

GOVERNANCE FRAMEWORK

PILBARA ENVIRONMENTAL OFFSETS FUND

Preamble

The Department of Water and Environmental Regulation has prepared this Governance Framework to establish the governance and oversight arrangements for the Pilbara Environmental Offsets Fund. The framework has been approved by the Minister for Environment and will be reviewed each time the Implementation Plan is reviewed.

Citation

This document may be cited as the *Pilbara Environmental Offsets Fund Governance Framework 2019*.

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1 Introduction

1.1 Purpose

The Pilbara Environmental Offsets Fund (the Fund) is established to facilitate the coordinated delivery of environmental offset projects located within the Pilbara bioregion of Western Australia, as defined in the Interim Biogeographic Regionalisation for Australia (IBRA). Offset projects should fall predominantly within the IBRA region but may be extended outside the boundary if there is a clear conservation benefit in doing so.

This Governance Framework establishes transparent decision-making processes, clarity of roles and responsibilities, and guidance for project delivery.

1.2 Guiding Principles

It is recognised that Government and industry have a shared goal to maximise the benefit delivered from offset related investment and conserving and enhancing the natural values and biodiversity of the Pilbara region. To achieve this, the Minister for Environment has endorsed five core principles for the Fund:

1. Transparent and accountable fund administration.
2. Cost efficiency, including maximising leveraging opportunities to achieve regional environmental outcomes and minimising administration.
3. Effective performance evaluation and continual improvement.
4. Clear roles, responsibilities and accountabilities.
5. Constructive and transparent engagement with key stakeholders.

To ensure transparency, accountability and confidence in decisions made in relation to the Fund, information will be made publicly available via mechanisms detailed in section 5.

1.3 Background to the Fund

In assessing proposals under Part IV of the *Environmental Protection Act 1986* (EP Act), the Environmental Protection Authority (EPA) identifies whether a significant residual impact remains after all mitigation measures have been applied. Offsets will usually be required to counterbalance any significant residual impact.

In general, significant residual impacts include those that affect threatened plants and animals (such as declared rare flora and threatened species that are protected by statute), areas within the formal conservation reserve system, important environmental systems and species that are protected under international agreements (such as Ramsar listed wetlands) and areas that are already defined as being critically impacted in a cumulative context, as is the case in the Pilbara. Impacts may also be significant if, for example, they could cause plants or animals to become rare or endangered, or they affect vegetation which provides important ecological functions.

The Pilbara is mostly Crown land and, as such, traditional land acquisition offsets are not possible in the region. In addition, multiple overlapping tenures including pastoral leases and

mineral tenements make it difficult for individual proponents to implement on-ground offset actions to deliver the long term and enduring protection of biodiversity.

In recognition of these difficulties, in 2012 the EPA began applying offset conditions to proposals in the Pilbara that require the contribution of monies to a Pilbara regional conservation initiative (now called the Pilbara Environmental Offsets Fund). Principle 6 of the Western Australia (WA) Offsets Policy and Guidelines provides for strategic approaches for offsets to address landscape scale issues - <http://www.epa.wa.gov.au/guidelines-procedures>.

In 2014 the EPA released strategic advice under s16(e) of the EP Act [*Cumulative Environmental Impacts of Development in the Pilbara Region*](#) (the Advice). One of the purposes of this document was to discuss the rationale behind the EPA's recommendation for the establishment of the Fund. In doing so, the Advice also identified the key threats and challenges to the environmental values of the Pilbara. The key threats and challenges identified in the Advice which may be addressed through implementation of the Pilbara Environmental Offsets Fund include:

- the large scale of clearing and the focus of this clearing in particular areas;
- lack of success in achieving a reasonable degree of ecological function in rehabilitation and the significant area requiring rehabilitation post mining;
- increasing degradation of natural systems due to a rapid introduction of weeds and feral animals; and
- lack of knowledge of the environmental values of the Pilbara, particularly about regional context and ecology to underpin environmental impact assessment.

These threats, as well as other threats to biodiversity in the Pilbara like habitat degradation and fire management, are all landscape-scale issues and require a coordinated approach at the landscape scale to increase understanding, reduce the threat, and improve the condition of the Pilbara environment.

