



Queensland

# Environmental Offsets Legislation Amendment Regulation (No. 1) 2014

## Subordinate Legislation 2014 No. 295

made under the

*Environmental Offsets Act 2014*

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## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Environmental Offsets Legislation Amendment Regulation (No. 1) 2014*.

### 2 Commencement

This regulation commences on 19 December 2014.

## Part 2 Amendment of Environmental Offsets Regulation 2014

### 3 Regulation amended

This part amends the *Environmental Offsets Regulation 2014*.

### 4 Amendment of s 5 (Prescribed environmental matters—Act, s 10)

(1) Section 5(4)—

*renumber* as section 5(5).

(2) Section 5(3)—

*omit, insert—*

(3) However, each of the following matters of State environmental significance is not a prescribed environmental matter to the extent the matter of State environmental significance is in an urban area—

(a) a prescribed regional ecosystem mentioned in schedule 2, section 2(2) to (4) or 3(2);

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- (b) a designated precinct mentioned in schedule 2, section 5(1);
  - (c) a marine plant mentioned in schedule 2, section 11;
  - (d) any part of a waterway mentioned in schedule 2, section 10(1).
- (4) For section 10(1)(c) of the Act, a matter of local environmental significance is a prescribed environmental matter if—
- (a) an environmental offset for the matter is required under a local planning instrument; and
  - (b) the matter is not the same, or substantially the same, as—
    - (i) a matter of national environmental significance mentioned in subsection (1); or
    - (ii) a matter of State environmental significance that is prescribed to be a prescribed environmental matter under subsection (2); or
    - (iii) a matter of State environmental significance mentioned in subsection (3)(a) to (d).
- (3) Section 5(5), as renumbered, definition *matter of local environmental significance*—  
*omit.*

## **5 Amendment of s 6 (Environmental offsets policy—Act, s 12)**

Section 6, ‘version 1.0’—

*omit, insert—*

version 1.1

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**6 Replacement of s 7 (Legally secured offset areas—Act, s 29(1)(a)(iii))**

Section 7—

*omit, insert—*

**7 Legally secured offset areas—Act, s 29**

- (1) Each of the following areas of land is prescribed for section 29(1)(a)(iii) of the Act—
  - (a) an area the subject of a covenant under the *Land Act 1994*, section 373A or the *Land Title Act 1994*, section 97A;
  - (b) a declared fish habitat area under the *Fisheries Act 1994*, section 120;
  - (c) a highly protected area under the *Marine Parks Act 2004*, schedule.
- (2) For section 29(3)(b) of the Act, each area mentioned in section 29(1) or (2) of the Act is prescribed as legally secured for the purposes of the other Act.

**7 Amendment of s 8 (Requirements for offset delivery plans—Act, s 18(4)(c))**

Section 8, ‘18(4)(c)’—

*omit, insert—*

18(4)(d)

**8 Amendment of s 9 (Matters administering agency to have regard to—Act, s 19)**

- (1) Section 9, heading, ‘have regard to’—

*omit, insert—*

consider

- (2) Section 9(1), ‘have regard’—

*omit, insert—*

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consider

- (3) Section 9(2), ‘have regard to’—

*omit, insert—*

consider

## **9 Replacement of s 10 (Requirements for financial settlement offsets—Act, s 24(2)(b))**

Section 10—

*omit, insert—*

### **10 Requirements for financial settlement offsets—Act, s 24(2)(b)**

- (1) The matter of State environmental significance prescribed under section 5(2) to be a prescribed environmental matter, that is a non-juvenile koala habitat tree, is prescribed as relevant for section 24 of the Act.
- (2) However, subsection (1) applies only if the local government that is the administering agency imposed the offset condition relating to the matter under the South East Queensland Koala Conservation State Planning Regulatory Provisions.

## **10 Amendment of s 13 (Meaning of *decision-maker*)**

- (1) Section 13, definition *decision-maker*, paragraph (a)—

*omit, insert—*

- (a) for an area of land to be identified as an advanced offset for a matter of environmental significance for which an environmental offset may be required under a State planning regulatory provision, or a local government planning instrument—the relevant local government; or

(2) Section 13—

*insert—*

*State planning regulatory provision* see the *Sustainable Planning Act 2009*, section 16.

