**Birds Australia**
CONSERVATION THROUGH KNOWLEDGE

26st October 2011

EPBC Reform Taskforce
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Email: EPBC.reform@environment.gov.au.

Dear Taskforce members,

**Comment on the Environmental Offsets Policy Consultation Draft**

I am writing to provide Birds Australia's comment on the above consultation paper.

Birds Australia (the Royal Australasian Ornithologists Union) was founded in 1901 and works to conserve native birds and biodiversity in Australasia and Antarctica, through the study and management of birds and their habitats, and the education and involvement of the community. We consider the operation of the EPBC Act to be a key driver in the protection of habitat for birds in Australia.

We appreciate the opportunity to provide comments on the draft policy. Whilst we have significant concerns regarding the use of offsets under the EPBC Act, we recognize that the policy could benefit from stakeholder input and so we have prepared this submission with recommendations and suggestions that we believe could improve the proposal. We hope to work with the new Australian Government to achieve the best possible outcomes for Australia's biodiversity in challenging times and would welcome the opportunity to provide further details. To discuss this opportunity please contact Samantha Vine on [redacted] or [redacted]

Yours sincerely,

Samantha Vine
*Conservation Manager*
**Birds Australia**

## General Comments

Habitat loss has led to a high extinction debt in Australia. Agriculture, forestry, mining, and urban development continue to destroy and degrade habitat, threatening an increasing number of species with extinction and eroding biodiversity.

Development pressures continue to drive habitat loss, thereby contributing to ongoing population declines.

To conserve our birds in particular and biodiversity more generally, we must **retain** (protect) existing native habitat, **restore** damaged or degraded habitat, and **rebuild** habitat that has been removed in the past. At both landscape and multi-regional scales, it is essential to maintain and restore connectivity of habitat to facilitate critical ecological functions such as large-scale movement and adaptation to a variable climate.

Whilst this sentiment is espoused by the Australian Government's biodiveristy policy the policy cannot, in practice, contribute adequately to the conservation of Australia's biodiversity if current practices that favor facilitation of habitat destruction at the expense of environmental protection continue.

Regulatory biodiversity trading (or environmental 'offsets') is increasingly being promoted as a way to enable both conservation and development while achieving 'no net loss' or even 'net gain' in biodiversity. However the practical application of offset has rarely been to the benefit of nature. There are many documented instances where offsetting has been used to justify the destruction of irreplaceable natural habitats. Globally, where qualitative assessments of biodiversity offset programs have been made, reviews demonstrate that the programs have rarely met the objectives they were established to achieve (see for example Turner *et al.* 2001, Gibbons and Lindenmeyer 2007, Kihslinger 2008).

Offsets may be appropriate in some circumstances, however, there are some things that cannot and should not be traded. Birds Australia believes that matters of national importance, such as our most endangered species, should be protected and recovered. Given the prosperity of our nation, avoiding damage to matters of national environmental significance is well within our capabilities.

Birds Australia is concerned that by endorsing an offset approach, the Australian Government is sending a message that our most threatened species and most special places are tradable commodities. The offsets approach can make it appear that these matters are tradeable or replaceable, which is far from the case.

Further, we are concerned that by allowing destruction of nationally and internationally significant habitat, the policy has the potential to undermine the Government's capacity to meet the objectives of the EPBC Act, as it may contradict the International treaty obligations that the Act seeks to implement.

The Commonwealth is required by legislation to operate under the precautionary principle (avoiding doing harm, even in absence of certainty that harm will be done). Birds Australia believe that, given that; offset programs have generally led to a loss of biodiversity to date; the inherent uncertainty in applying a policy that is untested; and the

risk of permanent habitat loss, fragmentation and ecological resilience; an offset program on anything but a trial basis is incompatible with the precautionary principle.

Birds Australia is disappointed that the Government has not included an evaluation of existing offset programs in the draft policy. Particularly since the Department has been operating under a draft policy since at least 2007, and approving conditions that include offsets for over a decade. This is a missed opportunity to demonstrate the ability of using offsets as a mechanism to improve conservation outcomes, or at least result in 'no net loss'.

