

Environmental Offsets Bill 2014

Explanatory Notes for amendments to be moved during Consideration in Detail by The Honourable Andrew Powell MP.

Title of the Bill

Environmental Offsets Bill 2014

Objectives of the Amendments

These amendments to the *Environmental Offsets Bill 2014* (the Bill) will clarify and improve the operation of the Bill and have mostly been made in response to the recommendations of the Agriculture, Resources and Environment Committee and feedback from stakeholders.

Achievement of the Objectives

The objectives are achieved by way of amendments to the Bill as described in the notes on provisions.

Alternative Ways of Achieving Policy Objectives

Legislative amendments are the only means of achieving the policy objectives.

Estimated Cost for Government Implementation

The Bill will introduce a standard environmental offsets framework for State and local government approvals and minimise duplication of offset requirements for proponents. There should be a reduction in compliance costs for Queensland Government arising from the Bill.

Consistency with Fundamental Legislative Principles

Offence relating to compliance notice –

It is necessary to raise the penalty amount in relation to non-compliance with an agreed delivery arrangement to provide alignment with the existing penalty for non-compliance with a proponent-driven offset as outlined in the Bill. This amendment is necessary to address several submissions provided to Agriculture Resources and Environment Committee which clearly indicated the penalty amount is significantly less than, and should be similar to, penalties for non-compliance associated with proponent-driven offsets. The proposed amendment would also provide consistency with penalties applying to similar offences under other Acts.

Calculating the amount of a financial settlement offset–

The calculation of the amount required for a financial settlement offset, as required by the administering authority, was originally provided for under regulation. The Office of Queensland Parliamentary Counsel has advised that it is necessary to escalate this provision into the Bill, in order to address the fundamental legislative principles associated with sub delegation of power.

Consultation

The amendments to the Bill are mostly made in response to Report No. 40 from the Agriculture, Resources and Environment Committee as well as to submissions made to the Committee during the submission period on the Bill.

NOTES ON PROVISIONS

Amendment 1 and 2

These amendments are necessary to clarify what is ‘significant’ in relation to a significant residual impact on a protected area or a legally secured offset area. This amendment is necessary to provide consistency between protected areas, legally secured offset areas and other prescribed environmental matters referred to under clause 8 (1) of the Bill.

Amendment 3

This amendment removes a redundant term in subclause 8 (4) to ensure the correct application of this provision. The significant residual impact applies to one or more items listed under subclause 8 (4) and it is therefore necessary to remove the word ‘or’, from the end of this provision.

Amendment 4

This amendment removes any doubt that a protected area, as mentioned in this amendment, does not include a nature refuge for the purposes of subclause (2) of the Bill or other prescribed environmental matters within the protected area.

Amendments 5, 6, 7 and 8

This amends subclause 10 (3) of the Bill to better facilitate the prescription of matters of national environmental significance (MNES). This amendment will expedite the process of accreditation of Queensland’s approval processes under 46 or 146B of the Environmental Protection and Biodiversity Conservation Act 1999.

The previous clause 10 (3) specified that MNES could not be prescribed until after the approval was granted. This arrangement would have made the process of accreditation under the *Environmental Protection and Biodiversity Conservation Act 1999* more cumbersome.

Amendment 9

This amendment provides for the environmental offset policy to set out the requirements for calculating the amount for a financial settlement offset. This amendment is necessary as a result of amendment 24 to clause 23(3), which inserts a requirement for the financial settlement offset amount to be calculated in accordance with the offset policy.

Amendment 10

This amendment implements recommendation 10 of the Agriculture Resources and Environment Committee report by replacing the words ‘cost-effective’ with ‘reasonable’ under clause 14 (2)(b) of the Bill.

Amendment 11

Amendment 11 amends subclause 14 (3) of the Bill to clarify that an administering authority may have regard to an existing environmental offset condition which relates to the same or substantially the same prescribed activity, prescribed environmental matter and area of land.

This amendment is necessary to improve the interpretation of this clause and to remove the notion that an administering agency may have regard to an offset condition imposed for the same prescribed environmental matter in a different location for a different area prescribed activity.

Amendment 12

This amendment replaces the words ‘administering authority’ with ‘administering agency’ to remove an inconsistent term mentioned in clause 14 (1) of the Bill.

Amendments 13 and 14

This amends clause 15 of the Bill to clarify that the restriction imposed under this clause applies to the same prescribed activity and the prescribed environmental matter. Clause 15 specifies that a lower level of government must not impose an offset condition if an offset condition was imposed, or decided not to be imposed by a higher level of government regardless of whether the lower level of government considers the impact is more significant, or an offset condition should have been imposed.

This amendment was also necessary to improve the interpretation of this clause by providing a clearer description of what an existing condition means in the context of ‘Commonwealth condition’ and ‘State condition’ by specifically referring to conditions that have been imposed.

