



# **Environmental Offsets Act 2014**

**Current as at 22 July 2024**

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Queensland

# Environmental Offsets Act 2014

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# Environmental Offsets Act 2014

**An Act to provide for environmental offsets to counterbalance significant residual impacts of particular activities on particular matters of national, State or local environmental significance and to establish a framework in relation to environmental offsets**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Environmental Offsets Act 2014*.

### 2 Commencement

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- part 14
- section 101
- section 102, to the extent it inserts section 14
- sections 106 to 111
- section 114
- sections 125 to 127
- section 133
- section 135
- sections 137 and 138
- part 25
- schedule 1.

## **Part 2 Purpose and application of Act**

### **3 Purpose and achievement**

- (1) The main purpose of this Act is to counterbalance the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets.
- (2) The main purpose is achieved primarily by—
  - (a) establishing a framework for environmental offsets; and
  - (b) recognising the level of protection given to prescribed environmental matters under other legislation; and
  - (c) providing for national, State and local matters of environmental significance to be prescribed environmental matters for the purpose of this Act; and
  - (d) coordinating the implementation of the framework in conjunction with other legislation.

*Note—*

Section 95(1) provides this Act applies to an authority granted under another Act only if the application under the other Act for the authority was made on or after the commencement of that section. See section 95 for further relevant provisions.

### **4 Act binds all persons**

- (1) This Act binds all persons including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State, the Commonwealth or any other State liable to be prosecuted for an offence against this Act.

### **5 Relationship with particular Acts**

- (1) This Act does not affect or limit the functions or powers under the State Development Act of the Coordinator-General,

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including, for example, the power to impose a condition under part 4, division 8 of that Act.

- (2) Also, this Act does not affect or limit—
- (a) the power of an assessment manager to impose a condition stated in a report of the Coordinator-General under section 39 of the State Development Act; or
  - (b) a person's obligation under section 54 of the State Development Act to take into consideration the Coordinator-General's report; or
  - (c) the obligation on an administering authority under the *Environmental Protection Act 1994*, section 205(2) to impose a condition.
- (3) To remove any doubt, it is declared that if there is an inconsistency between—
- (a) an imposed condition; and
  - (b) a deemed condition;
- the imposed condition prevails to the extent of the inconsistency with the deemed condition.

*Note for subsection (3)—*

However, a deemed condition prevails over some conditions in the following Acts—

- the *Environmental Protection Act 1994*—see section 714;
- the *Marine Parks Act 2004*—see section 151B;
- the *Nature Conservation Act 1992*—see sections 66A and 100J.

- (4) In this section—

***Coordinator-General*** see schedule 2 of the State Development Act.

***imposed condition*** means—

- (a) a condition imposed under another Act as a result of a power or obligation mentioned in subsection (2); or
- (b) an imposed condition within the meaning of the State Development Act, section 54B(2).

## Part 3 Interpretation

### Division 1 Dictionary

#### 6 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

### Division 2 Key concepts and definitions

#### 7 What is an *offset condition* and an *environmental offset*

(1) Under another Act, an administering agency may impose a condition (an *offset condition*) on an authority under the other Act for a prescribed activity for a prescribed environmental matter that—

(a) requires an environmental offset to be undertaken; or

*Examples of environmental offsets for paragraph (a)—*

- carrying out work to maintain the viability of a prescribed environmental matter
- preparing a plan about a prescribed environmental matter
- conducting scientific research or an education program

(b) otherwise relates to an environmental offset.

*Example for paragraph (b)—*

payment of a financial settlement offset

(2) An *environmental offset* is an activity undertaken to counterbalance a significant residual impact of a prescribed activity on a prescribed environmental matter.

(3) However, an environmental offset for a prescribed environmental matter that is a protected area, other than a special wildlife reserve or nature refuge, may include the delivery of any activity that provides a social, cultural, economic or environmental benefit to any protected area.

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## 8 What is a *significant residual impact*

- (1) Generally, a *significant residual impact* is an adverse impact, whether direct or indirect, of a prescribed activity on all or part of a prescribed environmental matter that—
  - (a) remains, or will or is likely to remain, (whether temporarily or permanently) despite on-site mitigation measures for the prescribed activity; and
  - (b) is, or will or is likely to be, significant.
- (2) If a prescribed environmental matter is a protected area and the adverse impact of the prescribed activity results, or will or is likely to result, in 1 or more of the following, for the purpose of subsection (1)(b), the impact is significant—
  - (a) the authorised clearing or inundation of all or part of the protected area for the construction of private or publicly owned infrastructure on the area;
  - (b) the exclusion of, or reduction in, the public use or enjoyment of all or part of the protected area;
  - (c) a reduction in the natural or cultural values, within the meaning of the *Nature Conservation Act 1992*, of all or part of the protected area.
- (3) However, an impact as mentioned in subsection (2) is not a significant residual impact for the protected area if the prescribed activity is—
  - (a) conducted by an authorised person performing functions under the *Nature Conservation Act 1992*; and
  - (b) consistent with the management of the area under the *Nature Conservation Act 1992*, section 15.
- (4) If a prescribed environmental matter is, or is in, a legally secured offset area and the adverse impact of the prescribed activity on all or part of the matter results, or will or is likely to result, in 1 or more of the following, for the purpose of subsection (1)(b), the impact is significant—
  - (a) for the prescribed environmental matter for which the area was set aside for the purposes of an environmental

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offset—a use of the area that is inconsistent with how the environmental offset was or is required to be undertaken to achieve a conservation outcome for the prescribed environmental matter under a delivery or management plan or agreement (however described in this or another Act);

- (b) for any other prescribed environmental matter in the area—a significant residual impact as mentioned in subsection (1) on the other prescribed environmental matter.
- (5) For subsection (2), a protected area does not include a nature refuge.
- (6) To remove any doubt, it is declared that subsection (2) does not apply to a prescribed environmental matter in a protected area.

## 9 What is a *prescribed activity*

A *prescribed activity* is an activity—

- (a) the subject of an authority under another Act; and
- (b) for which an offset condition may be imposed under the other Act on the authority; and
- (c) that is prescribed under a regulation.

## 10 What is a *prescribed environmental matter* and a *matter of environmental significance*

- (1) A *prescribed environmental matter* is any of the following matters prescribed under a regulation to be a prescribed environmental matter—
- (a) a matter of national environmental significance;
  - (b) a matter of State environmental significance;
  - (c) a matter of local environmental significance.
- (2) The prescription of a prescribed environmental matter may be made by reference to a matter declared, defined, designated,

established, listed, prescribed or otherwise described under this Act or another Act.

*Examples for subsection (2)—*

- a fish habitat area declared under the *Fisheries Act 1994*
  - a marine conservation park zone established under a zoning plan for a State marine park under the *Marine Parks Act 2004*
  - vulnerable wildlife prescribed under the *Nature Conservation Act 1992*
- (3) A regulation may only prescribe a matter of national environmental significance to be a prescribed environmental matter if—
- (a) it is a matter of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), chapter 2; and
  - (b) it is, or may be, the subject of an approval for the taking of an action or class of actions in relation to the matter under section 46 or 146B of that Act.

## 11 Conservation outcome achieved by environmental offset

A *conservation outcome* is achieved by an environmental offset for a prescribed activity for a prescribed environmental matter if the offset is selected, designed and managed to maintain the viability of the matter.

# Part 4 Environmental offsets policies

## 12 What is an *environmental offsets policy*

- (1) An *environmental offsets policy* is a document prescribed under a regulation to be an environmental offsets policy.
- (2) As soon as possible after the prescription as an environmental offsets policy of a document made by the chief executive, the chief executive must make the policy available for inspection in the way the chief executive considers appropriate.

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- (3) As soon as possible after the prescription as an environmental offsets policy of a document made by a local government, the local government must ensure the policy is available for inspection in the way the local government considers appropriate.
- (4) For subsections (2) and (3), an example of a way the chief executive or a local government may consider appropriate is making the document available in an electronic form on a website.
- (5) If the document prescribed to be an environmental offsets policy is amended or repealed, the amendment or repeal does not take effect for this Act until—
  - (a) for an amendment—the document as amended is prescribed to be an environmental offsets policy; or
  - (b) for a repeal—the document is prescribed to have been repealed.