## 11 Amendment of s 16 (Definitions for pt 7)

(1) Section 16, definitions *appellable decision*, *relevant entity* and *reviewable decision*—

*omit.*

(2) Section 16—

*insert—*

*appellable decision* means an internal review decision in relation to a reviewable decision that is—

- (a) a decision under section 19(2) of the Act, stated in a notice given under section 19(3) of the Act, that relates to an offset condition imposed under a relevant Act; or
- (b) a failure to give a notice under section 19(3) of the Act within 40 business days after the administering agency receives the notice of election, in relation to an offset condition imposed under a relevant Act; or
- (c) a failure by the administering agency to enter into an agreed delivery arrangement within the stated reasonable period under 19(3)(b) of the Act, in relation to an offset condition imposed under a relevant Act; or
- (d) a decision mentioned in section 19A(5), 25A(8)(a) or 95B(8)(a) of the Act in relation to an offset condition imposed under a relevant Act.

*relevant Act* means the *Environmental Protection Act 1994* or the *Sustainable Planning Act 2009*.

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***relevant entity*** means—

- (a) for a reviewable decision that is a decision under section 19(2) of the Act, stated in a notice given under section 19(3) of the Act, that relates to an offset condition imposed under a relevant Act—the administering agency that made the decision; or
- (b) for a reviewable decision that is a failure to give a notice under section 19(3) of the Act within 40 business days after the administering agency receives the notice of election—the administering agency that failed to give the notice; or
- (c) for a reviewable decision that is a failure by the administering agency to enter into an agreed delivery arrangement within the stated reasonable period under 19(3)(b) of the Act—the administering agency that failed to enter into an agreed delivery arrangement within that period; or
- (d) for a reviewable decision that is a decision by a decision-maker under section 14 or 15 to refuse an application—the decision-maker that made the decision; or
- (e) for a reviewable decision that is a decision mentioned in section 19A(5), 25A(8)(a) or 95B(8)(a) of the Act—the administering agency that made the decision.

***reviewable decision*** means—

- (a) a decision under section 19(2) of the Act, stated in a notice given under section 19(3) of the Act, that relates to an offset condition imposed under a relevant Act; or
- (b) a failure to give a notice under section 19(3) of the Act within 40 business days after the



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administering agency receives the notice of election; or

- (c) a failure by the administering agency to enter into an agreed delivery arrangement within the stated reasonable period under 19(3)(b) of the Act; or
- (d) a decision under section 14 or 15 to refuse an application; or
- (e) a decision mentioned in section 19A(5), 25A(8)(a) or 95B(8)(a) of the Act.

## 12 Insertion of new s 16A

Part 7, division 1—

*insert—*

### **16A Agreed delivery arrangement not entered into is taken to be reviewable decision**

For section 19(8)(c) of the Act, the fact that the entity and administering agency do not enter into an agreed delivery arrangement within the stated reasonable period is taken to be a reviewable decision.

## 13 Amendment of s 18 (Requirements for making application)

- (1) Section 18(1)(b)(iii)—

*renumber* as section 18(1)(b)(iv).

- (2) Section 18(1)(b)(ii)—

*omit, insert—*

- (ii) for a reviewable decision that is a failure to give a notice under section 19(3) of the Act within 40 business days after the administering agency receives the notice of election—the day

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by which the notice should have been given; or

- (iii) for a reviewable decision that is a failure by the administering agency to enter into an agreed delivery arrangement within the stated reasonable period under 19(3)(b) of the Act—the end of the period; or

#### **14 Amendment of s 20 (Stay of operation of particular reviewable decisions)**

Section 20(1)(a) to (c)—

*omit, insert—*

- (a) a decision under section 19(2) of the Act, stated in a notice given under section 19(3) of the Act, that relates to an offset condition imposed under—
  - (i) the *Marine Parks Act 2004*; or
  - (ii) the *Nature Conservation Act 1992*; or
- (b) a decision mentioned in section 19A(5), 25A(8)(a) or 95B(8)(a) of the Act in relation to an offset condition imposed under an Act mentioned in paragraph (a); or
- (c) a decision made under section 14 or 15 to refuse an application.

