

Offsetting us up for failure

Submission on the Northern Territory draft Greenhouse Gas Emissions Offsets Policy and Technical Guidelines

The draft offsets policy undermines the NT Government policy of adopting Fracking Inquiry Recommendation 9.8 - that all life-cycle emissions from onshore gas projects be offset. The draft policy also proposes 'indirect emissions offsets' that are not utilised in any other jurisdiction and would be entirely without integrity. Indirect offsets would undermine other offset markets and be likely to face legal challenge from affected parties. The draft policy should be abandoned, or at least heavily revised to address the Fracking Inquiry recommendation.

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Summary

The Northern Territory *Draft Greenhouse Gas Emissions Offsets Policy and Technical Guidelines* (referred to here as the Offsets Policy) should not be adopted at all, or at least not without major revision. The policy is ambiguous, open to interpretation by decisionmakers and lacks sufficient and definitive technical guidance.

The policy appears to be an attempt to avoid or weaken Recommendation 9.8 of the NT Fracking Inquiry, committed to by the NT Government, which requires onshore gas projects to offset all their life-cycle emissions that occur in Australia. The NT Government committed to this recommendation, which will impose large costs on the Territory's influential gas industry.

Theoretically, when used in conjunction with the *Greenhouse Gas Emissions Management for New and Expanding Large Emitters* policy, the Offsets Policy should comprehensively address Recommendation 9.8, legislating the requirement that all life-cycle emissions for onshore gas projects be offset in line with best-practice greenhouse gas (GHG) accounting protocol.

However, Recommendation 9.8 is not mentioned in the draft Offsets Policy or related documents, despite it being NT Government policy. If anything, this Offsets Policy undermines Recommendation 9.8 by giving proponents the flexibility to propose what they deem an adequate level of abatement for their projects, and decisionmakers substantial discretion to then consult with proponents and subsequently decide on the level of offsets required on a case-by-case basis.

As per Recommendation 9.8, a 'cradle to grave' offsetting requirement should apply to all onshore gas projects, regardless of whether they expect to end before 2050. An "overarching" 2050 target should not be used as an excuse to delay the other climate commitments of the NT Government such as Recommendation 9.8.

Where offsets would be required by onshore gas projects, questions arise around the nature and integrity of the eligible offsets listed under the policy: existing offsets such as Australian Carbon Credit Units (ACCUs) already face integrity issues; allowing proponents to generate their own offsets is problematic; and the "indirect offsets" proposed in the policy are an entirely novel concept, lacking additionality and integrity.

The "indirect offsets" described in the policy are of particular concern. These indirect offsets consist of funding research and development into technologies or practices that might reduce emissions in the future. Given that such an approach is entirely

without precedent in relation to GHG emissions, it is alarming that the Offsets Policy provides no guidance on how the additionality and rigour of indirect offsets is to be measured. It is insufficient that decisionmakers need only to have “reasonable confidence” that the new technology or practice will actually work.

It is not clear whether the NT Government has the power to create a new system of indirect offsets if they interact in any way with other offset markets. Creation of indirect offsets with no integrity could result in legal challenges from producers and consumers of ACCUs whose offsets would be reduced in value by the new NT Government indirect offsets.

With the impacts of climate change already being felt in the Northern Territory, it is time to end new fossil fuel projects, not implement policy seemingly designed to facilitate them. The draft policy should be abandoned, or at the very least it should directly address Recommendation 9.8 and set out the scientific, economic and legal case for indirect offsets.

Introduction

The Australia Institute welcomes the opportunity to make a submission to the Northern Territory Government's consultation on its draft *Greenhouse Gas Emissions Offsets Policy and Technical Guidelines*.

This policy and guidelines should not be adopted at all, or at least not without major revision. In no way do they adequately address the emissions that would arise from the potential development of a shale gas industry in the Northern Territory.