In July 2016, the WA Government announced the Fund and its creation by the now Department of Water and Environmental Regulation (DWER). The Fund is being established as a Government-managed Fund with involvement from an Implementation Advisory Group (IAG) made up of key stakeholders and experts and a Project Recommendation Group (PRG) made up of representatives from State and Australian¹ governments and an independent probity officer. This approach will promote transparency, accountability and stakeholder involvement in decision-making, and will assist in addressing the tenure issues that make delivery of offsets within the Pilbara difficult.

¹ The federal Department of the Environment and Energy (DoEE) is already engaging in the PRG and related Fund planning with a view to confirming the Fund's arrangements will meet federal requirements. Once satisfied, DoEE has confirmed it will recommend the Australian Government execute a Memorandum of Understanding with the WA Government by which proponents will be able to acquit their offset obligations at the federal level through payments to the Fund.

2 Governance Structure

The primary decision-maker for the Fund is the Minister for Environment. DWER and the Department of Biodiversity, Conservation and Attractions (DBCA) will jointly advise the Minister on the implementation of the Fund following advice from the IAG and PRG.

DWER will retain primary responsibility given its role in assuring compliance with Ministerial Conditions, the WA Offsets Policy and conditions of the Special Purpose Account. These relationships are described in Figure 1.

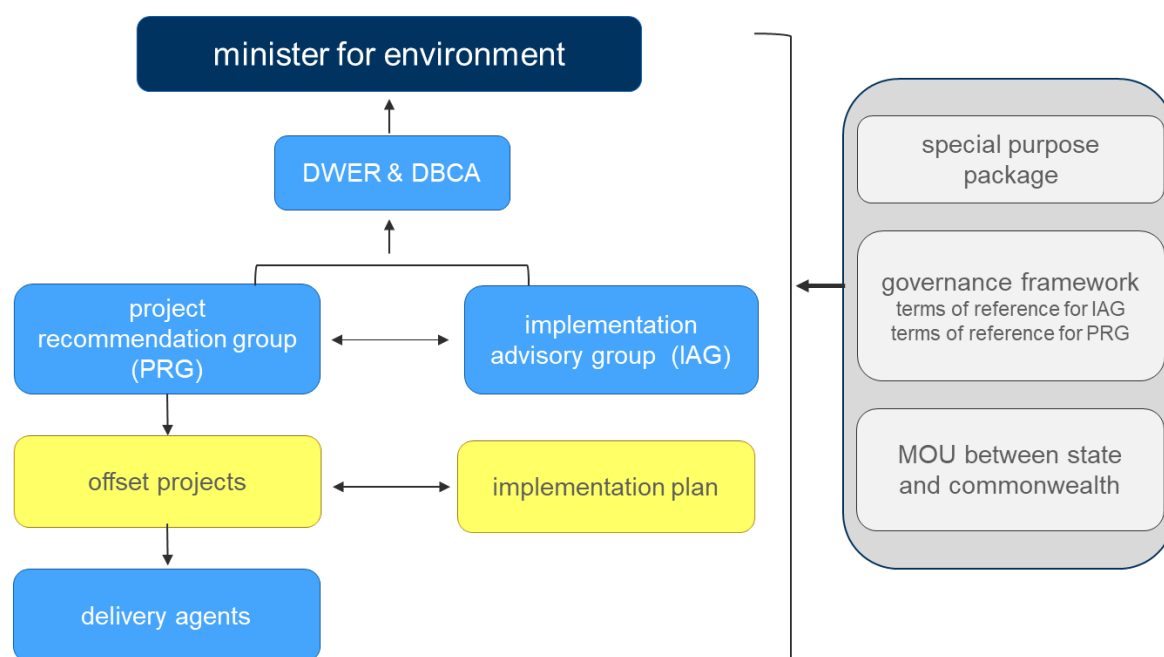


Figure 1: Governance Framework for the Pilbara Environmental Offsets Fund

2.1 Minister for Environment

The Minister for Environment (the Minister) is the primary decision-maker in relation to the Fund and will make the following key governance decisions:

1. Approval of the Governance Framework and any revisions.
2. Approval of the Terms of Reference and composition of IAG and PRG members.
3. Appointment of individuals to the IAG and PRG.
4. Approval of an Implementation Plan and subsequent amendments, which establishes the basis for fund expenditure.
5. Approving projects that will address significant residual impacts and receive monies from the Fund, consistent with the approved Implementation Plan.