### **13 Content of environmental offsets policy**

An environmental offsets policy may—

- (a) set out the circumstances in which an environmental offset may or may not be required; or
- (b) set out the characteristics of an area that is suitable for undertaking an environmental offset; or
- (c) provide for the ongoing management and monitoring of, and reporting about, an environmental offset; or
- (d) provide for deciding the size and scale of an environmental offset so the offset is proportionate to the significant residual impacts on a prescribed environmental matter; or
- (e) set out the requirements for determining the amount required for a financial settlement offset; or
- (f) include any other provision relating to the main purpose of this Act.



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## Part 5 Imposing offset conditions

### 13A Definition for pt 5

In this part—

*existing* means—

- (a) for a State condition—an offset condition that has been imposed; or
- (b) for a Commonwealth condition—a condition that has been imposed under a relevant Commonwealth Act.

### 13B What this part is about

- (1) This part applies if an administering agency may impose an offset condition on an authority, under another Act, for an impact on a prescribed environmental matter.
- (2) This part applies despite anything to the contrary in the other Act, other than as mentioned in—
  - (a) section 5; or
  - (b) the Planning Act, section 62.

## 14 Imposing offset condition

- (1) The administering agency may impose the offset condition only if satisfied—
  - (a) the prescribed activity will, or is likely to, have a significant residual impact on a prescribed environmental matter; and
  - (b) all reasonable on-site mitigation measures for the prescribed activity have been, or will be, undertaken.
- (2) When making a decision under the other Act about whether to impose an offset condition, the administering agency must consider any offset condition that has been imposed on an authority under another Act for—

- (a) the same, or substantially the same, impact; and
- (b) the same, or substantially the same, prescribed environmental matter.

## 15 Restriction on imposition of offset condition

- (1) An administering agency may impose an offset condition on an authority only if—
  - (a) the same, or substantially the same, impact has not been assessed under a relevant Commonwealth Act; and
  - (b) the same, or substantially the same, prescribed environmental matter has not been assessed under a relevant Commonwealth Act.
- (2) Subsection (1) applies whether or not the assessment resulted in the imposition of an offset condition.
- (3) However, subsection (1) does not apply if the prescribed environmental matter to which the condition relates is a protected area.
- (4) An administering agency that is a local government may impose an offset condition on an authority only for the following—
  - (a) a matter of local environmental significance;
  - (b) another prescribed environmental matter that is further prescribed by regulation as relevant for this subsection.
- (5) In this section—

***relevant Commonwealth Act*** means—

  - (a) the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) as a controlled action; or
  - (b) the *Great Barrier Reef Marine Park Act 1975* (Cwlth); or
  - (c) another Commonwealth Act prescribed by regulation.

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## Part 6 Requirements about environmental offsets

### Division 1 Deemed conditions

#### 16 Conditions that apply under this Act to authority

- (1) This section applies if an offset condition is imposed on an authority, under another Act, for a significant residual impact of a prescribed activity on a prescribed environmental matter.
- (2) Sections 19B, 22, 24 and 25 state further conditions that, under this Act, are imposed on the authority.
- (3) A further condition mentioned in subsection (2) is a *deemed condition* of the authority.
- (4) A reference in another Act to a condition (however described) of the authority includes each deemed condition.
- (5) Subsection (4) applies despite anything to the contrary in the Planning Act, section 66(1)(a) and (c).

#### 17 Contravention of deemed condition

- (1) This section applies to the following persons—
  - (a) an authority holder;
  - (b) another person who is acting under an authority granted under another Act.
- (2) A person to whom this section applies must comply with each deemed condition of the authority.
- (3) If a person contravenes a deemed condition, the person may be dealt with under the Act under which the authority was granted as if the person had contravened an offset condition imposed under that Act.
- (4) Without limiting subsection (3), the person may be prosecuted under the other Act for a breach of a deemed condition and, if convicted, is liable to a penalty in the same way and to the

same extent as if the person had breached an offset condition imposed under the other Act.

## **Division 2                      Election before starting prescribed activity**

### **18            Electing how to deliver environmental offset**

- (1) This section applies if—
  - (a) under another Act, an offset condition has been, or may be, imposed on an authority; and
  - (b) the condition relates to the significant residual impact of a prescribed activity on a prescribed environmental matter.
- (2) An entity may, by notice in the approved form given to the administering agency for the offset condition, elect to deliver an environmental offset for the prescribed activity, or for a stage of the prescribed activity, by—
  - (a) a proponent-driven offset; or
  - (b) a financial settlement offset; or
  - (c) a combination of a proponent-driven offset and a financial settlement offset.
- (3) A notice of election that involves a proponent-driven offset must be accompanied by a plan (an *offset delivery plan*) about how the entity will undertake the offset.
- (4) The offset delivery plan must—
  - (a) describe how an environmental offset will be undertaken and the conservation outcome will be achieved; and
  - (b) state that the entity, and any other entity that owns land on which the environmental offset will be undertaken, agree to the offset being undertaken; and
  - (c) be signed by the entities mentioned in paragraph (b); and

- 
- (d) satisfy each other requirement prescribed by regulation for this section.
- (5) For subsection (4)(a), the offset delivery plan must—
- (a) effectively account for and manage the risks of the environmental offset failing to achieve the conservation outcome; and
  - (b) ensure the environmental offset provides benefits in relation to the prescribed environmental matter in addition to any other benefit provided under a requirement of, or of an authority under, an Act; and

*Example for paragraph (b)—*

Ensuring an environmental offset in relation to the management of a pest provides benefits in addition to a landowner's obligation under the *Biosecurity Act 2014*, section 23 to take all reasonable and practical measures to prevent or minimise a biosecurity risk within the meaning of that Act.

- (c) have transparent governance arrangements that can be readily measured, monitored, audited and enforced; and
- (d) ensure the environmental offset is of a size and scale proportionate to the significant residual impact on the prescribed environmental matter.

## 19 Agreed delivery arrangements

- (1) After receiving a notice of election, the administering agency must consider the election and any offset delivery plan, including by considering—
  - (a) each relevant environmental offsets policy; and
  - (b) any other matter prescribed by regulation for this section.
- (2) The administering agency must decide whether it is appropriate to deliver the environmental offset in the way stated in the notice of election, and any offset delivery plan, or whether the offset should be delivered in a different way.
- (3) The administering agency must give the entity a notice that states—

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- (a) the way in which the environmental offset is required to be delivered; and
  - (b) the entity is required to enter into an agreed delivery arrangement within a stated reasonable period; and
  - (c) that the entity may apply for a review of the decision; and
  - (d) how and when the entity may apply for a review of the decision.
- (4) An ***agreed delivery arrangement*** is an agreement between an entity and the administering agency about the entity's delivery of an environmental offset, with reference to any offset delivery plan.
- (5) An agreed delivery arrangement may be entered into before or after the authority is granted.

*Note—*

However, see section 19A for when an agreed delivery arrangement is entered into before the authority is granted.

- (6) If the administering agency fails to give notice under subsection (3) within 40 business days after receiving the notice of election, the entity may apply for a review of the failure to give the notice, in the way provided for under subsection (8).
- (7) The entity and administering agency may amend either or both of the following—
- (a) the agreed delivery arrangement;
  - (b) an offset delivery plan;
- by entering into another agreed delivery arrangement before the entity starts the relevant prescribed activity, or the relevant stage of a prescribed activity.
- (8) A regulation may provide for—
- (a) a review of a decision to require an environmental offset to be delivered in a way that differs from the way stated in a notice of election; or

- (b) a review of a failure to give a notice under subsection (3) within 40 business days after the administering agency receives the notice of election; or
- (c) what happens if the entity and administering agency do not enter into an agreed delivery arrangement within the stated reasonable period; or
- (d) a dispute resolution process.