Amendment 15

This amends clause 16 of the Bill to provide clarification that deemed conditions on an authority which relate to an environmental offset are taken to apply despite section 347(1)(b) and (c) of the *Sustainable Planning Act 2009* which explicitly state conditions that cannot be imposed on an authority granted under that Act.

Sections 347 (1)(b) and (c) of the *Sustainable Planning Act 2009* restrict the imposition of conditions which require a monetary payment for infrastructure, or require works to be carried out by an entity that is not the applicant applying for the approval under that Act.

Amendment 16

Subclause 18 of the Bill is amended to clarify that environmental offsets may be delivered in stages if the prescribed activity to which the condition relates may also be delivered in stages. Before authority holder may start each stage of the prescribed activity, the holder must elect in the approved form how they will deliver an offset for that stage.

This amendment also clarifies that if a proponent elects to deliver a proponent-driven offset; it is a condition of their authority that the proponent must submit an offset delivery plan for the offset at the same time the notice of election is given under subclause 18(1) of the Bill.

This amendment also establishes the requirement under 18 (2)(a) to elect by notice how an offset will be delivered using the approved form. This provision is consistent with the chief executive’s power under clause 91 to approve forms for use under the Act.

Amendment 17

Subclause 18 (5) of the Bill is amended to remove any doubt that a proponent-driven offset must provide benefits in addition to the requirements stated or otherwise provided for as part of an authority granted under an Act.

Amendment 18

Cause 18 (5)(b) of the Bill is amended to correct the name of the *Land Protection (Pest and Stock Route Management) Act 2002*.

Amendment 19

This amendment removes subclause 18 (6) from the Bill as a consequence to the amendment of clause 16, which clarifies the relationship between deemed conditions and the relevant sections of the *Sustainable Planning Act 2009* determining the validity of these conditions.

Amendment 20

This amendment implements recommendation 11 of the Agriculture Resources and Environment Committee report by establishing a timeframe of 40 business days for the administering agencies to consider the notice of election. This amendment is necessary to provide certainty to proponents that a notice of election will be considered in a timely manner and ability to seek a review of the failure to make a decision if this is not achieved.

Amendment 21

This amendment is necessary to provide for an amendment of the agreed delivery arrangement under subclause 19(5) to occur prior to the authority holder commencing the prescribed activity under the authority.

Amendment 22

This amends 19(6) of the Bill to provide for the decision made to give notice, or for failure to give notice within 40 business days, to facilitate the commencement of a review process provided under regulation in 19 (6) of the Bill.

Amendment 23

A new subdivision 2A is inserted under clause 19, to provide for the amendment of an agreed delivery arrangement, in relation to a proponent-driven offset after the prescribed activity has commenced. This further agreement is necessary in a number of situations, including for example, where the agreed delivery arrangement may result in an unintended outcome or the environmental offset may not be achieving the main purpose of the Act.

Amendment 24

This amends subclause 23 (2) of the Bill to link the deemed condition with the agreed delivery arrangement, by requiring the payment of the agreed financial settlement amount prior to commencing the prescribed activity to which the offset condition relates.

This amendment also provides for local government to be the administering agency that receives financial settlement amount for matters of local environmental significance, and in some cases, matters of State environmental significance.

The State Planning Policy provides for a local government to administer matters of State environmental significance for certain prescribed activities. For example, receiving amounts in relation to offsets for Koala Habitat in South East Queensland as part of a development approval issued under the *Sustainable Planning Act 2009*. Subsequently the local government as the administering agency may receive the financial settlement amount in order to deliver the environmental offset for a particular matter.

This amendment, through subclause 23 (3), expressly states, in deciding the amount to be required as a financial settlement offset, an administering agency must calculate the amount in accordance with the environmental offsets policy.

This amendment is necessary for primary legislation to give effect to the financial settlement offsets calculation method, a key component of the environmental offsets policy framework. The

environmental offsets policy, a statutory instrument under the Act, is the most appropriate instrument for providing the level of detail required to make this calculation.

Amendment 25

This amendment is necessary to remove the incorrect term ‘trust account’ and replace it with correct term of ‘trust fund’ within the meaning of the *Local Government Act 2009*, and *City of Brisbane Act 2010*. Each of the abovementioned Acts provide for the establishment of a ‘trust fund’ to be credited with ‘trust money’. This amendment is necessary to provide consistency with the provisions in Part 11, division 2 of the Bill which provides for amounts received as a financial settlement offset by a local government to be taken as trust money credited to the local government’s trust fund.

Amendment 26

This amends clause 28 of the Bill to clarify that a protected area is only taken to be a legally secured offset area when the protected area is subject to a management plan or agreement, however stated, which provides for the delivery of an environmental offset that achieves a conservation outcome.

This amendment is necessary to establish the link between the management plan or agreement, however stated, for the protected area and the purpose for which the plan is made. This allows certain protected areas to be recognised as legally secured offset areas, but not if the area is dedicated or declared for a purpose, not related to the achievement of a conservation outcome.