2.2 Director General of the Department of Water and Environmental Regulation

The Director General (DG) of DWER (or authorised officer):

1. Chairs the IAG.
2. Provides the advice of the IAG, PRG and the DG of DBCA to the Minister.
3. Approves project plans and enters into project contracts with Delivery Agents on behalf of the State.
4. Is accountable for the financial management of the Account under the *Financial Management Act 2006* (FM Act).

2.3 Implementation Advisory Group

The IAG is responsible for providing advice to the DWER and DBCA Directors General, and the Minister for Environment, on development and evaluation of the Implementation Plan.

The IAG also liaises with the PRG regarding the Implementation Plan and selection criteria for projects as needed.

The IAG may form technical or project working groups as required to oversee the selection, management and/or evaluation of project(s) delivered under the Fund. The IAG will operate in accordance with the Terms of Reference attached to this document.

2.4 Project Recommendation Group

The PRG is comprised of representatives from DWER, DBCA and the Commonwealth Department of the Environment and Energy (DoEE¹), who have experience delivering biodiversity conservation projects in the Pilbara, and an independent probity officer. The PRG recommends to the Minister which projects should be funded in accordance with the Implementation Plan and provides advice on project evaluation and performance.

The PRG will operate in accordance with the Terms of Reference attached to this document.

2.5 Department of Water and Environmental Regulation

DWER manages two broad functions in relation to the Fund:

1. Management of the Fund account, including:
 - a) Invoicing proponents for money owed to the Fund.
 - b) Release of monies for project and Fund administrative costs.
 - c) Auditing and reporting on Fund income and expenditure.
2. Managing and coordinating offset implementation, including:
 - a) Chairing and providing a secretariat for the IAG.
 - b) Providing individual IAG nominations to the Minister.
 - c) Preparing and reviewing the Implementation Plan with DBCA, with advice and assistance from the IAG.
 - d) Appointing the probity expert to the PRG.

- e) Chairing and providing a secretariat for the PRG
- f) Jointly recommending with DBCA with advice from the PRG, projects that address significant residual impacts to the Minister.
- g) Preparing contracts with Delivery Agents.
- h) Overseeing each supported project, which includes monitoring and evaluating project performance, with advice from the PRG.
- i) Evaluating and reporting on overall Fund and Implementation Plan performance with advice from the IAG.

DWER, in consultation with DBCA will provide the PRG project recommendations to the Minister. On the rare occasion that advice from the PRG, DWER and/or DBCA differs, DWER will ensure that the recommendations and rationale from all parties is provided to the Minister, and a copy of the relevant information provided to the Minister is forwarded to DBCA and the PRG.

3 Offset Delivery

3.1 Strategic Focus

1. Projects delivered through the Fund will maintain a strategic, landscape-scale focus, while ensuring adherence to relevant State and Commonwealth statutory requirements. Projects will aim to counterbalance the significant residual impacts that have been identified in the relevant EPA Reports and Ministerial Statements and in approval decisions under the *Environment Biodiversity and Conservation Act 1999* (EPBC Act). This will allow strategic delivery of projects and remove duplication in offset requirements.
2. Projects delivered through the Fund will be designed to deliver enduring and long term strategic conservation outcomes consistent with Principle 6 of WAs Offset policy which states - “Environmental offsets will be focused on longer term strategic outcomes”.
3. Outcomes from projects will deliver, or lead to, tangible on-ground improvements in affected environmental values and, where possible, lead to improved scientific knowledge which feeds into environmental impact assessment, rehabilitation and/or the revision of offset rates for IBRA sub-regions in the Pilbara.
4. Where the Fund supports a research-based project, it will focus on matters that lead to improved conservation of affected environmental values. Where possible, outcomes of research projects should also lead to improved delivery of the Fund and/or environmental impact assessment.
5. Without compromising the above, projects may be prioritised where they leverage other investment and deliver broader outcomes by addressing multiple objectives or significant residual impacts.
6. Evaluation of the strategic objectives, outcomes and priorities of the Implementation Plan will be completed every three years to inform adaptive management of the Fund, consistent with Principle 5 of the WA Offset Policy which is that “environmental offsets will be applied within a framework of adaptive management”.

