



Government of South Australia
**Department of Environment
and Natural Resources**

DENR

Date: 21 October 2011

epbc.reform@environment.gov.au

Chief Executive

Level 9 Chesser House
91-97 Grenfell Street
Adelaide SA 5000

GPO Box 1047
Adelaide SA 5001
Australia

Ph: +61 8 8204 9323

Fax: +61 8 8204 9321

www.environment.sa.gov.au

To whom it may concern

**Re: Australian Government EPBC Act Biodiversity Offsets Policy –
Consultation draft**

Thank you for the opportunity to comment on the Draft EPBC Act Environmental Offsets Policy, released in August 2011.

The Department of Environment and Natural Resources (DENR) in South Australia has sought comments from relevant SA Government agencies. DENR is currently reviewing South Australia's existing native vegetation offsets policy, with a view to improving it in line with international offsets standards. I note that the content of the Draft Policy is generally consistent with these international standards, and therefore the DENR is broadly supportive of the Draft Policy.

A key feature of the existing vegetation offsets program in South Australia, which differs from the Draft Policy, is the option for proponents to pay monies into a fund in lieu of offsets. The South Australian Government will retain this as an option in future programs due to the flexibility it provides, both to Government and proponents.

I have attached detailed comments for your consideration (Attachment 1).

For further information on this matter please contact [REDACTED] on [REDACTED] or [REDACTED]

Yours sincerely

John O'Malley
A/CHIEF EXECUTIVE

ATTACHMENT 1

South Australian Government Comments on the Draft EPBC Act Environmental Offsets Policy

General Comments

The Draft policy is generally consistent with internationally developed principles for offset programs (e.g. International Business and Biodiversity Offset Program, BBOP), which is currently being used to help guide the improvement of South Australia's existing offset program (Significant Environmental Benefits program). Therefore, the policy is generally consistent with the approach being taken in SA.

The mitigation hierarchy (avoid, minimise, offset) provides the context for the offsets policy and this could be more clearly stated up-front.

It should be noted that an offsets policy is primarily concerned with facilitating land-use change/development in a way that minimises impacts to the environment, and stream-lines processes for developers. It is not a conservation policy *per se*, and is predicated on the fact that biodiversity losses will occur. Unless 'credits' are genuinely additional to what currently exists in our landscapes, or are created in advance, then at least for a period of time there is no true offset or net gain. There is a risk that gains will not be achieved, or that offsets will not perform in the long-term. A reasonable risk management strategy would be to have a mechanism established for insuring offsets, and/or their providers, so that offsets are maintained in the long-term. Off-site impacts and/or cumulative impacts should be incorporated into the offsets policy.

Establishment of an offsets market is a logical progression for an offsets policy, however, this should be distinguished from a market-based instruments (MBIs) approach to achieving offsets. Generally, to achieve the most strategic offset possible, government agencies and proponents should work together within the landscape where the impact is occurring. This is likely to be the best way to ensure that 'like-for-like' and net gain principles can be effectively applied. An MBIs approach will be suitable where rigorous conservation planning has identified clear priority goals and targets for a landscape/region, and a competitive process may provide the most cost-effective means of aligning an offset.

Terminology could use some clarification. An offsets policy/program may or may not require a market-place or a 'biodiversity banking' approach, although where feasible, establishing a market-place can be a logical progression for a biodiversity offsets policy/program. Use of the term 'offsets market' or similar may avoid confusion with the existing 'Bio-banking' scheme in NSW.

The draft policy precludes payment into an offset trust fund. South Australia's *Native Vegetation Act 1991* provides for *a priori* protection of native vegetation, with exemptions.

Therefore protecting or 'improving' existing vegetation/biodiversity does not necessarily constitute a true 'gain'. In SA the *Native Vegetation Act 1991* has provision for proponents to pay monies into the Native Vegetation Fund in lieu of an offset. This is a valuable component of the current approach to offsets in SA, and would be retained.

There will need to be a clear process for integrating/aligning EPBC Act offsets and State-based offsets, and clarification of interaction with strategic assessments.

As noted, the policy appears to be primarily terrestrially focussed, and application to intertidal and marine zones is likely to be required. SA acknowledges that land tenure and management issues pose challenges in this environment.

There is typically a scaling issue when determining offsets. Biological data is often not available at the 'site-scale' of developments to assess the 'value' of the biodiversity being impacted. The policy should acknowledge the implementation will at times require additional information to calculate an offset, and it is legitimate for government to apply cost-recovery measures in this context.

