

# Nature Conservation and Other Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 37

made under the

*Environmental Offsets Act 2014*

*Environmental Protection Act 1994*

*Nature Conservation Act 1992*

*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*Nature Conservation and Other Legislation Amendment Regulation 2022.*

### Authorising law

Section 93 of the *Environmental Offsets Act 2014*.

Section 580 of the *Environmental Protection Act 1994*.

Sections 76 to 80, 83, 85, 88A, 137 and 175 of the *Nature Conservation Act 1992*.

Section 165 of the *State Penalties Enforcement Act 1999*.

### Policy objectives and the reasons for them

The objectives of the *Nature Conservation and Other Legislation Amendment Regulation 2022* (Amendment Regulation) are to:

1. ensure that the prescription, conservation status and taxonomy of fauna and flora species reflect the most up-to-date scientific knowledge;
2. ensure animal authorisations will allow the keep and use of animals that were lawfully obtained prior to becoming ‘protected’ wildlife;
3. make administrative amendments to the *State Penalties Enforcement Regulation 2014* (SPE Regulation) to reflect the Department of Environment and Science (DES) enforcement authority in relation to koala-related offences under the *Planning Act 2016* (Planning Act); and

4. make other minor and consequential amendments, including correcting technical errors in the *Nature Conservation (Protected Areas Management) Regulation 2017*, the *Nature Conservation (Estuarine Crocodile) Conservation Plan 2018* and the *Environmental Protection Regulation 2019*.

Sections 76 to 80 of the *Nature Conservation Act 1992* (NC Act) provide for a regulation to prescribe wildlife to classes ('conservation status'). The reclassification of Queensland's native wildlife species is a routine process, ensuring that listings under the NC Act are kept up-to-date with current knowledge including population size and trends, risk of extinction and validity of native status. The conservation status of protected wildlife may be listed by regulation as 'extinct', 'extinct in the wild', 'critically endangered', 'endangered', 'vulnerable', 'near threatened' and 'least concern'. The Species Technical Committee (STC) is a panel of experts responsible for undertaking independent scientific assessments to determine the classification of wildlife under the NC Act and making recommendations to the responsible Minister. Following approval by the Minister, schedule 1 of the *Nature Conservation (Animals) Regulation 2020* (Animals Regulation) and schedule 1 of the *Nature Conservation (Plants) Regulation 2020* (Plants Regulation) must be amended so that the listings reflect the most recent recommendations from the STC.

In 2022, the STC made recommendations to the Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs. The recommendations were approved by the Minister on 4 March 2022 and 8 March 2022. The Amendment Regulation has been drafted to implement the reclassification of 6 fauna species and 13 flora species, as follows:

#### Fauna

- one species upgraded to 'endangered' (Koala);
- two species upgraded to 'vulnerable' (Mount Elliot broad-tailed gecko and Connors' Range broad-tailed gecko); and
- three species downgraded to 'least concern' (Thornton Peak Calyptotis, Black Mountain rainbow-skink and Black Mountain gecko).

#### Flora

- one species upgraded to 'critically endangered' (*Gossia inophloia*);
- six species upgraded to 'endangered' (*Rhodamnia arenaria*, *Rhodamnia sessiliflora*, *Rhodamnia whiteana*, *Rhodomyrtus canescens*, *Rhodomyrtus effuse* and *Rhodomyrtus pervagata*);
- two species upgraded to 'vulnerable' (*Lagenophora fimbriata* and *Melaleuca comosa*); and
- four species downgraded to 'vulnerable' (*Acacia* sp. Ruined Castle Creek (P.I.Forster+ PIF17848), *Ammannia robertsii*, *Eragrostis fenshamii* and *Sannantha papillosa*).

A consequential amendment to the *Environmental Offsets Regulation 2014* (Offsets Regulation) prescribes a new version of the Queensland Environmental Offsets Policy. The new version reflects updates to the classification and taxonomy of species prescribed in schedule 1 of the Animals Regulation and schedule 1 of the Plants Regulation. Administrative amendments are also required to the Animals Regulation and Plants Regulation to resolve minor drafting errors and provide nomenclature updates.

A recent amendment regulation has resulted in the listing of seven crayfish species as ‘protected’ wildlife, effectively transitioning from an unregulated to a regulated status under the NC Act. These species were previously regulated as ‘fish’ under the *Fisheries Act 1994* (Fisheries Act), however can no longer be administered as such as a result of their listing under the NC Act. The take and use of several crayfish species as aquaculture brood stock has been previously authorised under the *Fisheries Act 1994*. Consequently, authorisation is required to keep and use these animals through an appropriate management framework under the NC Act.

