

# Environmental Offsets Regulation 2014

Explanatory notes for SL 2014 No. 145

made under the

*Environmental Offsets Act 2014*

*Nature Conservation Act 1992*

*Queensland Civil and Administrative Tribunal Act 2009*

## General Outline

### Short title

The short title is the *Environmental Offsets Regulation 2014*

### Authorising law

The Regulation is made under the head of power contained in sections 9, 10, 12, 18, 19, 24, 29, 33, 90 and 93 of the *Environmental Offsets Act 2014*.

### Policy objectives and the reasons for them

#### ***Support the implementation and operation of the Environmental Offsets Act 2014***

The *Environmental Offsets Regulation 2014* (the Regulation) supports the *Environmental Offsets Act 2014* (the Act) by prescribing a number of important matters and processes essential for the implementation and operation of the Act. The primary objective of the Regulation is to enable certain provisions of the Act required to meet the Act's main objective; namely, to counterbalance the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets.

#### ***Prescribes the Queensland Environmental Offset Policy***

The Regulation facilitates the coordination of Queensland's environmental offsets framework by prescribing the 'Queensland Environmental Offsets Policy version 1.0' effectively replacing the existing five specific-issue offset policies in the State. This policy provides an integrated and coordinated strategy for the delivery of environmental offsets, bringing together the environmental offsets conditions imposed on numerous permit types authorised under other legislation into a single, streamlined and sensible approach to environmental offset delivery.

***Prescribes matters of national, State and local environmental significance***

The Regulation will prescribe matters of State environmental significance to which the Act applies, providing for a single point of reference for these activities and matters. This will result in a more strategic and advanced environmental offsets regime for each matter regulated under existing Acts in Queensland, by allowing for the strategic and innovative delivery of offsets.

This prescription extends to matters of national environmental significance to provide for the State to actively deliver the environmental offset for Australia's most important environmental matters using the stronger and significantly improved environmental offsets framework in Queensland. These provisions would come into effect only under an approved bilateral agreement between the Commonwealth and the State on environmental offset matters. Achieving the agreement would reduce regulatory complication and duplication with the State assessing environmental offset requirements under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

Furthermore, the prescription of matters of local environmental significance provides complete coordination of the environmental offsets framework across all levels of government. This prescription recognises the intrinsic values important in the local context, as identified under a local planning instrument, to be provided with an environmental offset that is consistent with the strategic and stronger environmental approach provided by the all-of-government offsets framework.

***Provides a fair and just process for reviewable decisions under the Act***

The Regulation describes the meaning of a reviewable decision and prescribes the process for review of a reviewable decision. As part of the agreed offset delivery arrangement, the proponent and the administering agency must come to an agreement on the delivery. To ensure agreement is possible, the Act introduces a head of power, by the Regulation, for the proponent to enter into a dispute resolution process. Consistent with current legislative standards, the dispute will be reviewed in the first instance through an internal review process. Following an internal review, if still dissatisfied, the proponent can apply for merit-review at the same court that deals with decision in relation to the authority under which the environmental offset condition was imposed.

***Prescribes activities the subject of an authority under another Act to which environmental offsets apply***

The Act prescribes that an environmental offset condition may only be imposed where there is significant residual impact arising from a prescribed activity. The Regulation defines prescribed activities for the purposes of the Act to provide certainty and clarity regarding the application of the Act.

***Provides for the identification and recognition of advanced offsets***

In accordance with the Act, the Regulation can provide for an area of land to be registered by local government and the Chief Executive as an advanced offset upon application by a landowner. An advanced offset is an area of land that has been identified for potential future use as an offset to compensate for future significant impacts on one or more prescribed environmental matters. The Regulation also prescribes the requirements for identification, registration and amendment of an advanced offset.

***Provides for legally secured offset areas***

The objectives of an offset area cannot be achieved unless future use and development of the site is compatible with objectives for the area. Most offsets must be legally secured to assist in the delivery of a conservation outcome. Section 29 outlines areas that are taken to be legally secured offset areas (for example, environmental offset protection areas). The Regulation extends the mechanisms for legally securing an offset area to covenants for the purposes of an environmental offset, under the *Land Act 1994*, or *Land Title Act 1994*.

***Provides for the amendment or revocation of an environmental offset area***

The Act provides for declaration of environmental protection offset areas as an option for legally securing an offset area. The Regulation also provides for the amendment and revocation of environmental offset protection areas in certain circumstances. These are modelled on similar requirements applying to areas of high nature conservation value declared under the *Vegetation Management Act 1999*.

## **Achievement of policy objectives**

The Regulation will achieve its objective of supporting the introduction of the Act by:

- providing the necessary supporting provisions and essential details to facilitate the introduction and operation of the Act;
- providing a description of environmental matters to which an environmental offset may be delivered and administered; and
- providing a definitive list of prescribed activities authorised under other Acts to which an environmental offset condition imposed under that Act may be delivered.