3.2 Implementation Plan

DWER and DBCA, with advice from the IAG, will coordinate the development of an Implementation Plan which will further define the strategic focus for the Fund for the life of the Implementation Plan. The Implementation Plan will be consistent with the purpose of the Fund outlined in section 1.1 and strategic focus in section 3.1.

A review of the Implementation Plan will be completed at a minimum of every fourth year of each five year Implementation Plan cycle to allow for replacement after five years, or earlier if triggered by criteria defined in the Plan. At a minimum, the Implementation Plan will:

1. Have regard for existing biodiversity, conservation and catchment planning documents developed for the Pilbara.
2. Identify the significant residual impacts for which contributions to the Fund have been made and how they will be addressed through the Implementation Plan.
3. Identify existing programs and funding, and opportunities to partner with other organisations, to maximise the benefits of the Fund (e.g. leveraging opportunities).
4. Contain project selection criteria that will have regard for *the WA Environmental Offsets Policy* and the *WA Environmental Offsets Guidelines* (and any subsequent revisions).
5. Contain guidelines for Delivery Agents.
6. Establish a reporting framework to monitor, assess and evaluate the performance of projects supported by the Fund and the Implementation Plan.

3.3 Project Delivery

Supported offset projects will be delivered by Delivery Agents and these may be drawn from the not-for-profit, government or private sectors through partnerships, direct requests or a call for expressions of interest. To be selected to deliver projects, Delivery Agents will be required to:

1. Prepare a Project Plan in accordance with the Implementation Plan and criteria defined in the guidelines for applicants that will accompany each call for projects.
2. Enter into a contract with the State to ensure transparency and the establishment of clear requirements regarding reporting of results, expenditure and outcomes for each project, consistent with the approved Project Plan.
3. Deliver and share data and intellectual property, and acknowledge project contributors. Data sharing arrangements between Delivery Agents and DWER will be defined in the approved Project Plan.

DWER and the PRG will maintain oversight of Delivery Agents and the implementation of projects, and as such:

1. Will require, at a minimum, reporting on the milestones, budget and project outcomes defined in the approved Project Plan and the project contract.
2. May recommend to the Minister to continue, modify or discontinue a project should the project not achieve its stated objectives as per adaptive management principles.

3. May consider a Delivery Agent's previous performance in the delivery of Fund projects in selecting whether to support further projects or continue to support existing projects.

The Implementation Plan will establish key criteria for the selection of Delivery Agents and the reporting requirements for projects.

3.4 Evaluation of Projects

Projects delivered through the Fund will be evaluated by DWER and the PRG. In preparing Project Evaluation Reports, DWER and the PRG will:

1. Require Delivery Agents to submit annual project progress reports to DWER and PRG in a form specified in the project contract(s).
2. Review the annual project progress reports to assess and track progress towards achieving the objectives and key milestones specified in the project contract.
3. Develop Project Evaluation Reports, at a frequency specified in the project contract, which make recommendations on whether to continue with, modify or discontinue the project.
4. Prepare a final project close out report.

3.5 Evaluation of the Implementation Plan

An evaluation of the Implementation Plan will be required to be completed at a minimum of every third year of the five year cycle to assess whether the strategic objectives, outcomes and priorities of the Fund are being delivered, and to inform adaptive management of the Fund. In preparing an Implementation Plan Evaluation Report, DWER and the IAG will:

1. Consider Project Evaluation Reports.
2. Consider Annual Financial Reports from DWER.
3. Identify and evaluate whether the Implementation Plan achieved its stated objectives during the three-year period.
4. Identify whether the Fund was managed in accordance with this or subsequent versions of the Governance Framework.
5. Make recommendations on how the subsequent Implementation Plan should be revised.
6. Prepare an Implementation Plan Evaluation Report.

