

Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2021

Explanatory notes for SL 2021 No. 165

made under the

Environmental Offsets Act 2014

Nature Conservation Act 1992

State Penalties Enforcement Act 1999

Statutory Instruments Act 1992

General Outline

Short title

Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2021.

Authorising law

Section 93 of the *Environmental Offsets Act 2014*

Sections 76 to 81, 120J and 175 of the *Nature Conservation Act 1992*

Section 165 of the *State Penalties Enforcement Act 1999*

Sections 22 and 59 of the *Statutory Instruments Act 1992*

Policy objectives and the reasons for them

The objectives of the *Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2021* (Amendment Regulation) are to:

1. Ensure that the prescription, conservation status and taxonomy of fauna and flora species reflect the most up-to-date scientific knowledge;
2. Make consequential amendments to reflect changes to conservation status and taxonomy;
3. Streamline administrative arrangements to make and publish a macropod harvest period notice (HPN); and
4. make other minor consequential amendments.

Sections 76 to 81 of the *Nature Conservation Act 1992* (NC Act) provide for a regulation to prescribe wildlife to classes. The reclassification of Queensland's native wildlife species is a routine process, ensuring that listings under the NC Act are kept up to date with current knowledge including population size and trends, risk of extinction and validity of native

status. The conservation status of protected wildlife may be listed by regulation as ‘extinct’, ‘extinct in the wild’, ‘critically endangered’, ‘endangered’, ‘vulnerable’, ‘near threatened’ and ‘least concern’. Wildlife not native to Australia may also be prescribed by regulation as ‘international’ or ‘prohibited’.

The Species Technical Committee (STC) is a panel of experts responsible for undertaking independent scientific assessments to determine the classification of wildlife under the NC Act and making recommendations to the responsible Minister. Following approval by the Minister, Schedule 1 of the *Nature Conservation (Animals) Regulation 2020* and Schedule 1 of the *Nature Conservation (Plants) Regulation 2020* must be amended so that the listings reflect the most recent recommendations from the STC.

In 2021, the STC made recommendations to the Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs. The recommendations were approved by the Minister on 12 April 2021 and 19 July 2021. The Amendment Regulation has been drafted to implement the reclassification of 15 fauna species and 7 flora species, prescription of one fauna species to ‘international’ wildlife class and delisting of one flora species as ‘protected’ wildlife, as follows:

Fauna

- three species upgraded to ‘extinct’;
- six species upgraded to ‘critically endangered’;
- three species upgraded to ‘endangered’;
- two species upgraded to ‘vulnerable’;
- one species downgraded to ‘least concern’; and
- one species prescribed as ‘international’ wildlife.

Flora

- two species upgraded to ‘critically endangered’;
- one species downgraded to ‘critically endangered’;
- one species upgraded to ‘endangered’;
- one species downgraded to ‘endangered’;
- one species downgraded to ‘vulnerable’;
- one species downgraded to ‘least concern’; and
- one species delisted due to previous misidentification.

In addition to classifying native wildlife as ‘protected’, wildlife may be prescribed as ‘international’ if, under section 81 of the NC Act, the Governor in Council is of the opinion that wildlife included in appendix I or II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is not Indigenous to Australia. Since 1975, the southern population of the white-lipped python (*Leiopython* sp.) in the Torres Strait/Papua New Guinea region has been recognised as a native reptile under Queensland law based on historical descriptions. However, scientific advice from the Queensland Museum confirms that the white-lipped python was wrongly described as a native species as it does not occur naturally within Australia’s territory. Accordingly, the Amendment Regulation prescribes the white-lipped python as ‘international wildlife’ to maintain Queensland’s wildlife trade regulatory framework. As an appendix II species, this is consistent with requirements under the CITES agreement.

A consequential amendment to the *Environmental Offsets Regulation 2014* prescribes a new version of the Queensland Environmental Offsets Policy. The new version reflects updates to classification and taxonomy of species prescribed in Schedule 1 of the *Nature Conservation (Animals) Regulation 2020* and Schedule 1 of the *Nature Conservation (Plants) Regulation 2020*.