Further, under the Convention on Biological Diversity (CBD), biological diversity includes diversity within as well as between species. Thus a policy that condones destruction of irreplaceable biodiversity assets, especially listed threatened species, is incompatible with the CBD. Genetic diversity is particularly important in terms of providing adaptation possibilities and resilience to the impacts of climate change.

***Recommendation 1***

Given the available evidence, we recommend against the use of offsets for MNES until it has been demonstrated that they can result in net gain, or at least 'no net loss', for nationally threatened species and places of international significance.

## Comments Specific to the Draft Policy

### Monitoring Performance

Given the Government's plan to evaluate the effectiveness of the policy after five years, Birds Australia feel that it is important to set out what measures will be used to evaluate whether or not the policy is achieving it's key aims. Particularly, in relation to:

Aim 1:
What measurements will the Department use to assess whether or not offsets used under the EPBC Act are effective, proportionate and scientifically robust?

Aim 3:
What measurements will the Department use to assess whether or not offsets used under the EPBC Act are delivering improved environmental outcomes? What is the baseline for comparison?

These should include independent expert ecological assessment, auditing and compliance checks to verify the veracity of proponent's self-assessments. Monitoring and compliance must be adequately resourced.

***Recommendation 2***

Birds Australia recommends that the Department publish it's proposed methods for evaluating the effectiveness of the offset policy.

Further Birds Australia suggests that the Department should include a key aim to ensure the policy results in 'net gain' for matters impacted by implementation of the policy. It should publish an annual 'balance sheet' to assess whether or not the policy is meeting this objective on a year-to-year basis so that it can respond in appropriate timeframes.

*Recommendation 3*

A key aim of the policy should be to ensure 'net gain' for the protected matters impacted by implementation of the policy.

**Section 4.2**
**Direct Offsets**

Protection of land acquired for inclusion in the conservation estate should be protected in perpetuity if it is intended to compensate for the permanent loss of habitat. The term enduring is ambiguous.

Offsets by definition require direct or 'like for like' trading to qualify as an 'offset'. For an offset to be an offset as opposed to another type of compensation, the impact and associated offset must be equivalent. So called 'indirect offsets' are a compensation mechanism that should be used only in exceptional circumstances. These should be based on high priority recovery actions described by authoritative sources such as recovery plans (although Birds Australia notes that many recovery plans do not prioritise actions, and so cautions that compensation packages that do not address the highest priority recovery actions or proximate threat to the MNES affected by development are unlikely to meet the stated aims of the offset policy).

**Section 5.3**
**Decision Stage**

*Recommendation 4*

In the interest of transparent decision-making, Birds Australia recommends that the Department make available the process and reasoning used by assessment officers (including the matters to be considered listed on page 11), to assess whether or not a proposed offset is appropriate and feasible.

**Section 6**
**Offset Requirements**

If offsets are to be used, we agree that an offset must contribute to the viability of the impacted protected matter. We support the ambition that an offset must deliver an overall conservation outcome that will improve or maintain the impacted protected matter as compared to *before* the action occurred. However we are concerned that offsets that do not achieve additionality or equivalence will fall short of this objective.

We agree that a proposed 'offset' that simply increases the amount of habitat or ecological community that is protected by covenant or other mechanism, does not achieve an improved conservation outcome given that the habitat of a matter of national environmental significance (MNES) is already protected by legislation. The current fashion of tenure change simply results in net loss of habitat for a given species and does not constitute an offset or adequate compensation for a significant impact on a MNES.

If the intention of an offset package is to provide 'protection' of other (already existing) habitat, its effectiveness as an offset hinges on the level of threat to the habitat at the offset site, and the degree to which that threat is ameliorated by the form of 'protection' provided. If the offset habitat is not otherwise at high risk of being lost (for example, has some form of existing legal protection), then this approach cannot be considered to achieve no net loss of habitat. In fact it just amounts to loss of that habitat. Birds Australia argues that habitat of threatened species and other MNES already has existing legal protection under the EPBC Act.

***Recommendation 5***

The policy needs to account for the degree of risk (or vulnerability) of a patch of habitat, a value, or place, being lost in the absence of protection offered by an offset package to assess whether or not the offset is really going to deliver a conservation outcome.