The proposed amendments to the Animals Regulation seek to amend the animal authorisation provisions to allow the keep and use of these animals under a modified “Farming Licence” and “Permit to Keep” (PTK) framework. This will limit impact to business and allow continued recreational keep under a PTK but aligns with the conservation intent of managing and monitoring the newly ‘threatened’ species. These amendments will also provide appropriate authorisation for similar fish and invertebrate species that are lawfully obtained prior to becoming protected wildlife under the NC Act in the future.

In 2020, the *Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020* provided increased protection to koala habitat areas in South East Queensland. As a result of these changes, DES received an enforcement authority to undertake compliance and enforcement action under the Planning Act for offences relating to koala habitat. However, on receipt of the enforcement authority, it was recognised that complementary action to amend schedule 1 of the SPE Regulation, which stipulates the administering authorities for Penalty Infringement Notices (PINs) offences under different legislation, had not been progressed. Consequentially, conservation officers under the NC Act were not authorised under the SPE Regulation in relation to the koala regulatory changes introduced on 7 February 2020. The proposed amendments will include conservation officers under schedule 1 of the SPE Regulation to enable the officers to issue PINs for offences under the Planning Act in relation to koala habitat and make other related minor amendments to schedule 2.

## **Achievement of policy objectives**

To achieve its objective, the Amendment Regulation will amend:

1. Wildlife conservation status under the Animals and Plants Regulations to:
  - update the conservation status of native fauna and flora species to reflect scientific assessment against criteria outlined under sections 76 to 80 of the NC Act;
  - make consequential amendments to the Offsets Regulation to reflect the new version of the Queensland Environmental Offsets Policy, which is amended to reflect the updates to species reclassifications; and
  - make minor amendments to the Animals Regulation and Plants Regulation to correct typographical errors and provide nomenclature updates.

2. Animal authorisations of the Animals Regulation to:

- add provisions under the “Farming Licence” and “Permit to Keep” animal authorisations to include the keep and use of animals that were lawfully obtained prior to becoming ‘protected’ wildlife; and
- include invertebrate species under the existing fees for animal authorities.

Changes to the “Farming Licence” under this Amendment Regulation will specifically allow *Euastacus* spp. and *Cherax robustus* kept in commercial aquaculture facilities, to be authorised as farm animals under the Animals Regulation. To accommodate similar species that are kept in approved aquaculture facilities and may transition to a ‘protected’ status under the NC Act, a provision will also be added to allow the keep and use of farm animals that were lawfully taken from the wild under another Act of the State.

The proposed amendments to the “Permit to Keep” will also require new provisions to allow the continued keep and use of animals that were lawfully obtained prior to becoming ‘protected’ wildlife under the NC Act. There was previously no requirement for this provision under the Animals Regulation because all native animals in Queensland are considered ‘protected’ wildlife, with the exception of ‘fish’ as defined by the Fisheries Act, under which they are regulated. Under the Animals Regulation, all invertebrates, except for those listed as ‘protected’, are currently exempt from requiring authorisation for their take, keep or use. The recent prescription of the seven crayfish as ‘protected’ under the NC Act, is the first instance of an invertebrate becoming newly listed with existing keep and use requiring animal authorisations under the Animals Regulation.

3. Schedules 1 and 2 of the SPE Regulation to:

- include conservation officers as an authorised person under the NC Act (the administering authority) to allow them to undertake enforcement and compliance actions for koala-related offences under the Planning Act; and
- reference DES enforcement authority and insert koala-specific offence provisions to separate these specific offences from the existing non-specific offence provisions in the SPE Regulation; and
- insert definitions relating to the offences to schedule 2.

In addition, the Amendment Regulation will achieve the objectives by making minor amendments to resolve issues identified in subordinate legislation under the NC Act, including:

- making typographical corrections;
- correcting references; and
- making consequential and minor administrative amendments.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the main objectives of the NC Act, that is, to ensure the conservation of nature, including the ecologically sustainable use of wildlife and protection of native wildlife and its habitat.

The Amendment Regulation is consistent with the objective of the *Environmental Offsets Act 2014* which allows for national, State and local matters of environmental significance to be prescribed environmental matters, including threatened species listed under the NC Act.

The Amendment Regulation is consistent with the objective with the objective of the *Environmental Protection Act 1994* which protects Queensland's environment while allowing for ecologically sustainable development.

The Amendment Regulation is consistent with the objective of *State Penalties Enforcement Act 1999* which maintains the integrity of fines as a viable sentencing or punitive option for offenders, maintains confidence in the justice system by enhancing the way fines and other monetary penalties may be enforced, and reduces the cost of the State of enforcing fines and other monetary penalties.

