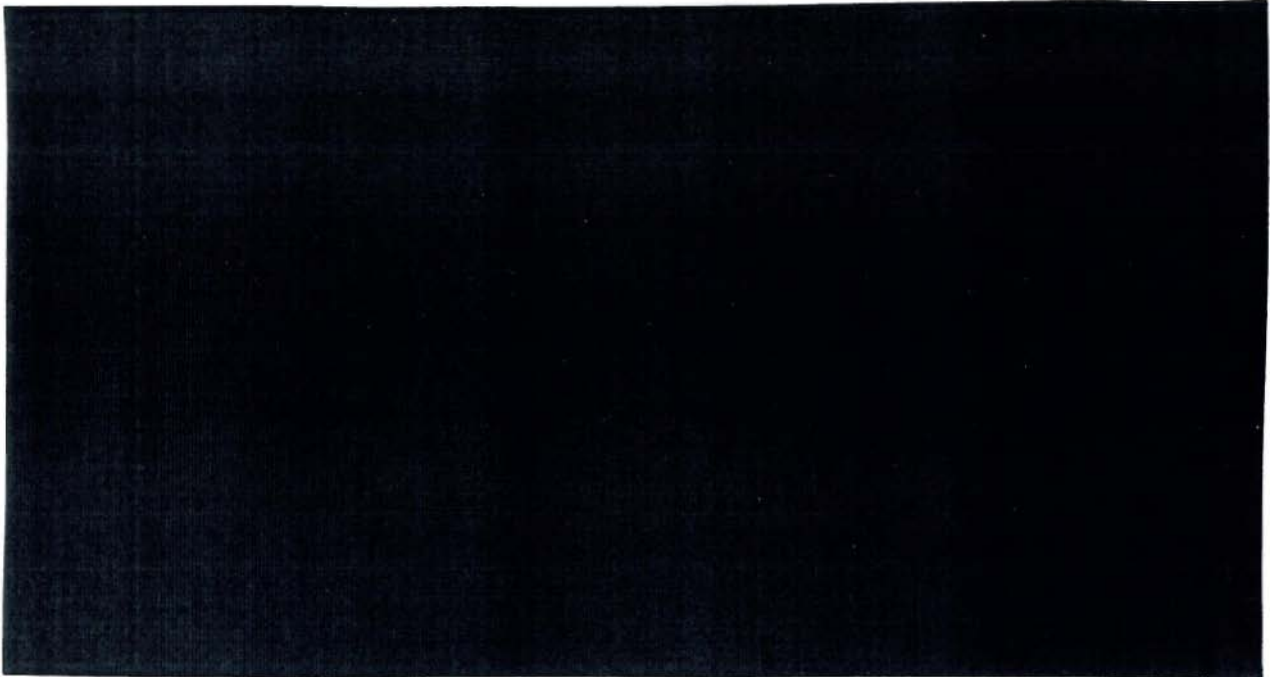


Figure 2

17. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Recommendation

18. [REDACTED]  
[REDACTED]

**Offsets Guidelines under the Policy**

19. AMEC is cognisant that the use of environmental offsets is a developing piece of environmental policy. However, AMEC considers that guidelines for developing appropriate offset packages would be of considerable use to proponents.
20. AMEC appreciates the considerable amount work that has been carried out in the development of the offsets calculator. This work should be able to form the basis for the development of offsets guidelines for proponents.

Recommendation

21. AMEC recommends the Departments utilise the work in developing the offsets calculator to develop Guidelines for Environmental Offsets.

## Offsets Register

22. AMEC welcomes the establishment of an offsets register. AMEC considers that an offsets register provides a significant improvement to the transparency and use of offsets.
23. However, the offsets register should not be used for pseudo benchmarking or precedence for offsets. Each offset should be considered within the context of the development and as such one offset is not comparable to another offset at another site.

## 75/25 Direct/Indirect Rule

24. AMEC understands that the 75/25 Direct/Indirect rule was determined based upon the historical approval of offsets by the Department. Whether this understanding is correct or not, the justification for this rule should be articulated in the policy. AMEC is not strongly opposed to this formula and while it may not be perfect, it is somewhat defensible at this point in time. AMEC presumes that this formula will be subject to scrutiny in the 5 year review flagged in the Policy.

## Cash Contributions

25. Cash contributions in certain circumstances are appropriate and legitimate offsets. However AMEC considers that a proponent should not be able to meet their offset obligations through providing cash above other offsets. This discriminates against smaller cash-poor companies.
26. Notwithstanding that offsets must be applied on a case by case basis, to demonstrate AMEC's concerns, consider two developments that are equal in every way, except, one proponent is a large established company (Company A) with significant cash resources, while the other is an emerging company (Company B) with minimal cash resources.
27. At the conclusion of the assessment process each company requires the same amount of offset points, say 100. Therefore, at a minimum, 75 points are needed through direct offsets and 25 through indirect offsets. Assume the calculator states that 1 point is equivalent to \$100,000<sup>1</sup> of cash (as an example and not AMEC's position). Conceivably then, Company A could provide \$2.5million and receive its approval, while Company B, unable to meet the equivalent cash requirement, is left attempting to find alternative offsets, which may or may not be available or feasible, and in doing so holds up their development approval.
28. To prevent this scenario, AMEC proposes a cap be placed on the percentage of the indirect offset points that can be met by cash. AMEC does not have a particular view on what the cap should be, but for consistency, the 75/25 rule (indirect/cash) could be applied. Thus, in the example above the most cash that could be provided as an offset would be \$625,000, i.e. 25% of 25 points (6.25 points). In addition, a company should be able to choose how it pays, for example, a company may choose the pay \$10,000p.a. for 10 years, or a \$100,000 up front, both of which equates to 1 point.

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<sup>1</sup> In the model presented, for example, \$800,000 would equal 0.8 points while \$1.8million would equal 1.8.



#### Recommendation

- 29. AMEC recommends the Department places a cap on the cash contribution that can be provided to meet a proponents offset obligations.**

### Quantitative Impact Assessment Guidelines

30. The development of the impacts calculator should necessitate a major revision of the *'Significant impact guidelines — matters of national environmental significance'*. In AMEC's view, it is no longer appropriate to merely state in the guidelines for example, under 'Critically endangered and endangered species' 'there is a real chance or possibility'. A 'real chance or possibility' must now be quantified in order to determine the overall impact risk the proposal has.
31. The overall impact would be referred to unmitigated impact. By quantifying the impact, a proponent has some guidance as to what avoidance and mitigation measures are required to reduce this impact, whether they are appropriate and finally what residual impact remains and therefore what offsets are required.
32. Through the Governments response to the EPBC Act review and its commitment to Recommendation 27, there is a real opportunity to incorporate quantitative assessments into the guidelines.

#### Recommendation

- 33. AMEC recommends the Department revises the *'Significant impact guidelines — matters of national environmental significance'* to incorporate a quantitative risk based assessment framework.**

### State and Territories v Commonwealth Offsets

34. AMEC recognises and appreciates that the States and Territories and the Commonwealth environmental laws are different. AMEC also notes the intent of the policy document where the Commonwealth will recognise State and Territory offsets to the extent that they compensate for the residual impact to the protected matter identified under the EPBC Act.
35. However AMEC remains frustrated at this unnecessary duplication of regulatory processes when State and Territory agencies are in a position to undertake the assessment process. AMEC would welcome further moves by Governments to streamline this process so businesses have a single approval process, including for offsets. This would also include State and Territory recognition of offsets under the EPBC Act.

**Appendix 1 has been redacted as it contains confidential material**

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