### **19A Agreed delivery arrangement before authority granted**

- (1) This section applies if an entity enters into an agreed delivery arrangement (the *early arrangement*) under section 19 before an authority is granted.
- (2) The entity—
  - (a) may start to deliver a proponent-driven offset before the authority is granted; but
  - (b) must not pay any amount under a financial settlement offset until after the authority is granted.
- (3) If, after the early arrangement is entered into, but not more than 10 business days after the authority for the prescribed activity is granted—
  - (a) there is a change in the way the prescribed activity is proposed to be carried out that will result in a change to the impact; and
  - (b) the administering agency decides that the impact that is counterbalanced under the early arrangement differs from the impact likely to arise from the prescribed activity;the administering agency must give the entity a notice under subsection (4).
- (4) The administering agency's notice must state—
  - (a) the environmental offset is required to be delivered in a way that differs from the way stated in the early arrangement; and

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- (b) the entity is required to enter into another agreed delivery arrangement to that effect, within a stated reasonable period; and
  - (c) the reasons for the decision; and
  - (d) that the entity may apply for a review of the decision; and
  - (e) how and when the entity may apply for a review of the decision.
- (5) A regulation may provide for a review of the decision to require the environmental offset to be delivered in a way that differs from the way stated in the early arrangement.

### **19B Deemed condition for agreed delivery arrangement**

- (1) This section applies to an authority, granted by an administering agency under another Act, to carry out a prescribed activity to which an offset condition relates.
- (2) It is a condition of the authority that the authority holder must have entered into an agreed delivery arrangement with the administering agency, before starting—
  - (a) any works that impact on the prescribed environmental matter to which the offset condition relates; or
  - (b) if the authority allows the prescribed activity to be carried out in stages—any works for the stage that impact on the prescribed environmental matter to which the offset condition relates.

## **Division 3 Amending agreements after prescribed activity starts**

### **20 Amending agreement after prescribed activity starts**

- (1) This section applies if—



- 
- (a) an administering agency and an authority holder have entered into an agreed delivery arrangement that involves a proponent-driven offset; and
  - (b) the authority holder has started the prescribed activity to which the authority relates.
- (2) The authority holder and administering agency may, by entering into another agreed delivery arrangement, amend either or both of the following—
    - (a) the agreed delivery arrangement;
    - (b) an offset delivery plan about the delivery of the proponent-driven offset.
  - (3) In considering whether to enter into a further agreed delivery arrangement, the administering agency must consider the matters mentioned in section 19(1)(a) and (b).
  - (4) An offset delivery plan amended under this section must comply with section 18(4) and (5).

## Division 4 Proponent-driven offsets

### 21 What is a *proponent-driven offset*

A *proponent-driven offset* is an environmental offset that an entity undertakes directly or indirectly.

*Example of an entity indirectly undertaking an environmental offset—*

An entity may deliver an environmental offset by contracting with a broker to carry out activities on the entity's behalf.

### 22 Requirement for proponent-driven offset

- (1) This section applies if, under an agreed delivery arrangement, an authority holder is to deliver an environmental offset in whole or in part by a proponent-driven offset.
- (2) It is a condition of the authority that the authority holder must comply with the agreed delivery arrangement, including the agreed offset delivery plan.

## **Division 5                      Financial settlement offsets**

### **23            What is a *financial settlement offset***

- (1) A *financial settlement offset* is a payment, in relation to delivering an offset condition imposed on an authority, by the authority holder to the department or a local government of an amount required by the administering agency that granted the authority.
- (2) The amount of the payment is—
  - (a) if the administering agency is a local government—an amount up to the amount determined by the local government in accordance with the environmental offsets policy; or
  - (b) for any other administering agency—an amount determined by the administering agency in accordance with the environmental offsets policy.

### **24            Requirements for financial settlement offsets**

- (1) This section applies if, under an agreed delivery arrangement, an authority holder is to deliver an offset condition in whole or in part by a financial settlement offset.
- (2) It is a condition of the authority that, before the authority holder starts any part of the prescribed activity to which the offset condition relates, the holder must pay the amount required by, and in the way stated in, the agreed delivery arrangement—
  - (a) if the offset condition relates to a matter of local environmental significance that is prescribed as a prescribed environmental matter—to the local government that is the administering agency; or
  - (b) if the offset condition relates to a matter of State environmental significance that is prescribed as a prescribed environmental matter and further prescribed

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as relevant for this section—to the local government that is the administering agency; or

- (c) otherwise—to the department.

*Note—*

See also sections 85 and 89.

- (3) The authority holder may pay the amount required by the agreed delivery arrangement for a stage of the prescribed activity only if the authority allows the prescribed activity to be carried out in stages.

## **Division 6                      Further condition about legally secured offset areas**

### **25                      Impacts on legally secured offset area**

- (1) This section applies to an authority granted under another Act for a prescribed activity to be undertaken in a legally secured offset area.
- (2) It is a condition of the authority that the authority holder must not carry out any prescribed activity in the legally secured offset area if—
- (a) a delivery or management plan or agreement (however described in this Act or another Act) applies to all or part of the offset area; and
- (b) carrying out the prescribed activity will delay, hamper or stop the delivery of the conservation outcome for a prescribed environmental matter as stated in the delivery or management plan or agreement.

## **Division 7                      Miscellaneous**

### **25AA Planning chief executive may nominate person to perform functions**

- (1) This section applies if, in relation to an application for a development approval under the Planning Act—
  - (a) the planning chief executive is the assessment manager or a referral agency for the application; and
  - (b) the planning chief executive has not nominated a person as an enforcement authority for the assessable development the subject of the application under that Act.
- (2) The planning chief executive may, by written notice given to a person, nominate the person to perform the planning chief executive's functions as an administering agency under this part for the development approval.

## **Part 6A                      When offset conditions stop applying**

### **25A Removing duplicate conditions**

- (1) This section applies if, after an offset condition is imposed, any of the following offset conditions is imposed—
  - (a) a Commonwealth condition for an area that is not a protected area;
  - (b) a State condition;
  - (c) a local government condition.
- (2) The authority holder may, at any time and free of charge, apply for an amendment of the authority to remove one of the conditions on the basis that the conditions are duplicate conditions.
- (3) The authority holder must apply, in the approved form, to—

- (a) if one of the offset conditions is a Commonwealth condition mentioned in subsection (1)(a)—the administering agency that imposed the offset condition that is not a Commonwealth condition, to remove the offset condition imposed by that agency; or
- (b) otherwise—
  - (i) the administering agency prescribed by regulation, to remove the condition imposed by that agency; or
  - (ii) if an administering agency is not prescribed by regulation—either administering agency that imposed an offset condition, to remove the offset condition imposed by that agency.
- (4) The administering agency must decide the application within 10 business days after receiving the application.
- (5) The administering agency may decide to amend the authority if satisfied that the conditions are duplicate conditions.
- (6) If the administering agency decides to amend the authority by removing the condition, the agency may also make any other amendments that the agency considers—
  - (a) relate to the removal of the condition; and
  - (b) are necessary or desirable.
- (7) If the administering agency decides to amend the authority, the agency must, within 10 days after making the decision—
  - (a) give the amended authority to the authority holder; and
  - (b) include a copy of the amended authority in the register kept under section 90.
- (8) If the administering agency decides not to amend the authority, the administering agency must give the authority holder a notice that states—
  - (a) the decision and the reasons for the decision; and
  - (b) that the holder may apply for a review of the decision; and



- (a) the period of the agreement;
  - (b) contact details for signatories to the agreement;
  - (c) if the agreement is to achieve a conservation outcome—the terms for achieving the outcome and a statement identifying those terms;
  - (d) any other matter required to be included in the agreement under a regulation for this section.
- (4) A regulation may make provisions about environmental offset agreements, including, for example, any of the following—
- (a) procedures for entering into an agreement;
  - (b) a prohibition or restriction on the use of an area the subject of an agreement;
  - (c) the entitlement of an entity to payments under an agreement;
  - (d) matters that may be considered by an administering agency in deciding if an entity is able to satisfy obligations under an agreement.

## **27 Duration of environmental offset agreement**

An environmental offset agreement has effect until the period of the agreement ends unless it is terminated earlier in accordance with the terms of the agreement.