The Regulation will achieve its objective of prescribing the ‘Queensland Environmental Offset Policy’ by:

- defining a single policy to replace the pre-existing five environmental offset policies in the State; and
- providing for a policy which aligns the national, State and local government offsets frameworks into a consistent whole-of-government approach to environmental offset delivery.

The Regulation will achieve its objective of prescribing matters of national, State and local environmental significance by:

- providing a list of matters of national environmental significance for which the State may require an environmental offset for on behalf of the Commonwealth, upon accreditation;
- describing the matters of State environmental significance to which an environmental offset condition imposed on an authority granted under an Act may be delivered in accordance with the Act; and
- describing the matters of local environmental significance to which an environmental offset is required under a local planning instrument to be delivered with consistency under the Act.

The Regulation will achieve its objective of providing a fair and just review process by:

- providing for an internal review process in the first instance for reviewable decisions;
- prescribing the refusal to identify or amend an advanced offset area as a reviewable decision;

- prescribing a reviewable decision as, the decision to provide a notice of disagreement in relation to a notice of election and, if applicable, the offset delivery plan;
- prescribing a reviewable decision as, the failure to provide a notice in relation to a notice of election and, if applicable, the offset delivery plan; and
- providing further review for dissatisfied persons by prescribing an external review process relevant to the court or tribunal responsible for dealing with relevant authority.

The Regulation will achieve its objective of prescribing the activities authorised under other Acts to which environmental offsets apply:

- providing the details of activities which may result in a significant residual impact on matters of environmental significance; and
- providing a definitive list of activities for which an environmental offset condition may be imposed under the other Act, to be delivered under this Act.

## **Consistency with policy objectives of authorising law**

There are no inconsistencies with the policy objectives of the authorising legislation.

## **Inconsistency with policy objectives of other legislation**

The Regulation is complimentary with other legislation providing a seamless interaction between the enabling Act, which imposed the environmental offset condition, and the delivery of this condition under the Act. The Regulation is not inconsistent with the policy objectives of any other legislation.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## **Benefits and costs of implementation**

The prescription of the 'Queensland Environmental Offset Policy' and replacement of the existing five environmental offset policies will reduce administration and resourcing costs across multiple government departments associated with drafting, preparation and subsequent amendments. The Department of Environment and Heritage Protection is responsible for the development and coordination of the environmental offsets framework in consultation with other Queensland Government departments.

The Regulation also provides a clearer description of the environmental matters subject to offsets which includes Queensland's most significant environmental values. This will result in efficiency gains for assessment officers by concentrating resources on those matters requiring the greatest protection and removing the need to assess offset requirements for matters not threatened under environmental legislation.

An initial cost is likely to be incurred by government during implementation, in terms of developing guidance material, training, and public education. These costs are considered a

one-off expense that will be compensated for by the long-term savings projected through this reform.

## Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles, as set out in section 4 of the *Legislative Standards Act 1992*.

## Consultation

The Honourable Andrew Powell MP, Minister for Environment and Heritage Protection, released a consultation draft of the Regulation in May 2014 for public feedback and also sought feedback directly from 83 peak bodies and external stakeholders. The results of consultation were both positive and constructive and subsequently led the refinement of the Regulation resulting in a polished, effective, and streamlined statutory instrument for commencement. A total of 25 submissions were received from a number of organisations across multiple jurisdictions including the conservation, resources, natural resource management and government sectors. The Regulation also took into consideration public feedback provided to the Agriculture, Resources and Environment Committee prior to the finalisation of the Environmental Offsets Bill.

## Notes on provisions

### **Clause 1      Short title**

This clause states that the subordinate legislation may be cited as the *Environmental Offsets Regulation 2014*.

### **Clause 2      Commencement**

This clause specifies that the Regulation commences on 1 July 2014.

### **Clause 3      Definitions**

This clause provides for particular terms to be defined in the dictionary under Schedule 3.

### **Clause 4      Prescribed activities—Act, s 9**

This clause provides for the prescription of activities to which section 9 (c) of the Act applies. Each prescribed activity that requires a permit, licence or authority from another Act, for which an environmental offset condition may be imposed, is prescribed for this section.

### **Clause 5      Prescribed environmental matters—Act, s 10**

This clause prescribes matters of national environmental significance, as listed under Commonwealth legislation, to be prescribed environmental matters under the Act. This prescription facilitates the assessment and delivery of environmental offsets under the Act for a significant residual impact to one or more of these matters that is subject to a bilateral agreement between the State and the Commonwealth. This clause also prescribes matters of state and local environmental significance.

