

Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2022

Explanatory notes for SL 2022 No. 166

made under the

Environmental Offsets Act 2014
Nature Conservation Act 1992

General Outline

Short title

Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2022

Authorising law

Sections 12 and 93 of the *Environmental Offsets Act 2014*
Sections 76 to 80 and 175 of the *Nature Conservation Act 1992*

Policy objectives and the reasons for them

The objectives of the *Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2022* (Amendment Regulation) are to:

1. ensure the prescription, conservation status and taxonomy of fauna and flora species reflect current scientific knowledge;
2. make consequential amendments to reflect changes to conservation status and taxonomy; and
3. make minor clarification amendments to provisions relating to the definition of ‘works of art’ under a least concern animal collection authority, movement of dependent animals, the accumulation of demerit points, and that a sustainable harvest plan is not required for contingent salvage.

Sections 76 to 80 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’ or ‘least concern’.

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 and 3 of the *Nature Conservation (Animals) Regulation 2020* (Animals Regulation) and schedule 1 of the *Nature Conservation (Plants) Regulation 2020* (Plants Regulation) must be amended for listings and taxonomy to reflect the most recent recommendations from the STC.

In 2022, the STC made two sets of 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 8 March 2022 and 29 September 2022. The Amendment Regulation has been drafted to implement the reclassification of 26 fauna species and 11 flora species, as follows:

Fauna

- eight species upgraded to ‘critically endangered’ (Coxen’s fig-parrot; buff-breasted button-quail; Malanda rainbowfish; Running River rainbowfish; mud gull crayfish; lemuroid ringtail possum; northern blue-tongued lizard; and Mitchell’s water monitor);
- seven species upgraded to ‘endangered’ (Major Mitchell’s cockatoo (eastern); hooded robin (south-eastern); honey blue eye; nublined fine-lined slider; Rochford slider; Mount Cooper slider; and Mertens’ water monitor);
- five species upgraded to ‘vulnerable’ (southern whiteface; sooty shearwater; brown treecreeper (south-eastern); blue-winged parrot; and diamond firetail);
- one species upgraded to ‘near threatened’ (limbless fine-lined slider);
- one species downgraded to ‘near threatened’ (Hobson’s fine-lined slider);
- one species prescribed as ‘least concern’ (Lamington spiny crayfish); and
- three species downgraded to ‘least concern’ (Bulleringa fine-lined slider; Chillagoe fine-lined slider; and Mount Surprise fine-lined slider). These three fauna species being downgraded to ‘least concern’ are formally recognised under the regulation as *Lerista storri*; however, they are distinct species.

Flora

- two species upgraded to ‘critically endangered’ (*Digitaria basaltica*; and *Digitaria veldkampiana*);
- one species upgraded to ‘endangered’ (*Diuris curta*);
- one species upgraded to ‘vulnerable’ (*Philotheca obovatifolia*);
- four species downgraded to ‘vulnerable’ (*Acacia castorum*; *Dolichocarpa spathulata*; *Homoranthus vagans*; and *Kunzea calida*);
- two species downgraded to ‘near threatened’ (*Coleus minutus*; and *Eremophila tetraptera*); and
- one species downgraded to ‘least concern’ (*Myriophyllum artesium*).

The STC recommendations for the Malanda rainbowfish (*Melanotaenia* sp. nov. ‘Malanda’) Running River rainbowfish (*Melanotaenia* sp. ‘Running River’), Lamington spiny crayfish (*Euastacus sulcatus*) and mud gully crayfish (*Euastacus dalagarbe*) mean these species will become newly protected wildlife under the NC Act. Instead of being regulated as ‘fish’ under the *Fisheries Act 1994* (Fisheries Act), these species will now be managed for conservation purposes under the NC Act.

Minor amendments to the Animals Regulation are also required to provide clarity on requirements relating to the movement of a dependent animal and ‘works of art’ under a least concern dead animal collection authority (collection authority).

In relation to the selling, giving away and moving of dependent animals under the Animals Regulation, the proposed amendments will clarify that a dependent animal includes a bird egg, and that a dependent animal may be moved with its mother or be moved to a person that holds an appropriate animal authority.