## **28 Variation etc. of environmental offset agreement**

- (1) This section applies if a relevant agency has entered into an environmental offset agreement (an *earlier agreement*) under section 26.
- (2) The relevant agency, and an entity bound by the earlier agreement, may enter into another environmental offset agreement (the *later agreement*) that varies, or terminates and replaces, the earlier agreement.

## Part 8 Legally secured offset areas

### 29 What is a *legally secured offset area*

- (1) An area of land is a *legally secured offset area* if—
  - (a) the area is—
    - (i) an environmental offset protection area; or
    - (ii) an area declared as an area of high nature conservation value under the *Vegetation Management Act 1999*, section 19F; or
    - (iii) another area prescribed under a regulation; and
  - (b) under this Act or another Act, the area is subject to a delivery or management plan or agreement (however described in this Act or the other Act) to achieve a conservation outcome for a prescribed environmental matter.
- (2) Also, an area is a *legally secured offset area* if, after an offset condition is imposed on an authority—
  - (a) the area is dedicated, or declared by regulation, as mentioned in the *Nature Conservation Act 1992*, section 29(1), 43D or 46; and
  - (b) the area is subject to a delivery or management plan or agreement (however described in the *Nature Conservation Act 1992*) to achieve a conservation outcome for a prescribed environmental matter.
- (3) Also, an area is a *legally secured offset area* if—
  - (a) before the commencement of this Act, a condition imposed on an authority under another Act (including a condition imposed under the *State Development Act*) required the establishment of the area; and
  - (b) the area is of a type prescribed under a regulation as legally secured for the purposes of the other Act.



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### **30 Declaration of environmental offset protection area**

- (1) An owner of land may apply, in the approved form, to the chief executive for a declaration the land stated in the application is an environmental offset protection area.
- (2) The application must be accompanied by—
  - (a) an environmental offset agreement and offset delivery plan, which are designed to achieve a conservation outcome; and
  - (b) the signed consent to the declaration of each person with an interest in the land stated in the application.
- (3) The chief executive may, by written notice given to the owner—
  - (a) declare the land stated in the application to be an environmental offset protection area; or
  - (b) declare a part of the land stated in the application to be an environmental offset protection area; or
  - (c) refuse the application.
- (4) An owner given a notice mentioned in subsection (3)(b) or (c) may apply in the way provided under the QCAT Act for a review of the declaration of only part of the land stated in the application or the refusal of the application.
- (5) A declaration of an environmental offset protection area may be the subject of a single declaration, even if the area—
  - (a) contains separate parcels of land; or
  - (b) comprises parcels that are not adjacent; or
  - (c) comprises parcels owned by different persons.
- (6) Before making a declaration under subsection (3)(a) or (b), the chief executive may consult, in the way the chief executive considers appropriate, with an entity the chief executive reasonably believes is, or may be, likely to be affected by the declaration.

- (7) However, the chief executive must not make a declaration for an area under subsection (3) unless the chief executive reasonably believes—
- (a) the area may be used to deliver an environmental offset in accordance with an environmental offset agreement and any relevant offset delivery plan; and
  - (b) the combined environmental offset agreement and offset delivery plan for the area is designed to achieve a conservation outcome; and
  - (c) each other person with an interest in the land within the area has consented to the declaration.

- (8) In this section—

**geothermal tenure** see the *Geothermal Energy Act 2010*, schedule 2.

**GHG authority** see the *Greenhouse Gas Storage Act 2009*, schedule 2.

**mining interest** means—

- (a) a mining claim, mineral development licence or mining lease granted under the *Mineral Resources Act 1989*; or
- (b) a petroleum lease granted under the *Petroleum Act 1923* or *Petroleum and Gas (Production and Safety) Act 2004*.

**person with an interest in land**, in an area, means—

- (a) a person with a registered interest, under the *Land Act 1994* or the *Land Title Act 1994*, in land in the area; or
- (b) if the land in the area is subject to a lease, mining interest, geothermal tenure or GHG authority—the lessee, interest holder, tenure holder or authority holder; or
- (c) if the land in the area is a forest entitlement area, State forest or timber reserve under the *Forestry Act 1959* or land prescribed under a regulation for this paragraph—the chief executive of the department in which the *Forestry Act 1959* is administered.

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### **31 Recording of declared areas etc.**

- (1) After the declaration of an environmental offset protection area, the chief executive must—
  - (a) record the declaration in the register mentioned in section 90; and
  - (b) give notice to the land registrar that the declaration has been made.
- (2) The notice under subsection (1)(b) must—
  - (a) include particulars of the land within the area the subject of the declaration; and
  - (b) state that an environmental offset agreement and, if relevant, an offset delivery plan, exist in relation to the land.
- (3) If the land registrar is given a notice under subsection (1)(b) about land within the area the subject of the declaration, the land registrar must keep a record in a way that a search of a register kept by the land registrar will show—
  - (a) the declaration has been made in relation to the land; and
  - (b) an environmental offset agreement and, if relevant, an offset delivery plan exist in relation to the land.
- (4) No fee is payable in relation to the notice or the recording.
- (5) Subsection (3) does not apply in relation to land within the area the subject of the declaration if a record may not be included in a register under the *Land Act 1994* or the *Land Title Act 1994*.

### **32 Environmental offset agreement binding**

While the declaration of an environmental offset protection area has effect, the environmental offset agreement in relation to the area, including as varied from time to time under section 28, is binding on—

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- (a) each person who is, from time to time, the owner of land within the area, even if the person did not sign the agreement; and
- (b) each other person who has a registered interest in land within the area.

### **33 Amending or revoking declaration**

A regulation may provide for the chief executive to do the following in relation to the declaration of an environmental offset protection area made under section 30—

- (a) amend the declaration;
- (b) revoke and remake the declaration;
- (c) revoke the declaration.

### **34 Updating or removing registry record**

- (1) This section applies if there is a registry record kept by the land registrar about a declaration of an environmental offset protection area (a *registry record*).
- (2) The chief executive may ask the land registrar to remove the registry record if—
  - (a) there was an error in the notice given to the registrar; or
  - (b) the declaration has been amended; or
  - (c) the declaration has been revoked and replaced.
- (3) The land registrar must remove the registry record if asked to do so by the chief executive.
- (4) After the removal, the chief executive may give the land registrar a notice containing information about—
  - (a) a declaration of an environmental offset protection area that was previously made; or
  - (b) a new declaration of an environmental offset protection area.

- (5) The notice must comply with section 31(2).
- (6) If the land registrar is given a notice under subsection (4), the land registrar must keep a registry record in a way that a search of a register kept by the land registrar will show the information given under subsection (4).
- (7) No fee is payable in relation to a removal or recording of a registry record under this section.

## Part 9 Compliance notices

### 35 Local government or chief executive may give compliance notice

- (1) This section applies if—
  - (a) a local government entered into an environmental offset agreement and the local government reasonably believes a person bound by the agreement has contravened its terms; or
  - (b) the chief executive entered into an environmental offset agreement and the chief executive reasonably believes a person bound by the agreement has contravened its terms.
- (2) The local government or chief executive (as the case may be) may give a notice (a **compliance notice**) to the person requiring the person to do either or both of the following—
  - (a) start complying with the agreement;
  - (b) remedy the contravention of the agreement in a way stated in the notice.
- (3) This section does not limit the power of an administering agency under another Act to give a notice (however described) to a person about a contravention of the other Act.

### 36 Requirements for compliance notice

- (1) A compliance notice must—

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- (a) be in writing; and
  - (b) describe the nature of the alleged contravention; and
  - (c) state the action the person must take to stop or remedy the contravention; and
  - (d) state a reasonable time within which the person must take the action; and
  - (e) include or be accompanied by an information notice for the decision to give the compliance notice.
- (2) If a compliance notice requires a person to take action involving the carrying out of work, it also must give details of the work involved.
  - (3) If a compliance notice requires a person to refrain from doing an act, it also must state either—
    - (a) a period for which the requirement applies; or
    - (b) that the requirement applies until further notice.
  - (4) If a compliance notice requires a person to do an act, it also must state a period within which the act is required to be done.
  - (5) If a compliance notice requires a person to do more than 1 act, it may state different periods within which the acts are required to be done.
  - (6) In this section—

*information notice* means a notice complying with the QCAT Act, section 157(2).