Consequential and administrative amendments are also required to the *Nature Conservation (Animals) Regulation 2020*, the *Nature Conservation (Koala) Conservation Plan 2017*, the *Nature Conservation (Plants) Regulation 2020*, and the *Nature Conservation (Protected Areas Management) Regulation 2017* to resolve minor drafting errors, provide nomenclature updates, and make other minor updates.

Administrative amendments are also required to the *Statutory Instruments Regulation 2012* (SI Regulation) and the *Nature Conservation (Macropod) Conservation Plan 2017* (Macropod Plan); and consequential amendments to the *State Penalties Enforcement Regulation 2014* to streamline the process of achieving a reasonably straightforward and appropriate sub-delegation to the chief executive to make and publish the annual macropod HPN.

A HPN is administered annually by the Department of Environment and Science (DES) to declare a harvest period for protected macropods in a given period. The declaration of a harvest period by Order in Council for macropods dates back to 1952. A HPN sets quotas for the allowable harvest of particular species that are of least concern. The HPN is currently listed in the SI Regulation (Schedule 1, Item 1) and is considered subordinate legislation. Section 11 of the Macropod Plan requires a notice to be made each year by the chief executive. Currently, as subordinate legislation, a HPN must be tabled in Parliament and may be subject to a disallowance motion; however, to date, a HPN has never been challenged or disallowed by Parliament. It is proposed to streamline the process by removing the HPN from the SI Regulation and the HPN will be made by the chief executive through the Macropod Plan.

DES will continue to engage with stakeholders through an annual forum and/or notifications where information is provided on current harvest figures, as well as quotas for the following harvest period and any upcoming changes. Prior to the COVID-19 pandemic, the forums were held face-to-face; however, as a result of restrictions, these are now conducted via an online meeting or notifications via email/post. The forum and/or notifications provides an opportunity for stakeholders to provide feedback and input. While the forum is held annually, DES also sends notifications to inform stakeholders of immediate changes (e.g. new Code of Practice requirements). Stakeholders are also advised where to locate the updated information on the DES website.

Achievement of policy objectives

The Amendment Regulation will achieve the objectives by:

1. Updating the conservation status of native fauna and flora species to reflect recent scientific assessment against criteria outlined under sections 76 to 80 of the NC Act.
2. Prescribing the white-lipped python (*Leiopython* sp.) as 'international' wildlife to reflect recent scientific assessment against criteria outlined under section 81 of the NC Act.

3. Delisting the flora species, *Phlegmariurus filiformis*, after advice was received that a single specimen from the Queensland Herbarium was misidentified and is in fact, the ‘critically endangered’ species, *Phlegmariurus creber*.
4. Updating the taxonomy of native flora and fauna species to reflect current scientific knowledge.
5. Removing reference to the HPN under Schedule 1 of the SI Regulation and making consequential amendments to the Macropod Plan to streamline the process of achieving sub-delegation to the chief executive.

The Amendment Regulation also updates the taxonomy of fauna species in section 66 of the *Nature Conservation (Animals) Regulation 2020*, and 10 flora species in Schedule 1 of the *Nature Conservation (Plants) Regulation 2020*.

The Amendment Regulation will also achieve the objectives by updating the *Environmental Offsets Regulation 2014* to refer to the most recent version of the Queensland Environmental Offsets Policy, which is amended to reflect the updates to conservation status and taxonomy.

In addition, the Amendment Regulation will achieve the objectives by making minor amendments to resolve issues identified in subordinate legislation under the NC Act, including:

- making typographical corrections;
- correcting references; and
- making consequential and minor administrative amendments that include clarification of original policy intent.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objectives of the NC Act, that is, to ensure the conservation of nature while allowing for the involvement of Indigenous people in the management of protected areas in which they have interest under Aboriginal tradition or Island custom.

The Amendment Regulation is consistent with the objective of the *Environmental Offsets Act 2014* which allows for national, State and local matters of environmental significance to be prescribed environmental matters, including threatened species listed under the NC Act.

The Amendment Regulation is consistent with the objective of the *Statutory Instruments Act 1992* which serves a purpose to rationalise notification, publication, tabling and disallowance requirements for subordinate legislation.