Amendment 27

This amends clause 29(1) to establish that each application for an environmental offset protection area must be accompanied by an ‘environmental offset agreement’ and an ‘offset delivery plan’ which are both designed to achieve a conservation outcome. The signed consent to the declaration of each person with an interest in land within the area of land to which the application relates is also required.

Amendment 28

This amendment omits subclause 29 (6)(c) to remove the obligation imposed on the Chief Executive to require the owner of land’s successors to comply with an environmental offset agreement. This obligation is unnecessary as clause 31 of the Bill provides for each agreement to be binding on each person who is from time to time the owner of land within the area and adequately addresses the continuation of the agreement on the owner of land in the future, whoever the owner may be.

Amendments 29 and 30

This amends clause 30 of the Bill to provide greater consistency between the Bill and processes and terminology currently used under the *Land Act 1994* and *Land Title Act 1994*.

Amendment 31

This amendment replaces clause 33 of the Bill which provides for a record kept by the registrar of titles to be corrected, updated or removed in certain circumstances.

Replacement was necessary to provide greater consistency between the Bill and processes and terminology currently used under the *Land Act 1994* and *Land Title Act 1994*.

Amendment 32

This amendment inserts a greater penalty relating to an offence under clause 36 for failing to comply with a compliance notice, issued in relation to non-compliance with an environmental offset agreement.

It is necessary to raise the penalty amount in relation to non-compliance with an agreed delivery arrangement to provide alignment with the existing penalty for non-compliance with a proponent-driven offset as outlined in the Bill.

Several submissions provided to Agriculture Resources and Environment Committee have indicated that the penalty amount is significantly less than, and should be similar to, penalties for non-compliance associated with proponent-driven offsets. The proposed amendment would also provide consistency with penalties applying to similar offences under other Acts.

Amendment 33

This amendment implements recommendation 13 of the Agriculture Resources and Environment Committee report by replacing the word “inspectors” with “enforcement officers” in the heading of clause 41 of the Bill to correct a drafting error.

Amendment 34

This amendment is prepared in response to the Agriculture Resources and Environment Committee report requesting clarification of clause 44. This clause has been amended to remove the ability to appoint any individual with their consent. There is an adequate head of power to identify other classes of persons by regulation if the need arises in the future.

Amendment 35

This amendment implements recommendation 12 of the Agriculture Resources and Environment Committee report to amend the object of the offset account, to expressly state that ‘the object of the offset account is to provide for the delivery of environmental offsets to achieve conservation outcomes’.

This amendment provides certainty to proponents that an environmental offset delivered using financial settlement offset money, will provide for an environmental offset that is selected, designed and managed to maintain the viability of that matter.

Amendments 36 and 37

This amends clause 85 of the Bill to provide certainty that an amount received as a financial settlement offset in relation to a protected area (other than a nature refuge), must be provided to the chief executive of the department responsible for administering protected areas. This clause ensures the transaction is made as soon as possible to ensure the environmental offset for the protected area can be implemented in a timely manner in accordance with clause 7 (3) of the Bill.

Amendment 38

This amendment implements recommendation 12 of the Agriculture Resources and Environment Committee report to provide a clear link between the payment of a financial settlement offset and the delivery of a conservation outcome. This amendment will ensure that payments made out of the local government trust fund to deliver the environmental offsets are designed to achieve a conservation outcome for the impacted matter.

Amendment 39

This amends clause 92 (2)(b) of the Bill to provide for an advanced offset to be ‘registered’ by an owner, as opposed to the previous term of ‘identified’. The recording of an advanced offset in the register will enhance trading of the offsets in the future.

Amendment 40

This amends clause 94 of the Bill to correct an error and make this provision operable. This amendment clarifies that the Act applies to an authority amended on or after commencement; to the extent the authority imposes a new environmental offset condition.

Amendment 41

This amendment clarifies the scope of the transitional regulation making powers.

Amendment 42 and 43

This amendment inserts a new subclause 138 (3B) to the Bill, to give the provision permanency, and effectively removing it from the transitional provisions inserted by clause 139.

This provision establishes deemed conditions imposed by the Bill, on an authority granted under the *Sustainable Planning Act 2009* on or post commencement, to prevail over an environmental offset condition to the extent of any inconsistency.

Amendment 44, 45 and 46

These amendments amend clause 139 of the Bill to the extent it inserts section 972 under the *Sustainable Planning Act 2009*.

Section 972 is removed and inserted under section 346A of that Act (Environmental offset conditions), to correct the provision from being applied as a transitional provision under that Act, giving the provision permanency.

These amendments move the definition of environmental offset from the body of the *Sustainable Planning Act 2009*, to the Schedule of that Act to reflect standard drafting convention when a term is used more than once in an Act. This amendment is consequential to the amendment of clause 138.

Amendment 47 and 48

These amendments provide a number of consequential amendments to the dictionary to reflect drafting practice and to improve clarity.