### **37 Offence relating to compliance notice**

A person given a compliance notice must comply with it.

Maximum penalty—

- (a) if the contravention is of a term for achieving a conservation outcome—1665 penalty units; or
- (b) otherwise—300 penalty units.

*Note—*

Under section 26, if an environmental offset agreement is to achieve a conservation outcome, the agreement must include a statement identifying the terms relating to achieving that conservation outcome.

### **38 Review of decision to give compliance notice**

A person given a compliance notice may apply, in the way provided under the QCAT Act, for a review of the decision to give the notice.

### **39 Taking action**

- (1) If a local government or the chief executive gives a person a compliance notice and the person contravenes it by not doing something, the local government or chief executive (the *entity*) may do the thing.
- (2) Any reasonable costs or expenses incurred by the entity in doing anything under subsection (1) may be recovered by it as a debt owing to it by the person given the compliance notice.

## **Part 10 Investigation and enforcement**

### **Division 1 Preliminary**

#### **40 Definitions for pt 10**

In this part—

*appointing authority*, of an enforcement officer, means—

- (a) if the enforcement officer was appointed by the chief executive—the chief executive; or
- (b) if the enforcement officer was appointed by the chief executive officer of a local government—the local government.

*relevant offence* means an offence against section 37 or this part.

#### **41 Enforcement officers under pt 10**

This part includes provision for the appointment of enforcement officers, and gives them particular powers.

#### **42 Functions of enforcement officers**

An enforcement officer has the following functions—

- (a) to investigate, monitor and enforce compliance with environmental offset agreements and compliance notices;
- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (c) to facilitate the exercise of powers under this Act.

#### **43 References to exercise of powers**

- (1) This section applies if—
  - (a) a provision of this part refers to the exercise of a power by an enforcement officer; and
  - (b) there is no reference to a specific power.
- (2) The reference is to the exercise of all or any enforcement officers' powers under this part or a warrant, to the extent the powers are relevant.

#### **44 Reference to document includes reference to reproductions from electronic document**

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or



- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

## **Division 2                    General provisions about enforcement officers**

### **Subdivision 1            Appointment**

#### **45            Appointment and qualifications**

- (1) The chief executive may, by instrument in writing, appoint any of the following persons as an enforcement officer—
  - (a) a public service employee;
  - (b) an APS employee under the *Public Service Act 1999* (Cwlth);
  - (c) a police officer;
  - (d) other persons prescribed by regulation.

*Note—*

A proposed appointment of a police officer must have the approval of the commissioner of police under the *Police Powers and Responsibilities Act 2000*, section 13 (Appointment of police officers as public officials for other Acts).

- (2) Also, the chief executive officer of a local government may, by instrument in writing, appoint an employee of the local government as an enforcement officer.
- (3) However, the person may be appointed as an enforcement officer only if the person is appropriately qualified for appointment.

#### **46            Appointment conditions and limit on powers**

- (1) An enforcement officer holds office on any conditions stated in—

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- (a) the officer's instrument of appointment; or
  - (b) a signed notice given to the officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the enforcement officer or a regulation may limit the officer's powers under this Act.
- (3) In this section—
- signed notice* means a notice signed by an enforcement officer's appointing authority.

#### **47 When office ends**

- (1) The office of a person as an enforcement officer ends if any of the following happens—
- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the person's resignation under section 48 takes effect.
- (2) This section does not limit the ways the office of a person as an enforcement officer ends.
- (3) In this section—
- condition of office* means a condition under which the enforcement officer holds office.

#### **48 Resignation**

An enforcement officer may resign by signed notice given to the officer's appointing authority.

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## **Subdivision 2      Identity cards**

### **49      Issue of identity card**

- (1) An appointing authority must issue an identity card to each person the authority appoints as an enforcement officer.
- (2) The identity card must—
  - (a) contain a recent photo of the enforcement officer; and
  - (b) contain a copy of the officer’s signature; and
  - (c) identify the person as an enforcement officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **50      Production or display of identity card**

- (1) In exercising a power in relation to a person in the person’s presence, an enforcement officer must—
  - (a) produce the officer’s identity card for the person’s inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the enforcement officer must produce the identity card for the person’s inspection at the first reasonable opportunity.
- (3) For subsection (1), an enforcement officer does not exercise a power in relation to a person only because the enforcement officer has entered a place as mentioned in section 52(1)(b) or (d).

## 51 Return of identity card

If the office of a person as an enforcement officer ends, the person must return the person's identity card to the person's appointing authority within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

## Division 3 Entry of places by enforcement officers

### Subdivision 1 Power to enter

#### 52 General power to enter places

- (1) An enforcement officer may enter a place if—
  - (a) an occupier of the place consents under subdivision 2 to the entry and section 55 has been complied with for the occupier; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 62 has been complied with for the occupier; or
  - (d) it is mentioned in an environmental offset agreement as the place of business of an entity that is a party to the agreement and is—
    - (i) open for carrying on the business; or
    - (ii) otherwise open for entry.
- (2) For subsection (1)(d), a *place of business* does not include a part of the place where a person resides.
- (3) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any

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conditions of the consent and ceases if the consent is withdrawn.

- (4) If the power to enter is under a warrant, the power is subject to the terms of the warrant.
- (5) The consent may provide consent for re-entry and is subject to the conditions of consent.
- (6) If the power to re-enter is under a warrant, re-entry is subject to the terms of the warrant.

## **Subdivision 2      Entry by consent**

### **53      Application of sdiv 2**

This subdivision applies if an enforcement officer intends to ask an occupier of a place to consent to the officer or another enforcement officer entering the place under section 52(1)(a).

### **54      Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an enforcement officer may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the enforcement officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

### **55      Matters enforcement officer must tell occupier**

Before asking for the consent, the enforcement officer must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and

- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

## **56 Consent acknowledgement**

- (1) If the consent is given, the enforcement officer may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state the following—
  - (a) the purpose of the entry, including the powers to be exercised;
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time;
  - (c) the occupier gives the enforcement officer or another enforcement officer consent to enter the place and exercise the powers;
  - (d) the time and day the consent was given;
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the enforcement officer must immediately give a copy to the occupier.
- (4) Subsection (5) applies if—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (2) for the entry is not produced in evidence.
- (5) The onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

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## **Subdivision 3      Entry under warrant**

### **57      Application for warrant**

- (1) An enforcement officer may apply to a magistrate for a warrant for a place.
- (2) The enforcement officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the enforcement officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

### **58      Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at or on the place, or will be at or on the place within the next 7 days, a particular thing or activity that may provide evidence of a relevant offence.
- (2) The warrant must state the following—
  - (a) the place to which the warrant applies;
  - (b) that a stated enforcement officer or any enforcement officer may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the enforcement officer's powers;
  - (c) particulars of the offence that the magistrate considers appropriate;

- (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name;
- (e) the evidence that may be seized under the warrant;
- (f) the hours of the day or night when the place may be entered;
- (g) the magistrate's name;
- (h) the day and time of the warrant's issue;
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

## 59 Electronic application

- (1) An application under section 57 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the enforcement officer reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the enforcement officer's remote location.
- (2) The application—
  - (a) may not be made before the enforcement officer prepares the written application under section 57(2); but
  - (b) may be made before the written application is sworn.

## 60 Additional procedure if electronic application

- (1) For an application made under section 59, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 59; and
  - (b) the way the application was made under section 59 was appropriate.



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- (2) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the enforcement officer, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the enforcement officer; or
  - (b) otherwise—
    - (i) the magistrate must tell the enforcement officer the information mentioned in section 58(2); and
    - (ii) the enforcement officer must complete a form of warrant, including by writing on it the information mentioned in section 58(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.
- (4) The enforcement officer must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 57(2) and (3); and
  - (b) if the enforcement officer completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Subsection (7) applies if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence.

(7) Despite subsection (3), the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(8) This section does not limit section 57.