3.6 Reporting on Project and Implementation Plan performance

DWER will prepare and maintain content on its website to house and publish material related to the Fund and make it publicly available. The website will contain, at a minimum:

1. The finalised Implementation Plan and any subsequent revisions.
2. The Governance Framework and Terms of Reference for the IAG and the PRG and details regarding membership of the IAG and PRG.
3. Details regarding each project supported by the Fund, including project objectives, milestones, reporting timeframes, annual progress reports and the final close out report.

4. The results of the project and Implementation Plan evaluations.
5. An annual statement of income and expenditure. Further details on financial reporting are outlined in section 4.5.

4 Financial Management of the Fund

4.1 Enabling legislation

A special purpose account, called the Pilbara Environmental Offsets Fund Account (the Account), has been created and shall be maintained pursuant to section 16(1)(d) of the *Financial Management Act 2006* (FM Act). Refer special purpose statement - Attachment 1.

4.2 Account Purpose

To facilitate the coordinated delivery of environmental offset projects located in the Pilbara region of Western Australia as defined in the Interim Biogeographic Regionalisation for Australia (Pilbara IBRA region).

The Fund will receive monetary contributions from proponents relating to environmental offsets imposed under an implementation agreement or decision made under s 45(5) of the EP Act.

The Fund may also receive monetary contributions from proponents relating to environmental offsets under:

- a) A condition of a decision on approval made under s 130(1) and 133 of the EPBC Act.
- b) A condition of a decision on approval made under s 146B of the EPBC Act¹.

4.3 Account Management

1. The Account shall be administered by the Director General (DG) of DWER in accordance with the FM Act, the *Financial Management Regulations 2007* and the Treasurer's Instructions.
2. Fund contributions are exclusive of Goods and Services Tax, unless otherwise stated in an implementation agreement or decision on approval.
3. DWER will invoice proponents for monies owed under EP Act implementation agreements when payments are due, in accordance with the process outlined in the Instructions and Template for preparing Impact Reconciliation Procedures and Impact Reconciliation Reports (<http://www.epa.wa.gov.au/templates-and-forms>), as updated from time to time.
4. DWER may receive monies in relation to a decision of a condition of approval under the EPBC Act via a process to be determined in consultation with the Commonwealth Government¹.

4.4 Account Expenditure

1. Monies standing to the credit of the Account may be expended on:

- a) environmental offset projects located wholly or partly within the Pilbara IBRA region which counterbalance the residual impacts of proposals for which the funds are received;
 - b) the costs of administering the Account; and
 - c) the costs of reporting on performance of the Account.
2. DWER will manage the Fund and manage and coordinate offset implementation consistent with section 2.5. DWER will recover the cost of these services, as well as travel, reimbursements and project delivery, in full, from the Fund, guided by the principles of value of money, reasonableness and transparency.
 3. DWERs annual financial report will itemise the Fund administration costs from the previous financial year and forecast them for the next.
 4. The Fund will be invoiced quarterly by DWER for its costs. DWER may transfer an administration services fee from the Fund provided that the amount of compensation will be subject to an end of year adjustment based on actual costs incurred.

4.5 Account Reporting

1. DWER will detail the starting and ending balances and total receipts and payments for the Account for the financial year in its Annual Report, in accordance with the provisions of the FM Act, *Financial Management Regulations 2007* and Treasurer's instructions.
2. DWER will also table this information following the end of the relevant financial year with the IAG and publish the information on its website. This will include the money spent on projects, reimbursements and administration.

4.6 Duration and Termination of the Account

1. Any balance standing to the credit of the Account on cessation of the operations for which the Account was created shall be disbursed to another mechanism utilised for the purposes of environmental offsets, as determined by the Western Australian Minister for the Environment, and if EPBC Act contributions have been receipted to the Fund¹, the Federal Minister for the Environment.

4.7 Auditing of the Account

1. DWER will submit relevant records related to the Account to the Office of the Auditor General annually for the purposes of financial auditing. This audit supports the financial statements made in the DWER Annual Report.

5 Consultation

1. DWER will provide a report annually to contributing individuals and organisations regarding expenditure, project evaluation reports and plans for the following 12 months.
2. DWER and the IAG will consult with contributing individuals and organisations and other relevant stakeholders in the development and review of the Implementation Plan.

