



Queensland

# **Environmental Protection and Other Acts Amendment Bill 2009**





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# Environmental Protection and Other Acts Amendment Bill 2009

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# 2009

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## A Bill

for

***An Act to amend the *Environmental Protection Act 1994*,  
*Fisheries Act 1994*, *Nature Conservation Act 1992* and  
*Sustainable Planning Act 2009* for particular purposes***

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[s 1]

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**The Parliament of Queensland enacts—** 1

**Part 1 Preliminary** 2

**Clause 1 Short title** 3

This Act may be cited as the *Environmental Protection and Other Acts Amendment Act 2009*. 4  
5

**Clause 2 Commencement** 6

This Act commences on a day to be fixed by proclamation. 7

**Part 2 Amendment of Environmental Protection Act 1994** 8  
9

**Clause 3 Act amended** 10

This part amends the *Environmental Protection Act 1994*. 11

**Clause 4 Amendment of s 73G (When registration certificate takes effect)** 12  
13

(1) Section 73G(1)(c), ‘section 73F(7)’— 14  
*omit, insert—* 15

‘section 73F(8)’. 16

(2) Section 73G(2), ‘section 73F(4)’— 17  
*omit, insert—* 18

‘section 73F(5)’. 19

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<b>Clause 5</b>	<b>Amendment of s 154 (General requirements for application)</b>	1
		2
	Section 154(3), after ‘extent to’—	3
	<i>insert</i> —	4
	‘which’.	5
<b>Clause 6</b>	<b>Amendment of s 210 (Conditions that may and must be included in draft environmental authority)</b>	6
		7
	(1) Section 210(4), ‘subsection (3)’—	8
	<i>omit, insert</i> —	9
	‘subsection (7)’.	10
	(2) Section 210(3) and (4)—	11
	<i>renumber</i> as section 210(7) and (8).	12
	(3) Section 210—	13
	<i>insert</i> —	14
	‘(3) The administering authority may include in the draft a condition that requires or otherwise relates to an environmental offset (an <i>environmental offset condition</i> ) if the administering authority is satisfied that all cost-effective on-site mitigation measures for the relevant mining activities have been, or will be, undertaken.	15
		16
		17
		18
		19
		20
	‘(4) An environmental offset condition may require works or activities to be undertaken on land on which a relevant mining activity is carried out or on other land in the State.	21
		22
		23
	‘(5) An environmental offset condition may require a monetary payment to an environmental offset trust.	24
		25
	‘(6) If the applicant has entered into an agreement about an environmental offset for this section, an environmental offset condition may require the authority holder to comply with the agreement.’.	26
		27
		28
		29
	(4) Section 210—	30
	<i>insert</i> —	31

[s 7]

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- ‘(9) The applicant may enter into an agreement with the administering authority or another entity to establish the obligations, or secure the performance, of a party to the agreement about a condition.
- ‘(10) In this section—
- environmental offset* means works or activities undertaken to counterbalance the impacts of a relevant mining activity on the natural environment.
- on-site mitigation measure*, for a relevant mining activity, means a measure, undertaken on land to which the activity relates, to avoid or minimise negative impacts of the activity on the natural environment.’.

**Clause 7      Amendment of s 305 (Conditions that may be made)**

- (1) Section 305(2)(d)—  
*renumber* as section 305(2)(e).
- (2) Section 305(2)—  
*insert*—
- ‘(d) if the entity doing or making the relevant act is satisfied that all cost-effective on-site mitigation measures for an authorised activity have been, or will be, undertaken—include a condition requiring or otherwise relating to an environmental offset (an *environmental offset condition*); or’.
- (3) Section 305—  
*insert*—
- ‘(5) An environmental offset condition may require works or activities to be undertaken on land on which an authorised activity is carried out or on other land in the State.
- ‘(6) An environmental offset condition may require a monetary payment to an environmental offset trust.
- ‘(7) If the environmental authority holder has entered into an agreement about an environmental offset for this section, an



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environmental offset condition may require the holder to  
comply with the agreement. 1 2

‘(8) The environmental authority holder may enter into an  
agreement with the entity doing or making the relevant act or  
another entity to establish the obligations, or secure the  
performance, of a party to the agreement about a condition. 3 4 5 6

‘(9) A reference in subsection (7) or (8) to the holder of an  
environmental authority entering into an agreement includes  
the holder entering into an agreement before the authority is  
granted. 7 8 9 10

‘(10) In this section— 11

*authorised activity* means an activity carried out under the  
environmental authority to which the relevant act relates. 12 13

*environmental offset* means works or activities undertaken to  
counterbalance the impacts of an authorised activity on the  
natural environment. 14 15 16

*on-site mitigation measure*, for an authorised activity, means  
a measure, undertaken on land to which the activity relates, to  
avoid or minimise negative impacts of the activity on the  
natural environment.’. 17 18 19 20