(9) In this section—

*relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

## **61 Defect in relation to a warrant**

(1) A warrant is not invalidated by a defect in the warrant or compliance with this subdivision unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

*warrant* includes a duplicate warrant mentioned in section 60(3).

## **62 Entry procedure**

(1) This section applies if an enforcement officer is intending to enter a place under a warrant issued under this subdivision.

(2) Before entering the place, the enforcement officer must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person who is an occupier of the place and is present by producing the officer's identity card or another document evidencing the officer's appointment;

(b) give the person a copy of the warrant;

(c) tell the person the enforcement officer is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the officer immediate entry to the place without using force.

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- (3) However, the enforcement officer need not comply with subsection (2) if the officer reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 60(3).

## **Division 4            Other powers and related matters**

### **Subdivision 1        General powers of enforcement officers after entering places**

#### **63        Application of sdiv 1**

- (1) The power under this subdivision may be exercised if an enforcement officer enters—
- (a) a place under section 52(1)(a), (c) or (d); or
  - (b) a public place, or a part of a public place, under section 52(1)(b) if, under an environmental offset agreement, an environmental offset is to be delivered in the public place or that part of the public place.
- (2) However, if the enforcement officer enters under section 52(1)(a) or (c), the powers under this subdivision are subject to any conditions of the consent or terms of the warrant.

#### **64        General powers**

- (1) The enforcement officer may do any of the following (each a *general power*)—
- (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at or on the place;

- (c) take for examination a thing, or a sample of or from a thing, at or on the place;
  - (d) place an identifying mark in or on anything at or on the place;
  - (e) take an extract from, or copy, a document at or on the place, or take the document to another place to copy;
  - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (g) take to, into or onto the place and use any person, equipment and materials the enforcement officer reasonably requires for exercising the enforcement officer's powers under this subdivision;
  - (h) remain at or on the place for the time necessary to achieve the purpose of the entry.
- (2) The enforcement officer may take a necessary step to allow the exercise of a general power.
- (3) If the enforcement officer takes a document from the place to copy it, the officer must copy the document and return it to the place as soon as practicable.
- (4) If the enforcement officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the officer must produce the document and return the article or device to the place as soon as practicable.
- (5) In this section—
- examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.
- film* includes photograph, videotape and record an image in another way.
- inspect*, a thing, includes open the thing and examine its contents.

## **65 Power to require reasonable help**

- (1) The enforcement officer may make a requirement (a *help requirement*) of an occupier of the place or a person at or on the place to give the officer reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the enforcement officer must give the person an offence warning for the requirement.

## **66 Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the defendant under an environmental offset agreement.

*Note—*

See, however, section 77.

## **Subdivision 2 Other information-obtaining powers of enforcement officers**

### **67 Power to require name and address**

- (1) This section applies if an enforcement officer—
  - (a) finds a person committing a relevant offence; or
  - (b) finds a person in circumstances that lead the officer to reasonably suspect the person has just committed a relevant offence; or

- (c) has information that leads the enforcement officer to reasonably suspect a person has just committed a relevant offence.
- (2) The enforcement officer may require the person to state the person's name and residential address.
- (3) The enforcement officer may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
  - (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the enforcement officer must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.
- (6) In this section—

*address* means any of the following—

  - (a) a residential address;
  - (b) a business address;
  - (c) another address in the State.

## **68 Offence to contravene personal details requirement**

- (1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.
- (2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

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## 69 Power to require information

- (1) This section applies if an enforcement officer reasonably believes—
  - (a) a relevant offence has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The enforcement officer may, by notice given to the person, require the person to give the enforcement officer information related to the offence at a stated reasonable time and place.
- (3) A requirement under subsection (2) is an *information requirement*.
- (4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—  
*information* includes a document.

## 70 Offence to contravene information requirement

- (1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

## **Division 5**                      **Miscellaneous provisions relating to enforcement officers**

### **Subdivision 1**            **Damage**

#### **71**            **Duty to avoid inconvenience and minimise damage**

In exercising a power, an enforcement officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 73.

#### **72**            **Notice of damage**

- (1) This section applies if—
  - (a) an enforcement officer damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an enforcement officer damages something.
- (2) However, this section does not apply to damage the enforcement officer reasonably considers is trivial or if the officer reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The enforcement officer must give notice of the damage to the person who appears to the officer to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the enforcement officer must—
  - (a) leave the notice at or on the place where the damage happened; and



- (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The enforcement officer may delay complying with subsection (3) or (4) if the officer reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the officer.
- (6) The delay may be only for so long as the enforcement officer continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the enforcement officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the officer or the assistant, the officer may state the belief in the notice.
- (8) The notice must state—
  - (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 73.

## **Subdivision 2 Compensation**

### **73 Compensation**

- (1) This section applies if a person incurs loss because of the exercise, or purported exercise, of a power by or for an enforcement officer including a loss arising from compliance with a requirement made of the person under this part.
- (2) The person may claim compensation from—
  - (a) if the enforcement officer was appointed by the chief executive—the State; or
  - (b) if the enforcement officer was appointed by the chief executive officer of a local government—the local government.
- (3) The compensation may be claimed and ordered in a proceeding—

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- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged relevant offence the investigation of which gave rise to the claim for compensation.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) In considering whether it is just to order compensation, the court must have regard to—
- (a) any relevant offence committed by the claimant; and
  - (b) whether the loss arose from a lawful seizure or lawful forfeiture.
- (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (7) Section 71 does not provide for a statutory right of compensation other than is provided by this section.
- (8) In this section—  
*loss* includes costs and damage.

### **Subdivision 3      Other offences relating to enforcement officers**

#### **74      Giving enforcement officer false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give an enforcement officer information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

- (2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the

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information or document was given in response to a specific power under this Act.

## 75 **Obstructing enforcement officer**

- (1) A person must not obstruct an enforcement officer exercising a power, or someone helping an enforcement officer exercising a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an enforcement officer, or someone helping an enforcement officer, and the officer decides to proceed with the exercise of the power, the officer must warn the person that—

(a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and

(b) the officer considers the person's conduct an obstruction.

- (3) In this section—

*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

## 76 **Impersonating enforcement officer**

A person must not impersonate an enforcement officer.

Maximum penalty—100 penalty units.

## **Subdivision 4 Other provisions**

### 77 **Evidential immunity for individuals complying with particular requirements**

- (1) Subsection (2) applies if an individual gives or produces information or a document to an enforcement officer under section 65 or 69.

- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

## **Division 6                      Legal proceedings**

### **78                      Summary proceedings for offence**

Proceedings for an offence against section 37 or a provision of this part are to be taken in a summary way under the *Justices Act 1886*.

### **79                      Limitation on time for starting proceeding**

A proceeding for an offence against section 37 or a provision of this part must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge.

### **80                      Evidentiary aids generally**

A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—

- (a) on a stated day, or during a stated period, a stated person was an enforcement officer;
- (b) on a stated day, a stated person was given a compliance notice or a requirement or other notice under this part;

- (c) a stated amount is payable under this Act by a stated person and has not been paid.

## **81 Responsibility for acts or omissions of representatives**

- (1) This section applies in a proceeding for an offence against section 37 or a provision of this part.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

***representative*** means—

  - (a) of a corporation—an executive officer, employee or agent of the corporation; or
  - (b) of an individual—an employee or agent of the individual.

***state of mind***, of a person, includes the person's—

  - (a) knowledge, intention, opinion, belief or purpose; and
  - (b) reasons for the intention, opinion, belief or purpose.

## **Part 11**                      **Amounts received as financial settlement offsets etc.**

### **Division 1**                **Amounts received by the department**

#### **82**        **Application of div 1**

This division applies to any amount received as a financial settlement offset by the department.

#### **83**        **Establishment of offset account**

The Financial Offset Account (the *offset account*) is established.

#### **84**        **Object of offset account**

The object of the offset account is to provide funding for the delivery of environmental offsets to achieve conservation outcomes.

#### **85**        **Payment of amounts into offset account**

- (1) On receipt by the department of an amount as a financial settlement offset, the amount must be paid into the offset account.
- (2) The following amounts may also be paid into the offset account—
  - (a) any amount appropriated by Parliament for the purposes of the offset account;
  - (b) any amount payable into the offset account under another Act;
  - (c) any amount paid into the offset account at the direction of, or with the approval of, the Minister.

