Environmental Defenders Office

Submission on exposure draft of the Environmental Offsets Amendment Bill 2026

4 September 2026

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 40 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

Submitted to:

Department of the Environment, Tourism, Science and Innovation

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Acknowledgement of Country

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past and present and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations Cultural Heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises the right to self-determination of First Nations peoples, including their right to freely determine their own political status and freely pursue their economic, social and cultural development. This extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

A note on language

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term First Nations. We acknowledge that not all First Nations peoples will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. The EDO respects all First Laws and values their inherent and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.

Executive Summary

1 Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Department of Environment, Tourism, Science, and Innovation's (**DETSI**) exposure draft of the Environmental Offsets Amendment Bill 2026 (**Draft Bill**).

2 Queensland is Australia's most biodiverse state and as a result is home to the largest variety of species across the country including a high number of threated species. These species are under pressure from ongoing deforestation for alternate land use and development. Offsets are one means for enabling development to occur whilst simultaneously seeking to protect threatened species from the impacts of these developments.

3 In general, EDO is supportive of many of the amendments proposed in the Draft Bill as they will create a clearer, more straight forward and better-functioning offsets framework which will improve outcomes for listed species and ecological communities. However, overall, the proposals in the Draft Bill do not go far enough towards addressing systemic failures in Queensland's offset framework which are allowing ongoing and accumulated harms to protected matters across the state.

4 In this submission, we first set out our comments and recommendations on what further reforms are required for the offsets framework to better function. We then provide recommendations on how the text of the Draft Bill could be improved to ensure better outcomes for protected matters from [23], followed by overarching comments on proposals set out in the Draft Bill from [35] below.

Summary of Recommendations

1. Offsets frameworks must embed First Nations rights including:
    (a) in accordance with United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**)and subject to effective engagement with First Nations people, further reforms be introduced to ensure that Queensland's offsets framework appropriately recognises the inherent rights of First Nations people, including free, prior and informed consent (**FPIC**) with respect of offsets. As a starting point, the definition of 'owner' should be amended to include registered native title claimants and holders; and
    (b) further opportunities for First Nations people to be involved in and benefit from the planning and delivery of offsets projects be explored.
2. Reliance on financial offsets should only be allowed as an absolute last resort, for protected matters that are actually able to be financially offset.
3. Updates to the financial offsets calculator must be informed by science, take a precautionary approach and should occur regularly to keep up with contemporary standards. Modify the method through which financial offsets are calculated, including through ensuring:
    (a) financial offsets reflect the actual costs of delivering the offsets;
    (b) the availability of sliding scale discounts is greatly reduced; and

(c) multipliers are appropriately calibrated to account for risks in failure of delivery.

4. The offsets register be improved to be more robust, detailing:
   (a) the nature and extent of impacts for which offsets are sought, including the species or values impacted, how they will be impacted and the science relied upon to determine this;
   (b) how an offset was determined to compensate for impacts, either the amount via financial settlement or a site-specific offset, and the science relied upon to determine this;
   (c) regular updates as to how effective delivery of an offset has been in compensating for the impact including the real cost of undertaking an offset and whether recalculations are needed going forward for establishing offsets;
   (d) where there are failures in offsets and (any) actions taken to address these failures;
   (e) protected species where offsets are disproportionately relied upon/unfulfilled;
   (f) timelines for delivering offsets; and
   (g) any research or understanding as to whether outstanding offsets can realistically be achieved.
5. With respect to the mitigation hierarchy:
   (a) the proposals in the Draft Bill be adopted including the requirement of 'repair'; and
   (b) proponents be required to demonstrate compliance with the mitigation hierarchy, and decision makers be required to consider the mitigation hierarchy prior to approving offsets; and
   (c) guidelines be developed to ensure the effective operation of the mitigation hierarchy including how the requirement to 'repair' functions practically.
6. The definition of 'environmental offset' should be limited to only include activities which directly benefit the protected matter for which the offset is being required. If a direct offset is not possible, the impact should not be allowed, particularly for highly threatened species or communities, unless it is essential in the public interest. Any consideration by DETSI of proceeding with including averted losses under the offsets framework, must be underpinned with robust methodology and science.
7. Proposed new subsection section 14(2) (as renumbered) be amended to replace 'may' with 'must' to ensure consideration of cumulative impacts is mandatory.
8. The funds in the financial offsets account should only be used for costs incurred by the department in administrating the offsets framework where such costs have been factored into the calculation of the financial offsets amount.
9. The requirement of consent from landholders and interested parties for applications for advanced offsets be reconsidered.