Monitoring and compliance are key features of an effective offsets program and the policy. The responsibility for monitoring and compliance needs clarification, as it has considerable resourcing issues. SA supports the position that the proponent is responsible for the offset beyond the length of the project and even to manage risk of failure of proposed offset. This is self-monitoring – but requires sound reporting and compliance measures. There should be minimal scope for offsets to 'fail' or not be delivered.

SA is in the process of improving its offset metric to value biodiversity on impact sites, and to ensure 'net' gains. Each state will have a different metric, based on the information-base available. Differences in available information will limit the ability to apply a consistent approach to calculating offsets. This is a major impediment to cross-border transactions, even within the same bio-region/sub-region.

Offsetting impacts outside of the landscape where they occur is generally not the preferred option. In the National context this would only be a possibility within bio-regions/sub-regions to meet "like-for-like" principles. 'Like-for-like' requires clear guidelines.

SA supports accreditation of biodiversity banking schemes but notes that an adequate scheme may not be in place in SA in the short-term.

An appropriate review period for the policy should be incorporated.

Specific Comments

- Box 1 should include explicit reference to a 'net gain' as the outcome being sought, as this is a key principle of offsets (p4).

- Support proposal that “Offsets are not intended to make proposals with unacceptable impacts acceptable.” (p5)
- Support use of third parties to deliver offsets – *Native Vegetation Act 1991* amendments to enable this in SA are currently in process (p6).
- ‘reasonable avoidance and mitigation measures’ needs defining (p6)
- The three actions listed as examples under 4.2.1 (Direct offsets) are not equivalent in value and should therefore not be treated as equivalent options. Ratio’s are required in terms of size of offsets in order to equate these actions.
- “...enduring protection” under 4.2 will require clarification. Also land acquisition of land and change in tenure does not necessarily equate with a gain *per se* (p6).
- Indirect offsets are an important inclusion in any offsetting scheme, but need more specific guidelines. Seeking social or economic co-benefits is ideal, especially if it results in greater ownership by community, but is vague (p7).
- Support proposal that offsets can’t be proposed in the referral stage, under part 7 of the EPBC Act, as this will ensure proponents consider avoiding the impacts or mitigating before considering an offset. (p9).
- Ensuring offset is delivered requires ongoing management requirements to be defined (p10); assume that timeframe of obligation is for as long as the impact of the action (not as long as the activity: p12).
- Protecting habitat that is already in good condition does not constitute a ‘net gain’ (p10). Similarly, restoring habitat that is in poor condition should only occur in exceptional circumstances, given the issues with overcoming ecological thresholds, requirement for specialist expertise, etc. Sites in moderate condition should be the preferred option. Ideally an ‘improved conservation outcome’ will be achieved by directing the offset to priorities identified through a rigorous regional/landscape conservation planning assessment.
- The magnitude of an offset is to be determined on a case-by-case basis (p11) but this means that precedence could be an issue, particularly when experiential evidence is the primary basis for decision-making (i.e. data/knowledge is limited). (see also page 12 re. equivalence – this highlights the need for adequate information to support objective metrics)
- Does a proposed offset being “cost effective to administer” refer to both the C’wealth and State Governments (p12)?
- Support a transparent register, which is critical to avoid “double-dipping” (p12&15)
- Concerned that if desired outcome is not being delivered then “conditions of approval can be varied”. There may need to be stronger legal enforcement to discourage failure to deliver (p15).

- Support that the proponent is required to incur the costs of an offset including providing adequate information for assessment of the proposal Transactions should be cost neutral for SA Govt (p15).
- Over what timeframe will annual reports be required for a particular impact/offset (p15).
- The quality of a site is somewhat 'goal' specific. There are many examples where very weedy sites support threatened species, and weeds can provide important habitat. (p16). Generic 'biodiversity' measures tend to overlook the context of the patch.
- The link between EPBC and state offsets will need to be transparent and upfront to developers (p17).
- The Offset Assessment Guide assumes that an offset occurring adjacent to an impact site will attract a high positive score. This may not be the most strategic or desirable outcome. (App 1).
- A range of comments on the detail of the calculators can be provided through the process of further input into their development. Issues raised related to the overall complexity and the need to define key terms to remove subjectivity in application.