- (3) An amount of a financial settlement offset received by the department, and any other amount paid into the offset account as mentioned in subsection (2)(b) or (c), is a contribution for the purposes of the *Financial Accountability Act 2009*, section 7(2)(c).

## **86 Payment of amounts from offset account**

- (1) The chief executive may make payments from the offset account only for—
- (a) paying expenses incurred by the department in relation to an environmental offset the department delivers, whether directly or indirectly; or
  - (b) paying fees or expenses related to administering the offset account; or
  - (c) making an investment under a Treasurer's approval in accordance with the *Financial Accountability Act 2009*, section 87; or
  - (d) paying other amounts required or permitted under this Act to be part of the offset account.
- (2) If a financial settlement payment has been made for a prescribed environmental matter that is a protected area, the chief executive must give the amount to the department responsible for the administration of the protected area for the delivery of an environmental offset as mentioned in section 7(3).
- (3) However, subsection (2) does not apply for financial settlement payments received in relation to impacts on—
- (a) other matters of environmental significance within a protected area; or
  - (b) a protected area that is a special wildlife reserve or nature refuge.

## **87 Administration of offset account**

- (1) Accounts for the offset account must be kept as part of the departmental accounts of the department.
- (2) However, amounts received for the offset account may be deposited in a departmental financial institution account of the department with other moneys of the department.
- (3) In this section—

*departmental accounts*, of a department, means the accounts of the department kept under the *Financial Accountability Act 2009*, section 69.

*departmental financial institution account*, of a department, means an account of the department kept under the *Financial Accountability Act 2009*, section 83.

*other moneys*, of the department, means all moneys of the department other than amounts received for the offset account.

## **Division 2 Payments received by a local government**

### **88 Application of div 2**

This division applies to any amount received as a financial settlement offset by a local government.

### **89 Payment of amounts into and from trust fund**

- (1) On receipt by the local government of an amount as a financial settlement offset, the amount—
  - (a) becomes trust money; and
  - (b) must be credited to the local government's trust fund.
- (2) The local government may transfer an amount from a trust fund only for—



- (a) paying expenses incurred, directly or indirectly, by the local government in the delivery of the environmental offset to achieve a conservation outcome; or
- (b) paying fees or expenses related to administering the trust fund; or
- (c) paying other amounts prescribed, or required or permitted, by regulation to be paid out of the trust fund.

## **Part 12                      General**

### **90        Register to be kept by each administering agency**

- (1) An administering agency must keep a register about the following—
  - (a) information in relation to each authority that has been issued with an offset condition, including, for example—
    - (i) the administering agency’s reference number for the authority; and
    - (ii) information about the prescribed environmental matter relevant to the offset condition; and
    - (iii) a description of the location of the impact relevant to the offset condition; and
    - (iv) if the authority is for a prescribed activity to be undertaken in a legally secured offset area—a description of the area’s location and the reason the area is a legally secured offset area under section 29;
  - (b) any other matter prescribed under a regulation.
- (2) An administering agency must make the register available for inspection in the way the agency reasonably considers appropriate, including, for example, in electronic form.

- (3) An administering agency must, if requested by the chief executive and without charge, give information held on the register to the chief executive.

## 91 Delegation by chief executive

- (1) The chief executive may delegate the chief executive's functions under this Act to an appropriately qualified public service employee.

- (2) In this section—

*appropriately qualified*, for a public service employee to whom a function may be delegated, includes having the qualifications, experience or standing appropriate for the function.

*Examples of standing for public service employee—*

the officer or employee's classification or level in a department or agency

*functions* includes powers.

## 92 Approved forms

The chief executive may approve forms for use under this Act.

## 93 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may do any of the following—
  - (a) prescribe fees payable under this Act;
  - (b) provide for an area of land to be registered by the chief executive or a local government to be used for the purposes of an environmental offset in the future (an *advanced offset*) and for the use of advanced offsets, including, for example, by providing for trade in relation to advanced offsets;

- (c) require or permit other amounts to be paid out of the offset account;
- (d) impose a penalty for contravention of a provision of a regulation of no more than 20 penalty units.

## Part 13 Transitional provisions

### 94 Definitions for pt 13

In this part—

*commencement* means commencement of this section.

*existing Act* means any of the following—

- (a) the *Environmental Protection Act 1994*;
- (b) the *Fisheries Act 1994*;
- (c) the *Marine Parks Act 2004*;
- (d) the *Nature Conservation Act 1992*;
- (e) the *Sustainable Planning Act 2009*;
- (f) the *Vegetation Management Act 1999*.

*existing authority* means an authority granted under an existing Act, as the authority is in force immediately before the commencement.

### 95 Application of this Act or existing Act

- (1) This Act applies to an authority granted under another Act only if the application under the other Act for the authority was made on or after the commencement.
- (2) An existing Act continues to apply to the following—
  - (a) an existing authority;
  - (b) an application for an authority under an existing Act that was made, but not dealt with, before the commencement;

- (c) an authority granted under an existing Act on or after the commencement (a *further existing authority*) as the result of an application mentioned in paragraph (b).
- (3) For subsection (2), if a provision of an existing Act has been repealed by the *Environmental Offsets Act 2014*, the existing Act as in force immediately before the commencement continues to apply unless a transitional regulation under this Act or the existing Act provides otherwise.
- (4) If, after the commencement—
  - (a) an application is made under an existing Act to amend an existing authority or a further existing authority in relation to a prescribed activity; and
  - (b) the amendment may or is likely to result in a significant residual impact on a prescribed environmental matter;this Act applies to the application and the authority as amended (the *amended authority*) to the extent a new environmental offset condition is imposed on the amended authority.
- (5) Without limiting section 96, a regulation made under that section may provide for the way this Act or the existing Act applies, or does not apply, to an application mentioned in subsection (4) and an amended authority.

## **95A Undecided applications for authorities**

- (1) This section applies if—
  - (a) an application for an authority was made under an existing Act, but not dealt with, before the commencement; and
  - (b) that Act allowed for an offset condition to be imposed on the authority; and
  - (c) the administering agency is deciding whether to impose on the authority a condition in relation to an environmental offset.

- (2) The administering agency may, at the request of or with the agreement of the applicant, consider all or part of the environmental offsets policy under this Act instead of all or part of any policy about environmental offsets (however described) under the existing Act.
- (3) This section applies despite section 95.

### **95B Amendment of existing authorities**

- (1) This section applies to the following authorities granted under an existing Act if that Act allowed for an offset condition to be imposed on the authority—
  - (a) an existing authority;
  - (b) an authority granted, on or after the commencement, as the result of an application that was made, but not dealt with, before the commencement.
- (2) The authority holder may, at any time and free of charge, apply for an amendment of the authority—
  - (a) to allow the selection and delivery of an environmental offset in accordance with the environmental offsets policy; or
  - (b) to allow a financial settlement offset (however described) determined in accordance with the environmental offsets policy; or
  - (c) to remove a requirement to provide an environmental offset for—
    - (i) an environmental value that is not a prescribed environmental matter under this Act; or
    - (ii) an impact on a prescribed environmental matter that is not a significant residual impact.
- (3) The authority holder must apply, in the approved form, to the administering agency that issued the authority.
- (4) The administering agency must decide the application within 20 business days after receiving the application.

[s 95B]

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- (5) The administering agency may decide to make the amendment only if satisfied that the environmental values for which the environmental offset was required have not yet been impacted by the activity that is authorised by the authority.
- (6) If the administering agency decides to make the amendment, the agency may also make any other amendments that the agency considers—
  - (a) relate to the amendment; and
  - (b) are necessary or desirable.
- (7) If the administering agency decides to amend the authority, the agency must, within 10 business days after making the decision—
  - (a) give the amended authority to the authority holder; and
  - (b) include a copy of the amended authority in the register kept under section 90.
- (8) If the administering agency decides not to amend the authority, the administering agency must give the authority holder a notice that states—
  - (a) the decision and the reasons for the decision; and
  - (b) that the holder may apply for a review of the decision; and
  - (c) how and when the holder may apply for a review of the decision.
- (9) A regulation may provide for a review of the decision.
- (10) Any provisions in the Act under which the offset condition was imposed about amending conditions of an authority, other than a provision mentioned in section 5, do not apply to an offset condition that is amended under this section.
- (11) This section applies despite section 95.