This policy seems to be comparable in nature to Western Australia's *Technical Guidance – Mitigating Greenhouse Gas Emissions* document. WA's document reflects the intense pressure and opposition the Western Australian Environmental Protection Authority (EPA) received from the gas industry after releasing a policy requiring that all new emissions intensive developments be carbon neutral.¹ The policy was withdrawn and replaced with the current watered-down guidance that heavily favours industry proponents and only requires a portion (scope 1 only) of the emissions from projects to be offset.²

The reason the NT and WA are similar is that they are each home to gas development proposals that, if realised, would result in millions of tonnes of GHG emissions being released into the atmosphere. While fracking in the NT is both unpopular³ and uneconomic,⁴ like WA, it has strong political support from both the Labor Territory Government and the Liberal-National Federal Government. Both governments subsidise this otherwise unviable industry. Recently announced Federal subsidies

¹ Morton (2019) *WA's rejection of carbon-neutral guidelines leaves LNG emissions booming*, , <https://www.theguardian.com/environment/2019/mar/20/lng-redux>

² WA Environmental Protection Authority (2019) *Technical Guidance – Mitigating Greenhouse Gas Emissions*, https://www.epa.wa.gov.au/sites/default/files/Policies_and_Guidance/20180306%20EPA%20TG%20Mitigating%20Greenhouse%20Gas%20Emissions%20-%204.pdf

³ Australia Institute (2018) *Majority of Territorians support keeping fracking moratorium*, <https://australiainstitute.org.au/post/majority-of-territorians-support-keeping-fracking-moratorium/>

⁴ Verschuer et al. (2021) *Subsidising fracking in the Beetaloo Basin: Submission to Senate Environment and Communications References Committee*, <https://australiainstitute.org.au/report/subsidising-fracking-in-the-beetaloo-basin/>

amount to \$226 million, while the Territory Government has a long history of subsidising the gas industry.⁵

NT Government's original commitment to implement all recommendations of the 2018 Scientific Inquiry into Hydraulic Fracturing of Onshore Unconventional Reservoirs in the Northern Territory notably imposes significant costs on the gas industry, particularly Recommendation 9.8:

That the NT and Australian governments seek to ensure that there is no net increase in the life-cycle GHG emissions emitted in Australia from any onshore shale gas produced in the NT.

While the implementation of Recommendation 9.8 would represent a cost of potentially billions to the gas industry,⁶ walking away from the Fracking Inquiry recommendations would impose a political cost on the Northern Territory government.

The *Draft Greenhouse Gas Emissions Offsets Policy and Technical Guidelines* appears to be a cynical attempt to resolve these costs for both parties. As written, the draft policy would dramatically reduce the cost of offsets to industry, while giving the NT Government the pretence of addressing the Fracking Inquiry recommendation. Unfortunately, the real cost of this arrangement would be borne by the environment and community through large, uncompensated increases in emissions.

⁵ Ibid; see also Campbell (2020) *Fracking and slacking: NT Government subsidies to onshore oil and gas*, <https://australiainstitute.org.au/report/fracking-and-slacking/>

⁶ Ogge (2018) *Options for the implementation of Recommendation 9.8 of NT Fracking Inquiry*, <https://australiainstitute.org.au/report/options-for-the-implementation-of-recommendation-9-8-of-nt-fracking-inquiry/>

Offsets policy and Fracking Inquiry

Recommendation 9.8

The *Independent Scientific Inquiry into Hydraulic Fracturing of Onshore Unconventional Reservoirs in the Northern Territory* recommended that fracking should not be allowed to proceed unless there is no net increase in the life cycle GHG emissions emitted in Australia from any onshore shale gas produced in the NT, and that any increase must be fully offset (Recommendation 9.8).

The Chief Minister has committed to fully implementing all the Fracking Inquiry recommendations including Recommendation 9.8.