Introduction

5 Queensland is a biodiversity hotspot and home to many endemic threatened species. The state's biodiversity is also facing increasing pressures from development for housing, extractive industries, the energy transition, incompatible land uses and the impacts of climate change. As the most recent Statewide Landcover and Tress Survey report evidences, land clearing in Queensland is continuing to occur at an alarming rate, with 274,616 ha of woody vegetation affected by clearing activity for the year 2023-24.[1]

6 Offsets are one way in which developments are able to proceed whilst still ensuring critical species are protected and our biodiversity is preserved. It is therefore essential that our offsets framework is fit for purpose. As has been recognised by DETSI, offset delivery has not kept up with the impacts from developments. [2]

7 While EDO is generally supportive of many of the proposals in the Draft Bill, we urge DETSI consider implementing further reform, to ensure the purpose of the *Environmental Offsets Act 2014* (Qld) (**Environmental Offsets Act**), namely to counterbalance the significant residual impacts on protected environmental matters is in fact achieved.[3]

Further reform of offsets framework is needed

Offsets frameworks must embed First Nations rights

8 EDO is a non-Indigenous community legal centre that works alongside First Nations peoples around Australia and the Torres Strait Islands in their efforts to protect their Countries and cultural heritage from damage and destruction.

9 Out of respect for First Nations self-determination, EDO has provided high-level key recommendations for western law reform to empower First Nations to protect their Countries and cultural heritage, and to ensure compliance with Australia's obligations under international law.

10 Queensland's offsets framework must recognise the inherent rights of First Nations People embodied in UNDRIP including particularly requiring mandatory FPIC in relation to offset projects on Country. Australia endorsed UNDRIP in 2009, but it has not been implemented at local, State and Federal governments levels.

11 One way First Nations rights could be upheld in the framework would be to expand the definition of 'owner' to include registered native title claimants, registered native title holders

[1] SLATS Clearing Report, available here.
[2] Discussion Paper 'A fresh start for Queensland's Environmental Offsets Framework' (**Discussion Paper**) 7, available here. 10.
[3] *Environmental Offsets Act 2014* (Qld).

and trustees of Deed of Grant in Trusts (**DOGITs**). This would reflect that native title parties have a proprietary interest in land, and the rights of First Nations to protect their land, resources and heritage as rightsholders and custodians of their Country.

12 Aside from embedding FPIC by treating First Nations' interests in land similarly to other key tenure/interest holders, the framework could better engage First Nations people through:

(a) facilitating stronger and more effective opportunities for partnerships, participation and co-design with First Nations in the planning and delivery of offsets on Country; and

(b) integrating First Nations knowledges into project design of any offset projects to strengthen protection of Country and Cultural Heritage, while retaining First Nations control of this knowledge and expertise, including by instituting strong legal protections for Indigenous Cultural and Intellectual Property; and

(c) resourcing First Nations to facilitate offsets projects to ensure that First Nations people benefit from opportunities proposed of offsets (in particular advanced offsets).

13 Subject to effective engagement and consultation with First Nations, DETSI should explore improving Queensland cultural heritage regime to recognise the impacts of biodiversity loss on connection to Country and Culture for First Nations which offsets cannot address.

Recommendation 1:

Offsets frameworks must embed First Nations rights including:

(a) in accordance with UNDRIP and subject to effective engagement with First Nations people, further reforms be introduced to ensure that Queensland's offsets framework appropriately recognises the inherent rights of First Nations people, including FPIC with respect of offsets. As a starting point, the definition of 'owner' should be amended to include registered native title claimants and holders; and

(b) further opportunities for First Nations people to be involved in and benefit from the planning and delivery of offsets projects be explored.

Financial offsets should only be available in limited circumstances

14 The current financial offsets framework has fundamentally failed to deliver outcomes for the protected matters it is intended to benefit.[4] Since the financial offsets framework was introduced, over 90% of offsets have been 'delivered' by way of financial offsets, however despite the impacts to protected matters having likely already occurred, these harms have not been compensated for. This is evidenced by the significant unspent financial offset contributions held in the financial offsets account.[5] Further, we understand from speaking with ecological experts that the funds accumulated in the financial offsets account are nowhere near sufficient to what is needed to deliver offsets for the impacts the money enabled. It also may be the case that those impacts are not in fact capable of being offset.

[4] Discussion Paper 7.

[5] Discussion Paper 7.

