



# Select Legal Issues on Environmental Offsets

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# Options for offset delivery

- Direct offsets
  - Proposed by proponents at the time of application or during assessment of development application
- Offset transfer
  - Agreement with an offset broker for the provision of an offset area
- Offset payments
  - A financial payment made to the Balance Earth Trust (Ecofund Queensland) to either:
    - Purchase land with state significant biodiversity values to add to protected areas; or
    - Purchase or secure suitable areas within a mapped strategic area or corridor identified by DERM

# Direct offsets

## What are the major legal documents?

- Landholder and DERM
  - Legally binding mechanism on title
  - Management Plan
- Landholder and Proponent
  - Call Option / Advanced Financial Agreement
  - Financial Agreement

# What is in the Call Option/Advanced Financial Agreement?

- Period of time to exercise (option period)
- Call option fee
- Warranties by landowner
- Draft financial agreement
- Why use?
- To secure offset in advance

# What is in the Financial Agreement?

- Details of the offset
- Maps of the offset area
- Details of the proponent's obligations
  - Deposit
  - Price
  - Payment times
- Details of landowner's obligations
  - Management of land
  - Reporting requirements
  - Entry into legally binding mechanism
- Management plan
- Details of legally binding mechanism

# Offset transfers

- An agreement with an offset broker for provision of an offset area
- Must be available at the time of the issue of the development approval and to be legally secured within twelve months
- Requires a Broker Agreement to be approved by DERM



# Offset transfers cont...

- **The Broker Agreement must identify:**
  - Applicant, project, stage, address and key contact details
  - Lot and plans
  - Requirement to locate and legally secure an offset area
  - Requirement to provide a legally secured offset area within twelve months of the issuing of the applicants development permit whereby time is of the essence
  - Requirement to provide a written quarterly report to DERM on the progress of legally securing an offset area
  - Regional ecosystems, essential habitat species, wetland type, stream order of the areas proposed for clearing, and the areas involved for each value
  - Ecological equivalence scores for ecological condition and special features on the clearing area
  - Financial amount which is the subject of the Broker Agreement

# The lawyer's role

- a bit different in this space

## Educative Role

- Proponent
- Landholder
- Proponent's lawyer
- Landholder's lawyer



# The lawyer's role cont...

## Documentation

- guiding the parties
- Understanding the parties motivation
- Working with offset broker

## Holding Redlich's role

- Work with offset broker
- Educate / guide, then document
- Prevent costs and time blowouts

# When will the lawyer become involved?

- At the end, after the agreement is reached?
- At the start, when the offset broker puts the proposal to the proponent and landowner?
- Benefits to early involvement
  - explain concepts and educate the parties
  - answer preliminary queries
  - brief the lawyers
  - educate the parties lawyers before positions entrenched



## Tips and Traps

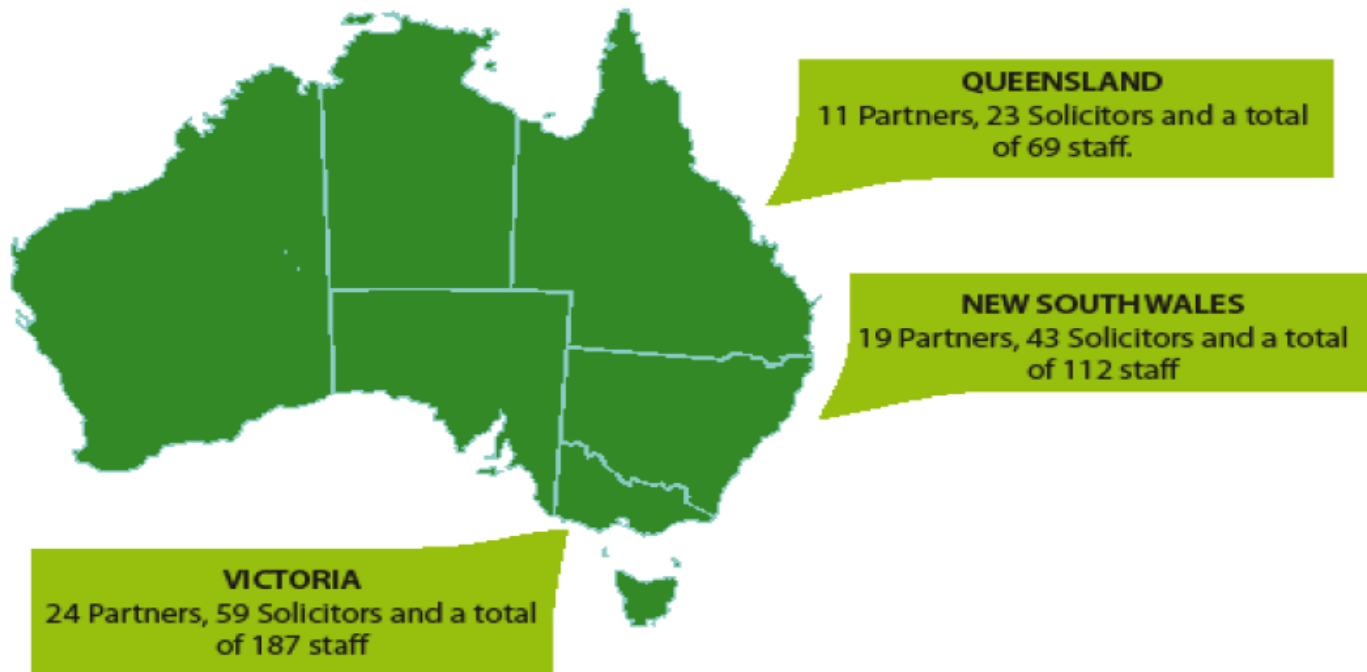
- Start early with the lawyers or at least one of them
- Flexibility – finalise along the way
- Experience – uncharted territory

# About Holding Redlich

Holding Redlich is a fully integrated leading Australian commercial law firm with offices in Brisbane, Melbourne and Sydney. The firm has 54 partners and 400 staff nationally

## Our Offices

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# About Holding Redlich

- We work with offset brokers, project proponents and land holders to liaise with and educate landowner's and their lawyers, to liaise with and educate proponents and their lawyers and document and see the transaction through to completion



# Key Contacts

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