However, the draft Offsets Policy does not mention onshore gas, nor Recommendation 9.8, despite the fact that:

- An onshore gas industry would likely become the largest offsetter of greenhouse gas in the NT. In fact, in 2019 Federal Minister Angus Taylor received advice from his department that “offsetting emissions of this quantum would be challenging”.⁷
- Many aspects of the policy seem to be directly informed by discussions the NT Government had with the Federal Government in 2019 “to build the NT level of understanding of Commonwealth policies and frameworks in relation to Greenhouse Gas emissions in the context of Recommendation 9.8 from the final report of the Scientific Inquiry into Hydraulic Fracturing of Onshore Unconventional Reservoirs in the Northern Territory”.⁸

Conversely, many aspects of the draft Offsets Policy appear to *undermine* Recommendation 9.8:

- There is no articulated requirement to offset scope 1, 2 and 3 emissions (i.e. life-cycle emissions).
- The policy is concerning both in its ambiguity and room for creative interpretation. Despite being labelled ‘technical guidance’, there is a real lack of such guidance or assessment criteria.

⁷ Department of Environment and Agriculture (2019) *Freedom of Information 191111*, <http://www.environment.gov.au/system/files/191111.pdf>

⁸ Department of Environment and Agriculture (2019) *Freedom of Information 191110*, <http://www.environment.gov.au/system/files/191110.pdf>

- The policy allows proponents to propose what they deem appropriate mitigation and abatement.
- The “indirect offsets” eligible under the policy are extremely concerning in their lack of integrity and additionality.
- The “overarching target” is net zero by 2050, giving scope to allow gas projects, or other emitters, to increase emissions up to 2050.

LIFE-CYCLE EMISSIONS

Implementing Recommendation 9.8 would mean proponents must offset all emissions from the production, processing and ultimate combustion of gas (if within Australia), which are known as scope 1, 2 and 3 emissions.

Emissions from shale gas include:

Scope 1: The emissions from the combustion of fuels on site, fugitive emissions (losses, leaks and other releases of methane to the atmosphere — emissions from flow back and drillout, well leaks, underground containment failure), venting and flaring.

Scope 2: The emissions from electricity used on site.

Scope 3: The emissions using the gas for the domestic market (including transport in Australia via pipelines and burning it for electricity generation) or exporting the gas for international market.

The NT has two policies that would potentially cover the life-cycle emissions of fracking activity: *Greenhouse Gas Emissions Management for New and Expanding Large Emitters* (a policy outlining the Territory Government’s expectations for the mitigation and management of emissions from new and expanding large greenhouse gas emitters— this policy is not linked to any legislation) and the proposed draft *Greenhouse Gas Emissions Offsets Policy and Technical Guidelines*.⁹

While this submission is only in relation to the Offsets Policy, the two policies interact with each other, and it is worth noting that *neither* policy requires scope 3 emissions to be accounted for in a meaningful way or offset. Furthermore, there is no enforceable requirement for all (or indeed any) scope 1 or 2 emissions to be offset, leaving it the discretion of the assessing agency or decision-maker.

⁹ Northern Territory Government (2020) *Progress on 9.8*, <https://hydraulicfracturing.nt.gov.au/action-items/9.8>

If the NT Government is legitimately committed to ensuring that all life-cycle emissions from onshore shale gas produced in the NT are fully offset, any policies developed would employ best-practice GHG accounting.

Any offset policy would explicitly require a full life-cycle assessment of shale gas production that accounts for all GHG emissions sources and activities within the defined life-cycle boundary of the product.¹⁰ All exclusions would be similarly disclosed and justified. All emissions would be required to be fully offset.

AMBIGUOUS ADVICE

In its current form, the Offsets Policy is concerning both in its ambiguity and room for creative interpretation.

The Offsets Policy is intended to provide information for:

- Decisionmakers - to help them determine when offsets should be required, and the amount of offsetting that should be required;
- Proponents - to help them understand when offsetting is likely to be required and develop offsetting proposals;
- Regulators - to help them ensure that offsetting requirements are delivered.

Despite being labelled ‘technical guidance’, for these actors, there is a concerning lack of such guidance or assessment criteria for them to follow in the Offsets Policy.

According to the policy, proponents will only be allowed to use offsets when they can prove that they have applied the NT Government’s ‘mitigation hierarchy’ to the project. That is, a proponent must prove that they have avoided and mitigated all emissions where possible before offsetting. However, neither the large emitters policy nor the Offsets Policy provide criteria or a framework to assess application of the mitigation hierarchy.