The Amendment Regulation is consistent with the objective of *State Penalties Enforcement Act 1999* which maintains the integrity of fines as a viable sentencing or punitive option for offenders, maintains confidence in the justice system by enhancing the way fines and other monetary penalties may be enforced, and reduces the cost of the State of enforcing fines and other monetary penalties.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with any other legislation.

Alternative ways of achieving policy objectives

Alternative ways of achieving the policy objectives were considered and rejected for the regulation of the white-lipped python (*Leiopython* sp.). In April 2021, the Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs endorsed the recommendation that the species should be removed as a Queensland native based on scientific advice that the species was wrongly described as a native reptile in 1975. However, it was established that options for the future management of captive white-lipped pythons should be assessed given the potential licensing and biosecurity risks involved.

The proposed alternative approach to the issue was non-regulation by not prescribing the white-lipped python under the NC Act. Although this approach would reduce regulatory burden to business and community under the NC Act, there would be significant impacts under the *Exhibited Animals Act 2015* and the *Biosecurity Act 2014*.

The approach proposed in the Amendment Regulation seeks to manage these risks through regulation of the species under the NC Act by prescribing the white-lipped python as ‘international’ wildlife and maintains status quo under Queensland’s legislative framework.

Benefits and costs of implementation

The Amendment Regulation will ensure that conservation and land use measures for listed species applied under the NC Act as well as other legislation on the basis of species classification is scientifically justified.

Without the amendments, there is a risk that conservation and land use requirements applied on the basis of inaccurate species classifications may be ineffective where the species is being upgraded to a more threatened status, unnecessary where a species is being downgraded to a less threatened or non-threatened status, or potentially pose a risk where not prescribed to a correct wildlife classification (i.e. international). With respect to the white-lipped python, an alternative option would be to not list the species as ‘international wildlife’, which would present significant impacts to business under the *Exhibited Animals Act 2015*, and offence, conservation and welfare risks under the *Biosecurity Act 2014*.

The proposed reclassifications are not anticipated to impose significant costs on the community, business or government. The changes are necessary to achieve the object of the NC Act, particularly the protection of native wildlife and its habitat, as well as appropriate management of other types of wildlife. The proposed delisting of *Phlegmariurus filiformis* will not result in any impacts on business or community in relation to the permitting framework for clearing protected plants.

The macropod HPN is required to be approved and published annually to enable a sustainable harvest to operate legally. Currently, the process to draft and make the HPN subordinate legislation can take seven weeks and usually involves only minimal changes each year. The proposed amendments to the SI Regulation and the Macropod Plan seek to streamline the process of achieving straightforward and appropriate sub-delegation to the chief executive by removing the requirement for the HPN to be made subordinate legislation.

Consistency with fundamental legislative principles

This Amendment Regulation is consistent with fundamental legislative principles as defined in section 24 of the *Legislative Standards Act 1992*, and has no adverse impacts on the rights and liberties of individuals or on the institution of Parliament.

Consultation

Public consultation was not undertaken on the Amendment Regulation as the amendments are administrative and reflect the scientific assessment by the STC. Other amendments are consequential or minor in nature.

The Queensland Parliament's Health and Environment Committee (HEC) was consulted on the amendments to the SI Regulation and the Macropod Plan to streamline the administrative arrangements for HPNs. HEC raised no concerns in relation to removing subordinate legislation requirements of the HPN.

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation (OBPR) was consulted in relation to some parts of the regulatory proposal. Advice was requested for exclusion for the proposed administrative amendment to the Macropod Plan. The amendment was assessed by OBPR and it was confirmed that the proposed amendment was unlikely to result in significant adverse impacts and did not require further regulatory analysis.

DES applied self-assessable exclusions from undertaking further regulatory impact analysis for all other parts of the regulatory proposal (Category a – Regulatory proposals that make consequential amendments; Category e – Regulatory proposals that are of a transitional nature; Category f – Regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practices, or does not affect the original intent, interpretation or effect of the legislation; and Category g - Regulatory proposals that are of a machinery nature).