15 If financial offsets are to be retained, they should only be allowed as an absolute last resort and with guardrails in place. Such guardrails should include:

(a) creating a list of protected matters that cannot be offset via a financial offset (as has been proposed under reforms to the *Environment Protection and Biodiversity Conservation Act* 1999 (Cth) (**EPBC Act**);

(b) ensuring that financial offsets are delivered in a timely fashion to reduce the latency between the impact occurring and the offset being established; and

(c) ensuring there is robust evidence that proposed offsets and truly additional and therefore provide a net benefit to protected matters.

Recommendation 2:
Reliance on financial offsets should only be allowed as an absolute last resort, for protected matters that are actually able to be financially offset. There should be a list of matters that cannot be offset via financial payments. Requirements should be introduced ensuring the timely delivery of financial offsets and that appropriate consideration is given to additionality of the activity.

Financial offsets calculator must be calibrated to represent the true cost of delivering offsets

16 The financial offsets calculator has not been updated since it was introduced in 2014. As recognised in the Discussion Paper, offset delivery has lagged behind the pace and scale of development impacts, resulting in 'net environmental loss and significant financial liability for the state'.[6] If financial offsets continue to be an option for fulfilling offset obligations, then that financial amount must be appropriately costed. EDO strongly supports earlier proposals to modernise the financial offset calculator, and encourages those proposals to be enacted.[7]

17 From attending the consultation session on the Draft Bill, we understand that the Department is considering ensuring that multipliers should include account for the risk of offset delivery failure. Such an approach is strongly supported as it will align with the precautionary principle and also recognise the on-the-ground reality that offsets are difficult to deliver and that, to date, the costs of actually realising effective offsets have been undervalued. Environmental threats from climate change including changes to bioregions and impacts from extreme weather events also pose significant risks to the delivery of offsets. These risks should be appropriately factored into the financial offset valuation as well.

18 As discussed below, administrative fees and disbursements incurred by the DETSI in administering the offsets framework should also be accounted for when determining financial offset amounts.

[6] Discussion Paper 10.
[7] Discussion Paper 10.

19 Overall, any review of the financial offsets calculator, and related multipliers, should be underscored by expert scientific evidence. While the benefits of obtaining large offset areas over piecemeal disconnected areas is acknowledged, we hold concerns that sliding scale discounts (which can discount up to 90% of the offset requirements) could counteract these benefits.[8] A better approach to sliding scale discounts would be to incorporate whole of landscape consideration when evaluating how, and where offsets are implemented, and their relative value in a given area.

20 To the extent possible, we also support alignment with any Commonwealth financial offsets calculator providing that the Commonwealth calculator is underpinned by sound methodology.

Recommendation 3:
Updates to the financial offsets calculator must be informed by science, take a precautionary approach and should occur regularly to keep up with contemporary standards. Modify the method through which financial offsets are calculated, including through ensuring:

(a) financial offsets reflect the actual costs of delivering the offsets;
(b) the availability of sliding scale discounts is greatly reduced; and
(c) multipliers are appropriately calibrated to account for risks in failure of delivery.

The offsets framework would benefit from greater transparency

21 Reforms should be introduced to increase the transparency around the assessment, approval and delivery of offsets. This could be achieved through more fulsome information on the offset register. The benefits of centralising and publicising such information would include:

(a) informing decision-makers of cumulative impacts and the relative significance of proposed impacts, particularly with reference to the application of the mitigation hierarchy;
(b) assisting industry in understanding challenges associated with offsetting different impacts from proposed developments, and help inform consideration of suitable places for development; and
(c) assisting those delivering offsets to understand protected matters to prioritise and assisting possible landholder partners in understanding the significance of potential offset areas.

22 In addition, it would be helpful to increase transparency of the efforts being taken to spend the amount of money received via financial settlement – including what the impact was that the money has been received for, how any offset is then established and the real costs associated with actually delivering the offset.

[8] Queensland Environmental Offsets Policy 35, available here.

Recommendation 4:
The offsets register be improved to be more robust, detailing:
(a) the nature and extent of impacts for which offsets are sought, including the species or values impacted, how they will be impacted and the science relied upon to determine this;
(b) how an offset was determined to compensate for impacts, either the amount via financial settlement or a site-specific offset, and the science relied upon to determine this;
(c) regular updates as to how effective delivery of an offset has been in compensating for the impact including the real cost of undertaking an offset and whether recalculations are needed going forward for establishing offsets;
(d) where there are failures in offsets and (any) actions taken to address these failures;
(e) protected species where offsets are disproportionately relied upon/unfulfilled;
(f) timelines for delivering offsets; and
(g) any research or understanding as to whether outstanding offsets can realistically be achieved.

