

Environmental Offsets Legislation Amendment Regulation (No. 1) 2014

Explanatory Notes for SL 2014 No. 295

made under the

Environmental Offsets Act 2014

General Outline

Short title

Environmental Offsets Legislation Amendment Regulation (No. 1) 2014

Authorising law

The *Environmental Offsets Legislation Amendment Regulation (No. 1) 2014* (the Amendment Regulation) is made under sections 93 and 96 of the *Environmental Offsets Act 2014*.

Policy objectives and the reasons for them

The Amendment Regulation progresses a second round of Greentape Reduction reforms to reduce costs to business and government while maintaining high environmental standards.

Achievement of policy objectives

The policy objective will be achieved by amending the *Environmental Offsets Regulation 2014* and *Environmental Offsets (Transitional) Regulation 2014* to give effect to the provisions of the *Environmental Protection and Other Legislation Amendment Act 2014* passed by Parliament on 28 October 2014.

The Amendment Regulation introduces further initiatives to reduce green tape for business by:

- prescribing matters of environmental significance that may be subject to an environmental offset decision made by local government;
- establishing which duplicated offset condition imposed by State and local government may be removed;
- establishing dispute resolution processes to support new administrative decisions made under the *Environmental Offsets Act 2014*; and
- correcting minor errors and omissions and updating cross-referencing to other legislation.

Further details on the policy objectives and how each amendment achieves the policy objectives are provided in the Notes on Provisions below.

Consistency with policy objectives of authorising Act

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

The Amendment Regulation is also consistent with the object of *Environmental Protection and Other Legislation Amendment Act 2014* that is, to reduce costs to business and government while maintaining high environmental standards.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no alternative approach. These matters are established in legislation and legislative amendments are the only option to give effect to the policy objectives.

Benefits and costs of implementation

The proposed amendments to the *Environmental Offsets Regulation 2014* are expected to reduce the compliance costs for both government and industry by removing duplication of offset requirements within and between government jurisdictions without reducing the existing level of environmental protection.

The amendments will also establish an internal review and merit review process for new decisions under the Act – this will ensure that proponents who are affected by the new decisions have an opportunity to seek a merit-based review of the appropriateness of those decisions.

Consistency with fundamental legislative principles

This Amendment Regulation has been examined for compliance with the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992* and is considered to have sufficient regard to the rights and liberties of individuals and the institution of Parliament.

Consultation

Key industry and government stakeholders have been consulted on the Amendment Regulation.

There was general support for the proposed amendments.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states that the Amendment Regulation should be cited as the *Environmental Offsets Legislation Amendment Regulation (No.1) 2014*.

Commencement

Clause 2 states that the Amendment Regulation commences on 19 December 2014.

Part 2 Amendment of Environmental Offsets Regulation 2014

Regulation amended

Clause 3 states that this part amends the *Environmental Offsets Regulation 2014*.

Amendment of s 5 (Prescribed environmental matters – Act, s 10)

Clause 4 amends section 5 of *Environmental Offsets Regulation 2014* to replace and consolidate existing sections in Schedule 2 of the Regulation stating that some matters of state environmental significance are not prescribed environmental matters under the Act if they occur in urban areas. This amendment is to reflect current drafting practice to improve the readability of the Regulation.

Clause 4 also amends section 5(4) of the *Environmental Offsets Regulation 2014* to omit the definition of ‘matter of local environmental significance’ and insert an expanded definition to clarify that a matter of local environmental significance cannot include a matter of State or national environmental significance or a matter that is the same or substantially the same as those matters. This amendment will facilitate the removal of duplication between national, State and local government offset conditions.

Amendment of s 6 (Environmental Offsets Policy – Act, s 12)

Clause 5 amends section 6 of the *Environmental Offsets Regulation 2014* to replace version 1.0 of the Environmental Offsets Policy with new version 1.1. A copy of the updated policy can be obtained from <http://www.qld.gov.au/environment/pollution/management/offsets/>

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

Clause 6 amends section 7 of the *Environmental Offsets Regulation 2014* to omit areas prescribed as legally secured offset areas for the purposes of section 29 of the *Environmental Offsets Act 2014* and insert an expanded definition to include fish habitat areas and highly protected areas of marine parks. New section 7 also prescribes legally secured offset areas where an offset condition imposed on an authority before the commencement of the Act required the establishment of such areas.

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

Clause 7 amends section 8 of the *Environmental Offsets Regulation 2014* to update cross-references to sections of the *Environmental Offsets Act 2014* as a result of recent changes to the Act in the *Environmental Protection and Other Legislation Amendment Act 2014*.

Amendment of s 9 (Matters administering agency to have regard to – Act, s 19)

Clause 8 amends section 9 of the *Environmental Offsets Regulation 2014* to adopt the term ‘consider’ to reflect the use of the term under section 19 of the *Environmental Offsets Act 2014* as a result of recent changes to the Act in the *Environmental Protection and Other Legislation Amendment Act 2014*.

Replacement of s 10 (Requirements for financial settlement offsets – Act, s 24(2)(b))

Clause 9 omits and replaces section 10 of the *Environmental Offsets Regulation 2014* to limit financial settlement offset payments made to local government for matters of State environmental significance to non-juvenile koala habitat trees. This reflects the existing power under the South East Queensland Koala Conservation State Planning Regulatory Provisions enabling local governments to impose offset conditions in relation to the clearing of koala habitat trees in specified areas

Amendment of s 13 (Meaning of decision-maker)

Clause 10 amends section 13 of the *Environmental Offsets Regulation 2014* to enable local government to identify and register an area of land as an advance offset for a matter of environmental significance for which an environmental offset may be required under the State planning regulatory provision under the *Sustainable Planning Act 2009* for effective delivery of the environmental offset framework. In particular, the amendment will support the delivery of offset conditions imposed by local government under the South East Queensland Koala Conservation State Planning Regulatory Provisions in relation to the clearing of koala habitat trees.