In addition, there is no clarity on whether an emitter has an obligation to offset at all, nor the extent to which their emissions should be offset:

Under the NT Offsets Framework, offset requirements can be applied to environmental approvals;

¹⁰ GHG Protocol. *Product Life-cycle Accounting and Reporting Standard*, https://ghgprotocol.org/sites/default/files/standards/Product-Life-Cycle-Accounting-Reporting-Standard_041613.pdf

and

...the decisionmaker for the approval **may** require residual emissions to be offset as a condition of the approval;

and

The Northern Territory Environment Protection Authority (NT EPA) is responsible for assessing the development proposal, and **may** recommend to the Minister for Environment that an emissions offset approval condition should be applied to the approval.

Notably, the decision as to whether offsets are required is completely in the hands of the approver, who is given complete discretion over what proportion of emissions will be required to be offset:

Assessing agencies and decision makers are responsible for determining whether residual emissions are significant;

and

An emissions offset approval condition should specify the amount of emissions that need to be offset for each emitting event or period. Alternatively, this may be specified in an overarching plan or strategy for managing emissions (e.g. a greenhouse gas abatement plan).

Advice around when emissions should be offset is also vague in the draft policy:

...emissions may be produced and identified over periods of time over the life of a project (for example, annually or every five years).

The lack of clarity in this 'technical guidance' allows the proponent to propose what they deem to be appropriate mitigation and offsetting, and the approver can either accept this at face value or suggest that more needs to be done.

In contrast to this ambiguity, and to be compliant with Recommendation 9.8, a sound Offsets Policy for shale gas emissions would clarify that scope 1, 2 and 3 emissions need to be measured and offset to ensure that all life-cycle emissions of the projects are accounted for.

Additionally, the policy would need to explicitly dictate that all emissions from onshore gas projects must be offset from the present, not simply at or beyond 2050. Ideally,

emissions from gas projects would be estimated annually and forward offset, followed by an annual true-up process.

ELIGIBLE OFFSETS

In relation to the types of offsets eligible under the policy, the draft policy suggests three options (in order of priority):

- **Purchase of Australian Carbon Credit Units (ACCUs) generated in the NT (or elsewhere if NT ACCUs aren't available)**

Purchase of ACCUs to offset emissions is non-controversial in theory, although recent research shows that there are significant integrity issues with ACCUs, bringing their additionality and potential for abatement into question.¹¹

The specific requirement to purchase NT-generated offsets is limiting. There are currently only 27 NT Emissions Reduction Fund (ERF) projects in Australia, which have generated 6.3 million ACCUs in total since 2012.¹² By contrast, the Fracking Inquiry found that development of the Beetaloo Basin could result in a need to offset 39 million tonnes of emissions each year (with upper estimates of 117 million tonnes per year)¹³ – far higher than what is available.

More concerning still, no new NT projects have been added to the ERF register in 2021 and just three have been added since 2017. None of those projects has yet been issued a single ACCU.

Discussions the NT Government had with the Federal Government jointly recognised that “NT carbon offsets will not be sufficient to address the growth of the gas industry and related emissions, and that offsets may need to be sourced from other jurisdictions”.¹⁴ It is also unlikely that there will be an adequate supply of ACCUs nationally. The Clean Energy Regulator (CER) has just issued its 100 millionth ACCU, but 69.5 million of these have been delivered to the Australian Government as contracted abatement, with other units being sold to the voluntary and compliance market. These ‘back of the envelope’ numbers demonstrate that there are not enough domestic

¹¹ Merzian, Hemming & Schoo (2021). *Questionable Integrity: Non-additionality in the Emissions Reduction Fund's Avoided Deforestation Method*, <https://australiainstitute.org.au/post/serious-integrity-concerns-around-australias-junk-carbon-credits/>

¹² Clean Energy Regulator (2021) *Emissions Reduction Fund project register*, <http://www.cleanenergyregulator.gov.au/ERF/project-and-contracts-registers/project-register>

¹³ Department of Environment and Agriculture (2019) *Freedom of Information 191110*, <http://www.environment.gov.au/system/files/191110.pdf>

¹⁴ *ibid*

offset units to cover a single year's worth of fracking emissions at rates estimated by the Fracking Inquiry.¹⁵

- **Generation of carbon credits using an Emissions Reduction Fund (ERF) method or an alternative framework**

Proponents have the option of generating their own carbon credits in the NT through the ERF or using the methodology from another framework (such as Verra or Gold Standard). These frameworks are not explicitly mentioned in the policy but are required to be eligible under the Australian Government's Climate Active Standard.