Comments on the exposure Draft Bill

Embedding the mitigation hierarchy and inclusion of 'repair'

23 EDO strongly endorses the proposed requirement for the Environmental Offsets Act to be administered with regard to the mitigation hierarchy.[9] EDO also supports the inclusion of the definition of the mitigation hierarchy in the Environmental Offsets Act (rather than in the Policy and Regulations).[10]

24 Overall, to be effective, the mitigation hierarchy must be embedded directly into decision making processes. This could be achieved through:
(a) requiring proponents to demonstrate that best efforts have been made to avoid, mitigate and repair impacts prior to an offset being available; and
(b) requiring decision makers to expressly consider compliance with the mitigation hierarchy prior to approving developments with offset conditions.

25 Clear guidance must be developed setting out the evidence needed to support developments proceeding that impact protected matters (especially highly threatened species and communities). For example, the extent to which the public interest in the development justifies harms to protected matters. Subject to comments at [13] above, this could also include consideration of impacts of biodiversity loss on First Nation peoples' connection to Country and Culture which offsets cannot address.

[9] Draft Bill cl 4, proposed s 3A.
[10] Draft Bill cl 21.

26 EDO strongly supports the inclusion of the additional stage of 'repair' to make clear that full rehabilitation, and where possible, restoration should be prioritised on site to avert harm prior to offsetting impacts.[11] Assessing and calculating repair requires clear a transparent governance framework and methodologies for determining how much repair is needed to compensate for the impacts, or how much residual impacts remains. This is similar need to determining how much offsetting is needed to compensate for impacts. Absent appropriate guidance, the repair step could end up with rehabilitation being relied on as an offset despite (on proper application of the mitigation hierarchy) not being truly additional.

Recommendation 5:

With respect to the mitigation hierarchy:

(a) the proposals in the Draft Bill be adopted including the requirement of 'repair'; and

(b) proponents be required to demonstrate compliance with the mitigation hierarchy, and decision makers be required to consider the mitigation hierarchy prior to approving offsets; and

(c) guidelines be developed to ensure the effective operation of the mitigation hierarchy including how the requirement to 'repair' functions practically.

The proposed definition of 'environmental offset' is overly broad

27 EDO holds concerns with respect to the proposed definition of 'environmental offset' as it may enable activities which do not result in a net benefit to protected matters being considered an offset. Examples given in the Draft Bill include 'preparing a plan about a prescribed environmental matter' – which could have no outcome at all for the environment – and activities which have an indirect benefit such as 'scientific research and an education program'.[12]

28 For protected areas (other than a special wildlife reserve or nature refuge) the Draft Bill proposes that activities that provide offset activities may include 'carrying out any activity that provides a social, cultural, economic or environmental benefit to any protected area'.[13] These definitions are overly vague, in some instances completely irrelevant to compensating for an environmental impact (such as social, cultural and economic benefits) and may result in activities which do not directly benefit protected matters to be considered as offsets. Indirect offsets do not actually offset impacts and therefore it is essential that direct offsets, and ideally like-for-like offsets, be required. If a direct, like-for-like offset is not possible, the impact should not be allowed to take place unless it is considered essential in the public interest.

[11] Draft Bill cl 5, proposed s 6A.
[12] Draft Bill cl 5, proposed s 6B(1).
[13] Draft Bill cl 5, proposed s 6B(2).

29 At the briefing on the Draft Bill, the Department of Environment, Tourism, Science and Innovation (**DETSI**) staff indicated they were considering introducing similar reforms to those occurring at the federal level to allow for averted loss offsets. We hold concerns that averted loss offsets, being those offsets awarded for preventing anticipated impacts to protected matter (e.g. clearing) from occurring, have a high risk of providing no additionality and therefore no compensation for the impact. There is an inherent issue of establishing additionality with respect to averted loss offsets as it is difficult to prove a counterfactual would have in fact occurred and to establish the extent of harms that would have hypothetically arisen.

30 In a context where Queensland's offsets framework already has a number of systemic issues undermining the effective delivery of offsets, the introduction of another class of offsets with underlying methodological problems presents further challenges for the offsets framework. It also risks further undermining the credibility of the framework as a whole. Any consideration by DETSI of proceeding with including averted losses under the offsets framework must be underpinned with robust methodology and science.

Recommendation 6:
The definition of 'environmental offset' should be limited to only include activities which directly benefit the protected matter for which the offset is being required. If a direct offset is not possible, the impact should not be allowed, particularly for highly threatened species or communities, unless it is essential in the public interest.

Any consideration by DETSI of proceeding with including averted losses under the offsets framework, must be underpinned with robust methodology and science.