The area of land which may be identified and registered as an advanced offset by the chief executive remain unchanged.

Amendment of s 16 (Definitions for Part 7)

Clause 11 amends section 16 of the *Environmental Offsets Regulation 2014* to omit and replace definitions for ‘appellable decision’, ‘relevant entity’, and ‘reviewable decision’ to incorporate new administrative decisions that can be made under the *Environmental Offsets Act 2014* as a consequence of the *Environmental Protection and Other Legislation Amendment Act 2014*.

Insertion of new s 16A

Clause 12 inserts new section 16A of the *Environmental Offsets Regulation 2014* to clarify that for section 19(8)(c) of the *Environmental Offsets Act 2014* the fact that an entity and administering agency do not enter into an agreed delivery arrangement within the stated reasonable period is taken to be a reviewable decision.

Amendment of s 18 (Requirements for making application)

Clause 13 amends section 18 of the *Environmental Offsets Regulation 2014* to incorporate new administrative decisions than can now be made under the *Environmental Offsets Act 2014* as a consequence of the *Environmental Protection and Other Legislation Amendment Act 2014*.

Amendment of s 20 (Stay of operation of particular reviewable decisions)

Clause 14 amends section 20 of the *Environmental Offsets Regulation* to incorporate new administrative decisions that can now made under the *Environmental Offsets Act 2014* as a consequence of the *Environmental Protection and Other Legislation Amendment Act 2014* and correct an error regarding when an applicant may apply for a stay of a reviewable decision.

Insertion of new ss 36 and 37

Clause 15 inserts new sections 36 and 37 into the *Environmental Offsets Regulation 2014*

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

New section 25A of the *Environmental Offsets Act 2014* inserted by the *Environmental Protection and Other Legislation Amendment Act 2014* enables authority holders to seek an amendment of their authority to remove a duplicated offset condition. For conditions imposed by a State or local government agency, subsection 25A(3) of the Act allows the authority holder to decide which condition to remove unless the administering agency required to remove a duplicated offset condition is prescribed by regulation.

New section 36 of the *Environmental Offsets Regulation 2014* outlines which administering agency to apply to for the removal of a duplicated offset condition where the condition relates to a threatened protected plant, protected area, marine park, koala habitat tree or koala habitat.

37 Non-juvenile koala habitat tree prescribed as relevant for Act, s15(4)

New subsection 15(4) of the *Environmental Offsets Act 2014* inserted by the *Environmental Protection and Other Legislation Amendment Act 2014* minimises duplication between national, State and local government offset conditions by, amongst other things, limiting local government offset conditions to matters of local environmental significance and any matter of national or State environmental significance prescribed by regulation for subsection 15(4) of the Act.

New section 37 of the *Environmental Offsets Regulation 2014* gives effect to subsection 15(4) by prescribing non-juvenile koala habitat trees (a matter of State environmental significance) as a matter for which local government may impose an offset condition. This reflects existing powers given to local governments under the

South East Queensland Koala Conservation State Planning Regulatory Provisions in relation to offset conditions.

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

Clause 16 amends Schedule 1 of the *Environmental Offsets Regulation 2014* to remove obsolete references to the State Planning Policy made under the *Sustainable Planning Act 2009*.

Amendment of sch 2 (Prescribed environmental matters – matters of State environmental significance)

Clause 17 amends Schedule 2 of the *Environmental Offsets Regulation 2014* to replace wild rivers as a matter of State environmental significance with designated precincts in a strategic environmental area and delete existing sections in Schedule 2 of the Regulation stating that some matters of state environmental significance are not prescribed environmental matters under the Act if they occur in urban areas. These provisions have been moved to section 5 of the Regulation to improve the readability of the Regulation.

Amendment of sch 3 (Dictionary)

Clause 18 amends Schedule 3 of the *Environmental Offsets Regulation 2014* to remove obsolete reference to the State Planning Policy made under the *Sustainable Planning Act 2009*.

A new definition for ‘SEQ region’ is also inserted to clarify that the term has the same meaning provided under the *Sustainable Planning Act 2009*.

Existing definitions for ‘koala habitat’, ‘non-juvenile koala habitat tree’ and ‘South East Queensland Koala Conservation State Planning Regulatory Provisions’ in Schedule 2 of the *Environmental Offsets Regulation 2014* are also now referenced in Schedule 3 given that those terms are now used elsewhere in the Regulation.

Part 3 Amendment of Environmental Offsets (Transitional) Regulation 2014

Regulation amended

Clause 19 states that this part amends the *Environmental Offsets (Transitional) Regulation 2014*.

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

Clause 20 amends section 4 of the *Environmental Offsets (Transitional) Regulation 2014* to correct a number of drafting errors and omissions. In particular, subsection 4(1) now only applies to subsection 4(2) of the Transitional Regulation, rather than the whole section. In addition, section 4 of the Transitional Regulation is also amended to remove offset requirements in relation to assessable development in areas of koala bushland habitat covered by table 6 and 7 of the South East Queensland Koala Conservation State Planning Regulatory

Provisions. This amendment is necessary in order to reinstate the requirements in place prior to the commencement of the transitional regulation.