The guidance around this option is vague. It appears to be an afterthought in recognition of the fact that there is an inadequate supply of ACCUs from existing projects.

Not only are offset projects expensive to establish, with at least 12 months between project establishment and the issuance of ACCUs, but existing methods under the ERF may also not be appropriate for the unique Territory environment.

In allowing a proponent to generate ACCUs, the Offsets Policy must clarify the exact mechanism for surrender of offsets and guarantee that all costs associated with projects will be borne by the proponent. The policy currently states:

Delivery of a direct emissions offset using ACCUs means the required number of ACCUs has been surrendered back to the Australian Government. This can be demonstrated by evidence ... **of an ERF contracted project** that is committed to generating and surrendering the required amount of ACCUs.

This sentence (in bold) implies that the proposed abatement can be sold back to the CER under a contract, meaning that the taxpayer will ultimately be purchasing the offsets generated. It is completely unacceptable that there be any public liability for fracking offsets.

In relation to developing offsets under an alternative framework, the Offsets Policy suggests "contact the administering organisation for the offset units" for further information. This is both unhelpful and inadequate guidance. At the very least, if the NT government intends to allow use of international offsetting methodologies, the

¹⁵ Clean Energy Regulator (2021) *Quarterly Carbon Market Report: June Quarter 2021*, <http://www.cleanenergyregulator.gov.au/DocumentAssets/Documents/Quarterly%20Carbon%20Market%20Report%20-%20June%20Quarter%202021.pdf>

guidance should clarify exactly which methods and carry out due diligence to ensure that they offer rigour and additional abatement.

- **Investment in “Indirect Offsets”**

“Indirect offsetting” means carrying out an action that does not directly offset the impact of a project or activity, but that may result in further actions that might offset the original impact in the future. By their very nature they are not offsets and this entire concept should be abandoned.

Indirect offsetting is sometimes applied to biodiversity offsetting, with usually dubious results. However, to our knowledge this is the first time that indirect offsets have been proposed to offset GHG emissions. Any offsetting of emissions should be ‘like for like’, not indirectly compensatory. Even in the biodiversity space, regulators usually require direct offsets over indirect offsets.¹⁶

Under the draft policy, indirect emissions offsetting is delivered by:

contributing funding towards research and development (R&D) that will support emissions abatement in the Territory. For example, this could include research that results in new carbon abatement methodologies that apply in the Territory context.

Indirect offsetting in the context of shale gas would be extremely problematic for multiple reasons:

- The relationship between the emitting activity and the environmental gain cannot be measured.
- Tracing the impacts (good and bad) of indirect offsets is almost impossible. There is minimal detail on how the value of these offsets is to be calculated. The draft Offsets Policy simply states, “The total value of the required funding is costed based on the estimated emissions...and the ACCU spot price...”. This suggests that a payment to a research project will be treated as equivalent to the purchase of an official ACCU, even though the offset will not be realised for many years, if ever.
- There is almost no way to ensure that the results of R&D will result in the equivalent abatement of emissions as those generated by a fracking project. Under the draft Offsets Policy, proponents and/or decision makers need only have “reasonable confidence that the R&D will achieve the proposed benefits”. Reasonable confidence is not further defined, and is inappropriate given the

¹⁶ Niner, Milligan, Jones & Styan (2015) *Realising a vision of no net loss through marine biodiversity offsetting in Australia*, <http://www.homepages.ucl.ac.uk/~ucfwpej/pdf/NinerOffsettingAustralia.pdf>

long history of technologies such as carbon capture and storage (CCS) failing to deliver benefits despite billions in public funding. There appears to be no “make good” requirement if the proponent’s confidence in the R&D turns out to be misplaced.