#### **15 Insertion of new ss 36 and 37**

After section 35—

*insert—*

##### **36 Administering agency to apply to for removal of particular duplicate offset condition**

Each of the following is prescribed for section 25A(3)(b)(i) of the Act—

- (a) if the offset condition the authority holder is seeking to remove relates to a protected plant that is endangered wildlife or vulnerable wildlife under the *Nature Conservation Act 1992*—the administering agency that imposed the offset condition, other than the agency that imposed the offset condition under a protected plant clearing permit granted under the *Nature Conservation (Administration) Regulation 2006*;
- (b) if the offset condition the authority holder is seeking to remove relates to a protected area under the *Nature Conservation Act 1992*—the administering agency that imposed the offset condition, other than the agency that imposed the offset condition for an authority mentioned in schedule 1, item 4;
- (c) if the offset condition the authority holder is seeking to remove relates to a marine park under the *Marine Parks Act 2004*—the administering agency that imposed the offset condition, other than the agency that imposed the offset condition on a permission granted under the *Marine Parks Regulation 2006*;
- (d) if the offset condition the authority holder is seeking to remove relates to koala habitat or a non-juvenile koala habitat tree in the SEQ region—the administering agency that imposed the offset condition, other than a local government that imposed the offset condition under the South East Queensland Koala Conservation State Planning Regulatory Provisions.

[s 16]

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**37 Non-juvenile koala habitat tree prescribed as relevant for Act, s 15(4)**

The matter of State environmental significance prescribed under section 5(2) to be a prescribed environmental matter, that is a non-juvenile koala habitat tree mentioned in schedule 2, section 6(3), is prescribed as relevant for section 15(4) of the Act.

**16 Amendment of sch 1 (Activities prescribed for section 9(c) of the Act)**

Schedule 1, item 7(c)—

*omit.*

**17 Amendment of sch 2 (Prescribed environmental matters—matters of State environmental significance)**

(1) Schedule 2, sections 2(5), 3(3) and 11(2)—

*omit.*

(2) Schedule 2, section 5—

*omit, insert—*

**5 Designated precinct in a strategic environmental area**

(1) A designated precinct in a strategic environmental area is a matter of State environmental significance.

(2) In this section—

*designated precinct*, in a strategic environmental area, see the *Regional Planning Interests Regulation 2014*, schedule 2, section 15(3).

(3) Schedule 2, section 10(1), ‘and not located within an urban area’—

*omit.*

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**18 Amendment of sch 3 (Dictionary)**

- (1) Schedule 3, definition *State Planning Policy 2013*—  
*omit.*
- (2) Schedule 3—  
*insert—*

*koala habitat* means—

- (a) essential habitat mentioned in schedule 2, section 2(3)(b); or
- (b) habitat for an animal mentioned in schedule 2, section 6(4).

*non-juvenile koala habitat tree* see schedule 2, section 6(5).

*SEQ region* see the *Sustainable Planning Act 2009*, section 864.

*South East Queensland Koala Conservation State Planning Regulatory Provisions* see schedule 2, section 6(5).

*urban area* see schedule 2, section 1.

**Part 3**

**Amendment of Environmental Offsets (Transitional) Regulation 2014**

**19 Regulation amended**

This part amends the *Environmental Offsets (Transitional) Regulation 2014*.

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**20 Amendment of s 4 (Provision about South East Queensland Koala Conservation State Planning Regulatory Provisions)**

- (1) Section 4(1), ‘This section’—

*omit, insert—*

Subsection (2)

- (2) Section 4(1)(c) and (d)—

*omit.*

- (3) Section 4(5)—

*renumber* as section 4(7).

- (4) Section 4—

*insert—*

- (5) Subsection (6) applies for the application of assessment criteria for assessable development under the following provisions (each a ***relevant provision***) of the South East Queensland Koala Conservation State Planning Regulatory Provisions—

(a) table 6, column 2, item 2;

(b) table 7, column 2, item 3.

- (6) A relevant provision is taken, with necessary changes, to be replaced with the following statement—

‘Site design must avoid clearing non-juvenile koala habitat trees in areas of high value rehabilitation habitat, and medium value rehabilitation habitat, with any unavoidable clearing minimised and significant residual impacts counterbalanced under the *Environmental Offsets Act 2014*.’

ENDNOTES

- 1 Made by the Governor in Council on 11 December 2014.
- 2 Notified on the Queensland legislation website on 12 December 2014.
- 3 The administering agency is the Department of Environment and Heritage Protection.

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