For an offset to be an offset (as opposed to another type of compensation), the impact and associated offset must be equivalent. So, whilst improvement in the quality of existing habitat may be accomplished in a shorter period of time than the creation of new habitat, to effectively compensate for habitat loss, there must be equivalence of habitat quality and quantity. For example, what area of high-quality habitat supports the same number of individuals as a hectare of low-quality habitat? The offset effect will be negligible if the resources provided by the offset are not equivalent to the resources lost; for example, if the habitat lost was used for nesting, but the habitat offset comprises feeding habitat.

***Recommendation 6***

An offset (rather than another type of compensation), must be direct, equivalent and additional.

**Requirements need to adequately consider uncertainty, risk, time lags and other factors**

Environmental offsetting has been widely criticised with respect to uncertainty around the amount of gain required to compensate for losses from clearing, the equivalence of losses and gains, the time lag between losses and gains, and a poor record of compliance. Indeed Maron, Dunn, McAlpine and Apan (2010) argue that 'because of time lags in resource maturation, offsets were unable to achieve no net loss in the medium-term, and the most plausible offset scenarios were inadequate to compensate for habitat loss at year 100, when resource availability was lowest'.

Offset requirements need to consider uncertainty, time lags and other ecological issues, including:

- significant time lags between losses in biodiversity and subsequent biodiversity gains. Temporary loss in habitat between clearing and the maturation of an offset, or differences between the habitat lost from clearing and gained through an offset, represent a significant risk to ecosystem processes and a species or populations viability.

- definition and valuation of biodiversity - unlike carbon credits, biodiversity measurements cannot easily be based on a single, quantifiable unit. Defining and quantifying biodiversity losses and gains always involves a subjective element, as at present, measuring every component of biodiversity is not achievable and knowledge of biodiversity is incomplete. Other crucial issues may also be overlooked, such as the effects of habitat fragmentation on dispersal, ecosystem function, and the loss of genetic diversity, resilience to climate change as well as social views on the definition and value of biodiversity

- methodologies are currently simplistic. Ecosystems are complex and biodiversity values are difficult to quantify

- like for like offsetting can still mean that while a high value conservation area may gain formal protection, nonetheless another high conservation value area is lost

- equity - offsetting too far from development sites would mean local communities could lose cultural values associated with the biodiversity, access to green spaces and other ecosystem services

- allocating offsets based on an assumption of restoring an area is subject to significant scientific uncertainty in term of biodiversity gains. Restoration science is still in it's infancy and habitat values can be difficult to restore in terms of the time and technical skills required. Many ecosystems are poorly described and will be impossible to recreate within human timescales.

*Recommendation 7*

Given the uncertainty, risk and the complexity of biodiversity values; that offset programs have generally led to a loss of biodiversity to date; the inherent uncertainty in applying a policy that is untested; and the risk of permanent habitat loss, fragmentation and ecological resilience to matters of national environmental significance: Birds Australia recommends against implementing an offset program on anything but a trial basis.

**Offsets Assessment Guide**

Birds Australia notes that the Offsets Assessment Guide has recently been refined and has changed significantly from the published copy. Birds Australia therefore reserve final comment until a finished version of the metric is made publically available. We are concerned with the structure of the approach, particularly with regard to equivalency and additionally. We strongly recommend that the metric be peer reviewed by expert scientists to ensure it will achieve the aims of the draft policy.

## References


Gibbons, P & Lindenmeyer, DB (2007) Offsets for land clearing: No net loss or the tail wagging the dog? Ecological Management and Restoration 8(1), pp. 26-31.

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Maron, M; Dunn, P. K; McAlpine, C. A. & Apan, A. (2010) Can offsets really compensate for habitat removal? The case of the endangered red-tailed black-cockatoo. *Journal of Applied Ecology*, vol. 47, issue 2. pp 348-355.

Moilanen, A., Van Teeffelen, A. J. A., Ben-Haim, Y. and Ferrier, S. (2009), How Much Compensation is Enough? A Framework for Incorporating Uncertainty and Time Discounting When Calculating Offset Ratios for Impacted Habitat. *Restoration Ecology*, vol 17, issue 4, pp470–478.

Turner, RE, Redmond, AM Zedler, JB (2001) Count it by acre or function – mitigation adds up to net loss of wetlands. National Wetlands Newsletter 23(6), pp 5-16.