**Clause 8 Amendment of s 310O (Conditions that may and must be  
imposed) 21 22**

(1) Section 310O(3)(b) and (c)— 23

*renumber* as section 310O(3)(c) and (d). 24

(2) Section 310O(3)— 25

*insert*— 26

‘(b) if the administering authority is satisfied that all  
cost-effective on-site mitigation measures for a relevant  
chapter 5A activity have been, or will be,  
undertaken—require or otherwise relate to an  
environmental offset (an *environmental offset*  
*condition*); or’. 27 28 29 30 31 32

[s 9]

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- (3) Section 310O— 1  
*insert*— 2
- ‘(6) An environmental offset condition may require works or 3  
activities to be undertaken on land on which a relevant chapter 4  
5A activity is carried out or on other land in the State. 5
- ‘(7) An environmental offset condition may require a monetary 6  
payment to an environmental offset trust. 7
- ‘(8) If the applicant has entered into an agreement about an 8  
environmental offset for this section, an environmental offset 9  
condition may require the environmental authority holder to 10  
comply with the agreement. 11
- ‘(9) The environmental authority holder may enter into an 12  
agreement with the administering authority or another entity 13  
to establish the obligations, or secure the performance, of a 14  
party to the agreement about a condition. 15
- ‘(10) In this section— 16
- environmental offset* means works or activities undertaken to 17  
counterbalance the impacts of a relevant chapter 5A activity 18  
on the natural environment. 19
- on-site mitigation measure*, for a relevant chapter 5A activity, 20  
means a measure, undertaken on land to which the activity 21  
relates, to avoid or minimise negative impacts of the activity 22  
on the natural environment.’. 23

**Clause 9 Amendment of s 363H (Administering authority may 24  
issue clean-up notice) 25**

- (1) Section 363H(1), after ‘stated action to’— 26  
*insert*— 27  
‘do all or any of the following’. 28
- (2) Section 363H(1)(a) to (c), ‘; or’ 29  
*omit, insert*— 30  
‘;’. 31

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<b>Clause 10</b>	<b>Amendment of s 363I (Offence not to comply with clean-up notice)</b>	1 2
	Section 363I(3)(b)—	3
	<i>omit, insert—</i>	4
	‘(b) that—	5
	(i) the relevant contamination incident was caused by a natural disaster; and	6 7
	(ii) the recipient had taken all measures it would be reasonable for the recipient to have taken to prevent the incident, having regard to all the circumstances including the inherent nature of the risk and the probability of the natural disaster; or’.	8 9 10 11 12
<b>Clause 11</b>	<b>Amendment of s 363N (Administering authority may issue cost recovery notice)</b>	13 14
	Section 363N(5)(b)—	15
	<i>omit, insert—</i>	16
	‘(b) if—	17
	(i) the contamination incident was caused by a natural disaster; and	18 19
	(ii) the recipient had taken all measures it would be reasonable for the recipient to have taken to prevent the incident, having regard to all the circumstances including the inherent nature of the risk and the probability of the natural disaster; or’.	20 21 22 23 24
<b>Clause 12</b>	<b>Amendment of s 478 (Failure to comply with authorised person’s direction in emergency)</b>	25 26
	Section 478, penalty—	27
	<i>omit, insert—</i>	28
	‘Maximum penalty—2000 penalty units.’.	29

[s 13]

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<b>Clause 13</b>	<b>Amendment of s 480 (False, misleading or incomplete documents)</b>	1 2
	Section 480(4)(a), ‘section 90(c) or 132(2)’—	3
	<i>omit, insert—</i>	4
	‘section 309Q(c) or 311F(2)’.	5
<b>Clause 14</b>	<b>Amendment of s 540 (Required registers)</b>	6
	Section 540(1)(k), ‘paragraph (h)’—	7
	<i>omit, insert—</i>	8
	‘paragraph (j)’.	9
<b>Clause 15</b>	<b>Amendment of sch 4 (Dictionary)</b>	10
	(1) Schedule 4, definition <i>regulatory requirement</i> —	11
	<i>omit.</i>	12
	(2) Schedule 4—	13
	<i>insert—</i>	14
	‘ <b>Balance the Earth Trust</b> means the trust by that name established under a trust deed entered into by the State on 9 October 2009.	15 16 17
	<b>environmental offset trust</b> means the Balance the Earth Trust or another trust established to accept and manage amounts to fund the undertaking of works or activities to counterbalance the impacts of environmentally relevant activities or other activities on the natural environment.	18 19 20 21 22
	<b>regulatory requirement</b> means a requirement under an environmental protection policy or a regulation for—	23 24
	(a) the administering authority to—	25
	(i) grant or refuse to grant, or follow stated procedures for evaluating, any of the following applications—	26 27
	(A) a development application for which the administering authority is the assessment	28 29



[s 18]