- This system appears to create a new class of offset with lower integrity, but which competes directly with the federally administered ACCUs. This would reduce the value of ACCUs.
- It is not clear to us that the NT Government has the power to do this. If it does, there could be legal challenges from producers and consumers of ACCUs whose offsets have been reduced in value by the new NT Government indirect offsets.
- Intellectual property is to be transferred to the NT Government. Given the complexity of IP law this aspect of the draft offset policy is simplistic.
- R&D must be conducted by third parties, not proponents themselves. This should also exclude bodies that are controlled by the gas industry, such as the Gas Industry Social and Environmental Research Alliance (GISERA).

Theoretically, indirect offsets used by proponents would still have to meet the NT’s Offset Integrity Principles. In practice this is unlikely, particularly in terms of additionality and the requirement to be informed by sound science and responsive management.

The Offsets Policy does not provide examples of what sort of R&D could be eligible as a direct offset. However, in meetings between the NT and federal government in 2019, representatives from the Department of Industry, Innovation and Science provided an overview of current CCS initiatives and the development potential of the Betaloo Sub-basin, also acknowledging the “need to consider large-scale industrial solutions to address 9.8.”¹⁷

Then, at the time of writing the NT government had just announced a partnership with CSIRO and industry to develop a CCS hub in Darwin.¹⁸ It therefore seems extremely likely that investment in CCS will be considered as an eligible “indirect offset” for industry proponents. Research by the Australia Institute shows that CCS has so far

¹⁷ Department of Environment and Agriculture (2019) *Freedom of Information 191110*, <http://www.environment.gov.au/system/files/191110.pdf>

¹⁸ CSIRO (2021) *CSIRO and partners scope NT Hub to lower emissions and boost investment*, <https://www.csiro.au/en/news/news-releases/2021/csiro-and-partners-scope-nt-hub-to-lower-emissions-and-boost-investment>

failed to meet any global or local targets despite over 30 years of development and billions of dollars of investment.¹⁹

The only operating CCS facility in Australia is Chevron's disastrous Gorgon project, which has failed to meet its five-year target for burying carbon dioxide by around 70%. It has been referred to as a “shocking failure” and has resulted in a substantial increase to Australia’s emissions.²⁰ Furthermore, CCS only captures reservoir CO2 emissions and will not address the fugitive emissions from gas extraction, nor combustion. In this context, to even consider funding of research into CCS as being eligible to “indirectly offset” the millions of tonnes of carbon dioxide and methane that will be emitted by onshore gas developments in the NT would be reckless, dangerous and lacking in integrity.

¹⁹ Browne (2018) *Sunk costs: Carbon capture and storage will miss every target set for it*, <https://australiainstitute.org.au/report/sunk-costs-carbon-capture-and-storage-will-miss-every-target-set-for-it/>

²⁰ Morton (2021) *'A shocking failure': Chevron criticised for missing carbon capture target at WA gas project*, <https://www.theguardian.com/environment/2021/jul/20/a-shocking-failure-chevron-criticised-for-missing-carbon-capture-target-at-wa-gas-project>

Conclusion and recommendation

Climate change is already having serious impacts all around the globe, and the latest Intergovernmental Panel on Climate Change and International Energy Agency reports make the strongest possible recommendations to end new fossil fuel development. Yet this draft offset policy appears designed to facilitate new fossil gas development in the Northern Territory.

The Offsets Policy is poorly thought out and unnecessarily complicates what is clearly stated in Recommendation 9.8: that all life-cycle emissions associated with onshore gas be fully offset. This policy should provide clear and unambiguous advice to proponents on how to meet that requirement.

To avoid the perception that this policy has been developed expressly for the gas industry, or at best to avoid its exploitation by the gas industry, it should include Recommendation 9.8 from the NT Fracking Inquiry. The draft offset policy should set out explicitly that all life-cycle greenhouse gas emissions from fossil gas projects are to be directly offset at or before the time greenhouse gases are emitted.

The indirect Offsets Policy is entirely novel, not done elsewhere and opens the NT Government to criticism of the lengths it will go to accommodate the gas industry.