Consideration of cumulative impacts of developments should be mandatory

1 EDO supports amendments targeted at ensuring cumulative or total impacts of projects are considered and offset where authorities are amended.[14] This will ensure all activities that result in significant residual impacts will be subject to offset requirements. However, as currently drafted, the consideration of cumulative impacts is not mandatory. Where cumulative impacts arise, we see no policy justification for affording discretion as to whether they should be considered.

Recommendation 7:
Proposed new subsection section 14(2) (as renumbered) be amended to replace 'may' with 'must' to ensure consideration of cumulative impacts is mandatory.

[14] Draft Bill cl 16.

Financial offset payments should only be used for administrative costs to the extent those costs are accounted for in calculating the offset amount

2 As part of proposals to 'unlock' the financial offsets account, the Draft Bill proposes to allow payments from the financial offsets account to cover expenses incurred by the department for activities related to administering the offsets framework.[15] This proposal is only supported to the extent the administrative costs are factored into the calculation of the financial settlement amount. EDO strongly supports implementing the polluter pays principle to ensure that developers are responsible for covering the full costs of delivering offsets, including administrative costs. However, we hold concerns that allowing existing funds in the financial offsets account to be spent on administrative matters will undermine achieving the goal of the financial offsets account to effectively deliver actual benefits to protected matters. To avoid further compromising the available funds for offsetting impacts already allowed (for which money was obtained, and has proven to be insufficient), the government must source the administrative funds elsewhere to address this error in the calculator to date.

Recommendation 8:
The funds in the financial offsets account should only be used for costs incurred by the department in administrating the offsets framework where such costs have been factored into the calculation of the financial offsets amount.

Consent from landholders and interested parties should be required for applications for advanced offsets

3 The Discussion Paper proposed that an application for an advanced offset should be required to be accompanied by written consent of each owner and person with an interest in the land within the area.[16] This proposal was not progressed in the Draft Bill as it could "potentially create a barrier to registering advanced offsets".[17]

4 Early engagement of landholders and interested parties (including First Nations parties) in the delivery of offsets, advanced or otherwise is essential. We hold concerns that failure to obtaining consent at an early stage in the process will actually have the opposite effect and result in delays later in the process.

Recommendation 9:
The requirement of consent from landholders and interested parties for applications for advanced offsets be reconsidered.

[15] Draft Bill cl 46, proposed s 86(1).
[16] Discussion Paper, p 16.
[17] Supplementary Information, p 8.

Other proposals EDO is generally supportive of in the Draft Bill

5 We provide the following overarching comments on the proposals in the Draft Bill:

(a) Expansion of prescribed activities (which require offsets) to include accepted development under the *Planning Act 2014* (Qld) and activities under Commonwealth approvals is strongly supported.[18] This will ensure that a broader range of activities that may impact protected matters are required to be offset.

(b) EDO supports the proposals to relocate key provisions in the Offsets Regulation and Policy into the Environmental Offsets Act.[19] Similarly, proposals creating clearer administrative arrangements and requiring decision notices are also supported.[20] These amendments will create a simpler framework which is easier to navigate.

(c) EDO also supports the new deemed conditions proposed requiring payment/delivery of financial settlement offsets and agreed delivery arrangements prior to activities and related impacts occurring.[21] This will assist in reducing the time lag between an impact occurring and the offsets being secured.

(d) EDO supports removing the requirement to elect how the offset will be delivered in circumstances where conditions already mandate the delivery method.[22] This proposal will reduce regulatory/administrative burden on proponents and the administering authority without reducing the integrity of the offsets framework.

(e) EDO supports broadening the definition of what is considered a legally secured offset area.[23] This will facilitate a broader range of ways to legally secure offset areas.

(f) The proposals in the Draft Bill enabling the administering agency to make minor amendments (meaning clerical or technical errors) to agreed delivery arrangements, environmental offset agreements and offset protection agreements by notice are supported.[24]

Thank you for the opportunity to make this submission.
Please do not hesitate to contact our office should you have further enquiries.

[18] Draft Bill cl 9.
[19] Draft Bill cl 37, 38, 47, 48 and 50.
[20] Draft Bill cl 21, proposed ss 20A, 20B, 20C
[21] Draft Bill cl 20, proposed ss 17A and 17B and cl 21, proposed ss 19 and 20.
[22] Draft Bill cl 21, proposed s 17A and 17B.
[23] Draft Bill cl 31, proposed s 32.
[24] Draft Bill cl 21, proposed s 20E, cl 29, proposed s 27A, and cl 35, proposed 30C and cl 51 proposed definition of 'minor amendment'.