## **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is not inconsistent with any other legislation.

## **Alternative ways of achieving policy objectives**

Alternative ways of achieving the policy objectives were considered and rejected for the regulation of the newly listed crayfish species (in particular, *Cherax robustus* and *Euastacus* spp.). The proposed alternative approaches were maintaining status quo or providing an exemption for the species. Maintaining status quo would have a significant impact to business (previous aquaculture facilities under the Fisheries Act) as continued commercial practices would be considered unlawful under the NC Act. Although the exemption option would reduce regulatory burden to business and community under the NC Act, there would be significant impacts to the conservation of the species due to limited ability to monitor illegal take from the wild.

The alternative approaches are not suitable because they do not allow monitoring and tracking through a regulated licencing system, of which is the preferred option for threatened species. The proposed option allows appropriate regulation through the licencing framework to ensure compliance while limiting impact to community and business continuity.

## **Benefits and costs of implementation**

The Amendment Regulation will ensure that conservation and land use measures for listed species applied under the NC Act as well as other legislation on the basis of species classification is scientifically justified. Without the amendments, there is a risk that conservation and land use requirements applied on the basis of inaccurate species classifications may be ineffective where the species is being upgraded to a more threatened status or unnecessary where a species is being downgraded to a less threatened or non-

threatened status. The proposed reclassifications are not anticipated to impose significant costs on the community, business or government. The changes are necessary to achieve the object of the NC Act, particularly the protection of native wildlife and its habitat, as well as appropriate management of other types of wildlife.

The benefits and costs of implementation were consulted through the Preliminary Impact Assessment process, and it was determined that no further regulatory impact analysis is required. The proposed amendments to the animal authorisations under the Animals Regulation limits economic, social and environmental impacts. Risks are minimised by removing unnecessary keep and use provisions, allowing business continuity and limiting recreational keep while maintaining conservation intent. The proposed amendments intend for licence/permit holders to allow continued keep and use of lawfully obtained animals prior to their listing as ‘protected’ wildlife, whereas maintaining status quo would result in inability to keep or use for commercial or recreational purposes. The Amendment Regulation is beneficial to the continued keep and use of lawfully obtained animals by business and community.

The State will have greater capacity to respond to increasing risks of illegal wildlife keep and use and will achieve cost recovery for the administration and assessment of licences and permits. The resourcing costs for compliance are also negligible because they can be incorporated into the ongoing compliance costs to the government through the current licencing framework under the NC Act. The licencing fees imposed on licence/permit holders will assist in negating these costs. Under the Animals Regulation, the fee for a farming licence for the invertebrate species is currently \$192.30 if the term of the licence is one year or less, or \$547.00 if the term of the licence is more than one year (where the maximum term for a farming licence is three years). The cost of a permit to keep wildlife is \$86.00 for three years.

However, based on industry consultation specific to newly protected crayfish species, the cost to business is minimal as there are only two existing aquaculture facilities (previously approved under the Fisheries Act) requiring a “Farming Licence” under the NC Act. It also should be noted that given previous “no take” restrictions under the Fisheries Act, there is expected to be very little existing keep within the community and therefore, limited impact.

Implementing the Amendment Regulation is in the public interest, is not considered to constitute significant subordinate legislation and will have negligible costs.

## **Consistency with fundamental legislative principles**

This Amendment Regulation is consistent with fundamental legislative principles as defined in section 24 of the *Legislative Standards Act 1992* and has no adverse impacts on the rights and liberties of individuals or on the institution of Parliament.

## **Consultation**

The species reclassification amendments are administrative and reflect the scientific assessment by the STC. Other associated amendments are consequential in nature.

External consultation was conducted with the aquaculture permit holders and the Australia New Guinea Fishes Association Queensland Incorporated (ANGFA) to determine the level of commercial and recreational keep and use of the recently prescribed crayfish species. The outcomes of the consultation supported the proposed amendments and indicated that both a “Farming Licence” and “Permit to Keep” were appropriate for the existing commercial and recreational keep and use of the animals.

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of the Best Practice Regulation (OBPR) was consulted in relation to some parts of the Amendment Regulation relating to animal authorities under the Animals Regulation and the proposed amendments to the SPE Regulation. OBPR determined that the amendments to animal authorities under the Animals Regulation will not add to the burden of regulation and are unlikely to result in significant adverse impacts. OBPR also confirmed that the proposed amendments to the SPE Regulation are machinery in nature. No further regulatory impact analysis was required by OBPR.

In addition, DES applied a self-assessable exclusion from undertaking further regulatory impact analysis for all other parts of the regulatory proposal (Category a – Regulatory proposals that make consequential amendments; Category e – Regulatory proposals that are of a transitional nature; Category f – Regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practices, or does not affect the original intent, interpretation or effect of the legislation; and Category g – Regulatory proposals that are of machinery nature).

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