6 Promotion, Publicity, Publication and Data Ownership

6.1 Promotion

1. DWER will acknowledge proponents that are required to contribute to the Fund, on the Fund website, annual financial reporting and the Implementation Plan.
2. Logos and acknowledgement of individuals or organisations who contribute meaningful funding or in-kind support, in addition to organisations that are required to contribute to the Fund, will be included in project reports, media and other communications, and on the Fund website, if approved by that individual or organisation.

6.2 Publicity

1. Individuals or organisations will not conduct any media activity, including media releases, interviews or social media posts, about this Fund without the written approval of DWER as specified in the approved Project Plan.

6.3 Publication

1. Delivery Agents must publish results of their projects as per the approved Project Plan.
2. Data from individual projects will need to be loaded into the appropriate government or research databases, as specified in the approved Project Plan.
3. Delivery Agents must agree to obtain DWER's prior written consent before publishing material, including in a thesis, manuscript, abstract, journal article, research report or presentation ("Publication") that uses project intellectual property developed through resources provided by the Fund.

6.4 Data Ownership

1. All the data (inclusive of raw data and any summaries) produced by the projects supported by the Fund is owned by the Government of Western Australia and must be provided to DWER as outlined in the DWER approved Project Plan, or as otherwise requested by DWER.
2. DWER will work with Traditional Owners to define how culturally sensitive data collected as part of a project/(s) will be stored and accessed, and this will be defined in the approved Project Plan.
3. Project data will be made publicly available, as per specifications outlined in the approved Project Plan.

7 Review cycle

1. The efficacy of this Governance Framework will be reviewed each time the Implementation Plan is reviewed. This review will include input from the IAG members, contributing individuals or organisations and other key stakeholders.
2. The DG of DWER may recommend amendments to any terms of this Governance Framework, which will become effective with the agreement of the Minister.
3. Any stakeholder may approach the DG of DWER or Minister to discuss the Fund.

8 Definitions

Words and expressions used in this Governance Framework shall have the same respective meanings as provided for in the EP Act or FM Act or as provided for below.

Account	Pilbara Environmental Offsets Fund Account, established as an agency special purpose account for purposes approved by the Treasurer under section 16 (1)(d) of the <i>Financial Management Act 2006</i>
DBCA	Department of Biodiversity, Conservation and Attractions, Department of the Public Service of the State responsible for the administration of <i>Biodiversity Conservation Act 2016</i>
DWER	Department of Water and Environmental Regulation, Department of the Public Service of the State responsible for the administration of the EP Act.
Director General (DG) of DWER	The Director General of the Department of Water and Environmental Regulation, or authorised officer
Director General (DG) of DBCA	The Director General of the Department of Biodiversity, Conservation and Attractions
Environmental Offset	As defined in <i>WA Environmental Offsets Policy</i> (Government of Western Australia, 2011) and the <i>EPBC Act Environmental Offsets Policy</i> (Commonwealth of Australia, 2012)
EPA	Environmental Protection Authority
EP Act	<i>Environmental Protection Act 1986</i> (WA)
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Commonwealth)
FM Act	<i>Financial Management Act 2006</i> (WA)
Fund	The Pilbara Environmental Offsets Fund, which is established to facilitate the coordinated delivery of environmental offset projects within the Pilbara region of Western Australia
IAG	Implementation Advisory Group
IBRA	Interim Biogeographic Regionalisation for Australia, as described in <i>Australia's bioregions (IBRA)</i> , Department of Sustainability, Environment, Water, Population and Communities, Commonwealth of Australia 2012 and as updated from time to time.
Leveraging	Leveraging may involve seeking opportunities to expand existing regional programs and/or provide a starting point to gain more funding and support for new ones, to enhance the benefit of offset monies.
Minister	The WA Minister for the Environment, or their delegate.
Ministerial Statement	Statement issued under s 45 (or under s 45 as applied by section 46(8)) of the EP Act (which may include implementation conditions).
PRG	Project Recommendation Group
Special Purpose Statement	A special purpose statement approved by the Treasurer in accordance with the FM Act s 17.
Treasurer's Instructions	Section 78 of the FM Act provides that the Treasurer may issue instructions with respect to matters of financial administration. The 'Treasurer's instructions' have the force of law and therefore must be observed by all agencies to which they apply.