A collection authority under the Animals Regulation allows a dead least concern animal to be collected, kept, and used for non-commercial purposes, other than for the creation and sale of ‘works of art’. To remove any ambiguity and ensure that activities are authorised under the appropriate authority, the proposed amendments clarify that processed protected animals (i.e. taxidermy and/or articulated skeletons) are not ‘works of art’.

Minor amendments to the Plants Regulation are also required to provide clarity and ensure a consistent approach to when a sustainable harvest plan is required in relation to a protected plants harvesting licence. When restricted plants have been approved for clearing (e.g. under a protected plant clearing permit) and are proposed to be harvested under ‘contingent salvage’, a sustainable harvest plan is not required because the harvesting of plants from an area that is already going to be cleared will not create any further ecological harm.

Other minor amendments to the Animals Regulation, the Plants Regulation, and the *Nature Conservation (Protected Areas Management) Regulation 2017* (PAM Regulation) are also required to clarify provisions for the accumulation of demerit points.

The accumulation of demerit points is considered when assessing the suitability of a person to hold a relevant authority (e.g. permit or licence) under the NC Act. To support compliance and ensure regulatory consistency, the proposed amendments will specify when a person accumulates demerit points and the circumstances under which demerit points are allocated.

The amendment to the *Environmental Offsets Regulation 2014* (Offsets Regulation) 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 Animals Regulation and schedule 1 of the Plants Regulation.

Administrative amendments to are also required to the Animals and Plants Regulations to provide nomenclature updates.

Achievement of policy objectives

To achieve its objectives, the Amendment Regulation will amend:

1. the conservation status of wildlife under the Animals Regulation and Plants Regulation by:
 - 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;

- updating the taxonomy of native flora and fauna species and provide nomenclature updates to reflect current scientific knowledge; and
 - making consequential amendments to the Offsets Regulation 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;
2. provisions applying to animal authorisations under the Animals Regulation to:
 - make minor amendments to the definition of ‘works of art’ to clarify ‘commercial activities’ under a least concern dead animal collection authority; and
 - make minor clarification amendments to the definition of a ‘dependent animal’ and simplify terms relating to movement provisions of dependent animals to remove ambiguity;
 3. provisions applying to protected plant harvesting licences under the Plants Regulation to:
 - make minor amendments to the restrictions on grant of a protected plant harvesting licence to ensure a consistent approach to when a sustainable harvest plan is required; and
 4. provisions relating to the accumulation of demerit points under the Animals, Plants and PAM Regulations to:
 - clarify when demerit points associated with the issuance of an infringement notice are accumulated.

In addition, the Amendment Regulation will achieve the objectives by making consequential and minor administrative amendments to subordinate legislation under the NC Act to ensure consistency across provisions and reflect modern drafting standards.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the object of the NC Act, that is, the conservation of nature while allowing for the involvement of First Nations peoples in the management of protected areas in which they have interest under Aboriginal tradition or Island custom.

The Amendment Regulation is consistent with the main purpose of the *Environmental Offsets Act 2014* which is to counterbalance the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with any other legislation.

Alternative ways of achieving policy objectives

Alternative approaches were not considered for proposed amendments as they are either machinery in nature, consequential or clarifications.

Benefits and costs of implementation

The Amendment Regulation will ensure that the prescription, conservation status and taxonomy of fauna and flora species reflect current scientific knowledge. Without the amendments, there is a risk that, over time, conservation and land use requirements applied based on inaccurate species classifications may be ineffective where the species is being upgraded to a more threatened status or unnecessary where a species is being downgraded to a less threatened or non-threatened status. The proposed reclassifications are not anticipated to impose significant costs on the community, business, or government. The changes are necessary to achieve the objectives of the NCA, particularly the protection of native wildlife and its habitat, as well as the appropriate management of other types of wildlife.

Implementing the Amendment Regulation is in the public interest, is not considered to constitute significant subordinate legislation and will have negligible costs.

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

Amendments to the reclassification of wildlife are administrative and reflect the scientific assessment of the STC. The Department of Environment and Science consulted the STC to confirm details of species reclassifications and nomenclature for species. Other associated amendments did not require consultation as they are consequential or minor in nature.

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation (OBPR) was consulted where appropriate on the proposed amendments. DES applied a self-assessable exclusion for certain amendments that fell into 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 machinery nature. For amendments relating to a least concern animal collection authority and accumulation of demerit points, OBPR determined that no further regulatory analysis was required.