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## Schedule 2      Dictionary

## section 6

*administering agency*—

- (a) means—
- (i) in relation to an offset condition for a development approval for assessable development under the Planning Act, other than an approval mentioned in subparagraph (ii)—
    - (A) if, under that Act, a referral agency may direct, or has directed, the assessment manager for the application for the development approval to impose the offset condition—the referral agency; or
    - (B) if the planning chief executive has, under the Planning Act, schedule 2, definition *enforcement authority*, paragraph (a)(iii), nominated a person as an enforcement authority for the assessable development—the person; or
    - (C) otherwise—the assessment manager for the application for the development approval; or
  - (ii) in relation to an offset condition for a development approval for assessable development under the Planning Act that is given or changed by the planning chief executive under chapter 3, part 6A of that Act—
    - (A) if the planning chief executive has, under schedule 2 of that Act, definition *enforcement authority*, paragraph (b), nominated a person as an enforcement authority for the assessable development—the person; or
    - (B) otherwise—the planning chief executive; or

- (iii) in relation to an authority under any other Act—an entity that, under another Act, performs a function in relation to—
  - (A) the grant of an authority for a prescribed activity; or
  - (B) enforcing compliance with the conditions of an authority for a prescribed activity, or otherwise administering the authority; or
- (iv) for part 7—an administering agency mentioned in section 26(1)(a) or (b); and
- (b) includes, for part 6 in relation to a development approval, a person nominated by the planning chief executive under section 25AA(2) for the development approval.

***agreed delivery arrangement*** see sections 19 and 20.

***agreed delivery arrangement*** see section 19(4).

***appointing authority***, for part 10, see section 40.

***assessment manager*** means an assessment manager under the Planning Act.

***authority***, under another Act, means—

- (a) an agreement (however described) under the other Act; or
- (b) a licence, permit or other authority (however described) under the other Act.

***authority holder*** means the person who is, from time to time, the holder of an authority under another Act (however the holder is described under the other Act).

***Commonwealth condition*** means a condition that may be imposed on a licence, permit or other authority under a relevant Commonwealth Act, the effect of which is equivalent to an offset condition.

***compliance notice*** see section 35(2).

***conservation outcome*** see section 11.



***deemed condition*** see section 16.

***deliver***, in relation to an offset condition, means comply with the condition by delivering the relevant environmental offset.

***development approval*** means a development approval under the Planning Act.

***enforcement officer*** means a person who holds office under part 10, division 1 as an enforcement officer.

***environmental offset*** see section 7(2).

***environmental offset agreement*** see section 26.

***environmental offset protection area*** means an area of land declared to be an environmental offset protection area under section 30 or 33.

***environmental offsets policy*** see section 12.

***existing***, for part 5, see section 13A.

***financial settlement offset*** see section 23.

***general power*** see section 64(1).

***grant***, in relation to an authority under another Act, means—

- (a) for an authority that is an agreement—enter (however described) the authority; or
- (b) otherwise—approve, give, issue or otherwise grant (however described) the authority.

***help requirement*** see section 65(1).

***identity card***, for a provision about enforcement officers, means an identity card issued under section 49(1).

***impose***, in relation to an offset condition—

- (a) for an authority under another Act—means apply the offset condition (however the application is described in the other Act); and
- (b) for an authority under the Planning Act—includes direct an assessment manager under that Act to impose an offset condition; and

- (c) for an agreement entered into under another Act—means include the offset condition in the agreement.

**information requirement** see section 69(3).

**land** includes waters.

**land registrar** means the registrar of titles under the *Land Title Act 1994* or another person responsible for keeping a register for dealings in land.

**later agreement**, for an environmental offset agreement, see section 28(2).

**legally secured offset area** see section 29.

**local government condition** means an offset condition that may be imposed on an authority by a local government.

**matter of local environmental significance** means a matter prescribed to be a prescribed environmental matter under section 10(1)(c).

**nature refuge** see the *Nature Conservation Act 1992*, schedule.

**notice** means a written notice.

**notice of election** means a notice mentioned in section 18(2) by which an authority holder elects to deliver an environmental offset.

**occupier**, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at or on the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

**of**, a place, includes at or on the place.

**offence warning**, for a direction or requirement by an enforcement officer, means a warning that, without a

reasonable excuse, it is an offence for the person to whom the direction or requirement is made not to comply with it.

**offset account** see section 83.

**offset condition** see section 7(1).

**offset delivery plan** see section 18(3).

**on-site mitigation measure**, for a prescribed activity, means a measure undertaken on land to which the prescribed activity relates, to avoid or minimise significant adverse impacts on prescribed environmental matters.

**owner**, of land, includes the following—

- (a) for freehold land—the person recorded in the freehold land register as the person entitled to the fee simple interest in the land;
- (b) for land held under a lease—the person who holds the lease;
- (c) for trust land under the *Land Act 1994*—the trustees of the land;
- (d) for Aboriginal land under the *Aboriginal Land Act 1991*—the persons to whom the land has been transferred or granted;
- (e) for Torres Strait Islander land under the *Torres Strait Islander Land Act 1991*—the persons to whom the land has been transferred or granted;
- (f) for a State-controlled road under the *Transport Infrastructure Act 1994*—the chief executive of the department in which that Act is administered;
- (g) for a road controlled by a local government under the *Local Government Act 2009*—the local government;
- (h) for other land prescribed under a regulation—the entity prescribed under a regulation for the land.

**personal details requirement** see section 67(5).

**person in control**, of a thing—

- (a) if the thing is a vehicle, includes the following—

- (i) the vehicle's driver or rider;
  - (ii) anyone who reasonably appears to be, claims to be, or acts as if he or she is, the vehicle's driver or rider or the person in control of the vehicle; or
- (b) otherwise—includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

**place** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water where any of the following are situated—
  - (i) a building or structure;
  - (ii) a group of buildings or structures;
  - (iii) a feature of land or water, including a feature that does not occur naturally.

**Planning Act** means the *Planning Act 2016*.

**planning chief executive** means the chief executive of the department in which the Planning Act is administered.

**premises** includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) a cave or tent; and
- (e) premises held under more than 1 title or by more than 1 owner.

**prescribed activity** see section 9.

**prescribed environmental matter** see section 10(1).

***proponent-driven offset*** see section 21.

***protected area*** means a protected area of a class mentioned in the *Nature Conservation Act 1992*, section 14, other than a coordinated conservation area.

***public place*** means—

- (a) a place, or part of the place—
  - (i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under subparagraph (i)—*

a national park

- (ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or

- (b) a place that is a public place under another Act.

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***reasonably considers*** means considers on grounds that are reasonable in the circumstances.

***reasonably suspects*** means suspects on grounds that are reasonable in the circumstances.

***referral agency*** means a referral agency under the Planning Act.

***relevant agency*** see section 26(1).

***relevant Commonwealth Act*** means any of the following—

- (a) the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth);
- (b) the *Great Barrier Reef Marine Park Act 1975* (Cwlth);
- (c) another Commonwealth Act prescribed under a regulation for this definition.

***relevant offence***, for part 10, see section 40.

***significant residual impact*** see section 8.

***special wildlife reserve*** see the *Nature Conservation Act 1992*, schedule.

***State condition*** means an offset condition that may be imposed on an authority by the State.

***State Development Act*** means the *State Development and Public Works Organisation Act 1971*.

***trust fund***—

- (a) for the Brisbane City Council—see the *City of Brisbane Regulation 2012*, section 192(2); or
- (b) for another local government—see the *Local Government Regulation 2012*, section 200(2).

***trust money***—

- (a) for the Brisbane City Council—see the *City of Brisbane Regulation 2012*, section 192(3); or
- (b) for another local government—see the *Local Government Regulation 2012*, section 200(3).

***vehicle***—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.