**Clause 6 Environmental Offset Policy–Act, s 12**

The ‘Queensland Environmental Offset Policy (version 1.0)’ is prescribed for section 12(1) of the Act.

**Clause 7 Legally secured offset areas–Act, s 29(1)(a)(iii)**

This clause extends the mechanisms for legally securing an offset area to covenants for the purposes of an environmental offset, under the *Land Act 1994*, or *Land Title Act 1994*.

**Clause 8 Requirements for offset delivery plans–Act, s 18(4)(c)**

This clause extends the particulars that an offset delivery plan must include under section 18(4) of the Act. This is necessary to require specific information in relation the delivery of the environmental offset to enable the administering agency to assess the plan and determine if the proposal will contribute to addressing the requirements of the environmental offset condition. This information includes the prescribed environmental matters subject to the offset condition, and information on how the impact will be counterbalanced. An offset delivery plan must state whether land will be used to satisfy all or part of the environmental offset condition, state whether the offset condition will be delivered wholly or partly on the land on which the environmental offset was undertaken, details of any person with an interest in the land and describe the existing land use.

**Clause 9 Matters administering agency to have regard to–Act, s19**

This clause expands the matters for which an administering agency must have regard to when provided with an environmental offset delivery plan as part of a proponent driven offset. This clause enables the administering agency to decide whether the delivery of the environmental offset satisfies the requirements of the Act, is able to be conducted on the land with or without another’s permission under another Act and the impact the environmental offset will have on other prescribed environmental matters.

**Clause 10 Requirements for financial settlement offsets–Act, s 24(2)(b)**

This clause prescribes matters of State environmental significance for which local government will receive financial settlement offset payments under section 24(2)(b) of the Act. This section operates in conjunction with 15 of the Act – if the offset condition is imposed by the State the financial settlement offset payment will be provided to the Chief Executive. Local government will be prevented from imposing a similar offset condition.

**Clause 11 Amending declaration of environmental offset protection area–Act, s 33**

This clause provides for the chief executive to amend the declaration of an environmental offset protection area, when an environmental offset agreement varied under section 28 of the Act, has the effect of increasing the area of land covered by the agreement. The chief executive may provide a notice to the owner of the land, giving effect to this amendment. Prior to amendments, the chief executive must reasonably believe that the additional area may be used to deliver an offset, the later agreement and delivery plan will achieve a conservation outcome and each person with an interest has consented.

**Clause 12 Revoking declaration of environmental offset protection area–Act, s 33**

This clause provides for the chief executive to revoke the declaration of an environmental offset protection area under certain circumstances.

**Clause 13      Meaning of *decision maker***

This clause establishes the definition of decision maker, in relation an advanced offsets for matters of environmental significance.

**Clause 14      Identification and registration of advanced offsets–Act, ss 90(1)(b) and 93(2)(b)**

This clause provides for the owner of land to apply, in the approved form, to the decision maker, for the identification of an area of land to become an advanced offset. This clause requires the decision maker to have regard to the environmental offset policy when making this decision. Subclause (3) establishes for the decision maker to approve the identification of all or part of the land, or to refuse the identification of the advanced offset. Subclause (4) requires the decision maker to register the area, in the register established under section 90 of the Act. Subclause (5) provides for information notices to be provided as soon as practicable after a decision to refuse the application.

**Clause 15      Amendment of registration of advanced offsets**

This clause provides for an owner of land who has a registered advanced offset, to amend the boundary of the area subject to the advanced offset, or to revoke the area, by way of application. This clause requires the decision maker to have regard to the environmental offset policy when making this decision under this section. This relevant decision maker may amend the boundaries, or refuse to amend the boundaries. Subclause (4) requires the record of the advanced offset area to be amended. Subclause (5) provides for information notices to be provided as soon as practicable after a decision to refuse the application.

**Clause 16      Definition for part 4**

This clause provides for particular terms to be defined for Part 7 – “appellable decision”, “relevant entity”, “internal review decision”, and “reviewable decision”.

**Clause 17      Internal review process is first step**

This clause establishes the internal review process, by way of application, to precede any application for external review.

**Clause 18      Requirements for making application**

This clause establishes applications for internal review to be provided to the administering authority in the approved form within 20 business days of the reviewable decision. Each application must be submitted in the approved form with sufficient information to enable the administering authority to appropriately decide the application. This clause also provides for the administering authority to extend the time an applicant may apply for an internal review.

**Clause 19      Internal review**

This clause requires an administering agency to review the reviewable decision, and provide the applicant with an internal review decision. This clause also establishes the implications for not complying with this section.

**Clause 20      Stay of operation of particular reviewable decisions**

This clause establishes that an application for internal review does not stay the reviewable decision, though facilitates for an application to be made to a relevant entity requesting a stay of this decision.