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- (a) works or activities to enhance or rehabilitate a fish habitat; and 1  
2
  - (b) the exchange of another fish habitat for a fish habitat affected by the development; and 3  
4
  - (c) a contribution to fish habitat research. 5
- ‘(3) With the agreement of the applicant for the approval, an environmental offset condition may require a monetary payment to the Fisheries Research Fund under section 117.’. 6  
7  
8

**Clause 18 Amendment of s 117 (Fisheries Research Fund) 9**

- (1) Section 117(4)(c)— 10  
*renumber* as section 117(4)(d). 11
- (2) Section 117(4)— 12  
*insert*— 13  
‘(c) amounts received for payment into the fund under environmental offset conditions mentioned in section 76IA; and’. 14  
15  
16
- (3) Section 117(5)(b)— 17  
*renumber* as section 117(5)(c). 18
- (4) Section 117(5)— 19  
*insert*— 20  
‘(b) fish habitat enhancement, rehabilitation or exchange; or’. 21  
22

**Clause 19 Amendment of schedule (Dictionary) 23**

- Schedule— 24  
*insert*— 25  
‘*environmental offset condition* see the Planning Act, section 346A(1).’. 26  
27

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<b>Part 4</b>	<b>Amendment of Nature Conservation Act 1992</b>	1 2
<b>Clause 20</b>	<b>Act amended</b>	3
	This part amends the <i>Nature Conservation Act 1992</i> .	4
<b>Clause 21</b>	<b>Replacement of s 124 (Approval of amendment of plans)</b>	5
	Section 124—	6
	<i>omit, insert—</i>	7
<b>‘124</b>	<b>Procedures applying to amending plans</b>	8
	‘(1) The procedures for the preparation and approval of management plans and conservation plans apply to amending plans subject to this section.	9 10 11
	‘(2) Sections 113 and 114 do not apply to an amending plan.	12
	‘(3) Also, sections 115 and 116 do not apply to an amending plan if its only amendments of another management or conservation plan are to—	13 14 15
	(a) correct an error in the other plan; or	16
	(b) make a change (other than a change of substance) in the other plan; or	17 18
	(c) if the other plan or a regulation provides that an amendment of a stated type may be made to the other plan by amendment under this subsection—make an amendment of that type.	19 20 21 22
	‘(4) In this section—	23
	<i>amending plan</i> means a management or conservation plan made only to amend another management or conservation plan.’.	24 25 26

[s 22]

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**Part 5** **Amendment of Sustainable Planning Act 2009** 1  
2

**Clause 22 Act amended** 3

This part amends the *Sustainable Planning Act 2009*. 4

**Clause 23 Insertion of new s 346A** 5

After section 346— 6

*insert—* 7

**‘346A Environmental offset conditions** 8

‘(1) This section applies to a condition that requires or otherwise 9  
relates to an environmental offset (an *environmental offset* 10  
*condition*). 11

‘(2) An environmental offset condition may be imposed only if the 12  
concurrence agency or assessment manager is satisfied that all 13  
cost-effective on-site mitigation measures for the development 14  
have been, or will be, undertaken. 15

‘(3) If the applicant has entered into an agreement about an 16  
environmental offset for this section, a condition may require 17  
the applicant to comply with the agreement. 18

‘(4) A condition imposed under subsection (3)— 19

(a) is taken to comply with section 345; and 20

(b) is not invalid on the ground of being uncertain or 21  
lacking finality. 22

‘(5) If an entity other than the applicant agrees, under an 23  
agreement mentioned in subsection (3), to carry out works 24  
required for the development, section 347(1)(c) does not 25  
apply to a condition stating that those works must be 26  
undertaken by the entity. 27

*Note—* 28

Also, under section 348, the applicant may enter into an agreement to 29  
establish the obligations, or secure the performance, of a party to the 30  
agreement about an environmental offset condition. 31



- 
- ‘(6) An environmental offset condition may require works or activities to be undertaken on land on which the development is undertaken or on other land in the State. 1  
2  
3
- ‘(7) An environmental offset condition may require a monetary payment to an environmental offset trust. 4  
5
- ‘(8) In this section— 6
- Balance the Earth Trust*** means the trust by that name established under a trust deed entered into by the State on 9 October 2009. 7  
8  
9
- environmental offset*** means works or activities undertaken to counterbalance the impacts of a development on the natural environment. 10  
11  
12
- environmental offset trust*** means the Balance the Earth Trust or another trust established to accept and manage amounts to fund the undertaking of works or activities to counterbalance the impacts of development or other activities on the natural environment. 13  
14  
15  
16  
17
- natural environment***— 18
- (a) means living and non-living things that occur naturally at 1 or more places on Earth; and 19  
20
- (b) does not include amenity or aesthetic, cultural, economic or social conditions. 21  
22
- on-site mitigation measure***, for a development, means a measure, undertaken on land to which the development relates, to avoid or minimise negative impacts of the development on the natural environment.’. 23  
24  
25  
26