**Clause 21 Applications for external review**

This clause provides for a person who is the authority holder of a prescribed activity approved under the *Marine Parks Act 2004*, or *Nature Conservation Act 1992*, to which an environmental offset condition has been imposed, to apply to the Queensland Civil Administration Tribunal (QCAT) for an external review.

**Clause 23 Who may appeal**

This clause provides for a person who is the authority holder of a prescribed activity approved under the *Environmental Protection Act 1994*, to which an environmental offset condition has been imposed, to apply to the relevant entity for an appeal.

**Clause 24 How to start an appeal**

This clause describes how to start an appeal and that the notice of appeal must state fully the grounds of the appeal. This clause also requires the appellant to provide the notice of appeal to the administering agency upon filing the notice of appeal with the relevant entity.

**Clause 25 Appeal period**

This clause establishes the appeal period and provides for this period to be extended.

**Clause 26 Hearing procedures**

This clause establishes the procedure for an appeal must be in accordance with the rules of court applicable to the appeal.

**Clause 27 Land Court's powers for appeal**

This clause provides for the Land Court to take on the same powers as the administering agency.

**Clause 28 Decision for appeals**

This clause provides for the Land Court to confirm the decision, set aside the decision and substitute another decision, or set aside the decision and return the matter to the administering agency who made the decisions, with directions the Land Court considers appropriate.

**Clause 29 Who may appeal**

This clause provides for a person who is the authority holder of a prescribed activity approved under the *Sustainable Planning Act 2009*, or the *Environmental Protection Act 1994*, to which an environmental offset condition has been imposed, to apply to the relevant entity for an appeal.

**Clause 30 How to start appeal**

This clause establishes an appeal, if the appeal is to go before the Planning and Environmental Court, to start by filing a written notice of appeal with the registrar of the Planning and Environmental Court. It is necessary for the notice of appeal to state the grounds of the appeal in full and state the facts relied on when making this appeal. This clause also requires the appellant to provide the notice of appeal to the administering agency upon filing the notice of appeal with the relevant entity.

**Clause 31 Appeal period**

This clause provides for the notice of appeal to be provided within 22 business days after the day the appellant receives notice of the decision or the decision is taken to have been made. The Planning and Environment Court may extend this period for providing a notice of appeal.



**Clause 32 Stay of operation of decisions**

This clause provides for the Planning and Environment Court to stay a decision, the subject of an appeal, to ensure the effectiveness of the appeal. The period of the stay must not extend past the day the decision is made by the Court.

**Clause 33 Hearing procedures**

This clause states the procedure for an appeal is to be conducted in accordance with the rules of the court, or in the absence of a rule, establishes for the procedure for an appeal to be conducted in accordance with the directions of the judge.

**Clause 34 Powers of Planning and Environment Court on appeal**

This clause provides for the Planning and Environment court to confirm the decision appealed against, vary the decision appealed against, or set aside the decision appealed against and make a decision in substitution for the decisions set aside.

**Clause 36 Regulation amended**

Clause 36 states that it amends the *Nature Conservation (Administration) Regulation 2006*.

**Clause 37 Amendment of s 29 (Deciding application)**

Clause 37 inserts new subsections (5) and (6) to expressly provide for the chief executive to impose an environmental offset condition on an authority under that Act, within the meaning of environmental offset provided under the Act.

**Clause 38 Regulation amended**

This clause states that this subdivision amends the *Nature Conservation (Wildlife Management) Regulation 2006*.

**Clause 39 Replacement of s 288 (Chief executive may require offset)**

This clause inserts a new section 288 to provide for the chief executive to impose an environmental offset condition on a protected plant clearing permit, if the clearing will result in a significant residual impact to plants that are listed as either endangered or vulnerable wildlife.

**Clause 40 Regulation amended**

This clause states this division amends the *Queensland Civil and Administrative Tribunal Regulation 2009*.

**Clause 41 Amendment of sch 1 (Enabling Acts and provisions)**

This clause inserts a reference to the relevant sections of the Act to establish this Act as an enabling Act, in relation to QCAT.

**Schedule 1 Activities prescribed for section 9(c) of the Act**

This Schedules prescribed the activities authorised under other Acts, to the extent an environmental offset condition may be imposed on a particular authority granted under the enabling Act, to be prescribed as activities for which the Act can apply.

**Schedule 2 Prescribed environmental matters—matters of State environmental significance**

Schedule 2, clause 1 provides definitions for this Schedule to define particular terms.

Schedule 2, clauses 2 through to 12, prescribes matters of environmental significance which are matters of State environmental significance. The matters prescribed in these clauses only apply to the prescribed activity authorised under another Act, to the extent the enabling Act regulates or authorises the activity conducted upon that particular matter under the approval.

**Schedule 3 Dictionary**

This Schedule defines particular terms used throughout the regulation which are stated more than once.

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