

Nature Conservation and Other Legislation Amendment Regulation 2023

Explanatory notes for SL 2023 No. 77

made under the

Environmental Offsets Act 2014
Nature Conservation Act 1992

General Outline

Short title

Nature Conservation and Other Legislation Amendment Regulation 2023

Authorising law

Section 93 of the *Environmental Offsets Act 2014*
Sections 76 to 80, 120H, 120J, and 175 of the *Nature Conservation Act 1992*

Policy objectives and the reasons for them

The objectives of the *Nature Conservation and Other Legislation Amendment Regulation 2023* (Amendment Regulation) are to:

1. ensure the prescription, conservation status and taxonomy of fauna and flora species reflect current scientific knowledge;
2. make consequential amendments to reflect changes to conservation status and taxonomy;
3. make changes to the management of protected fish species and clarify provisions for the keep and use of particular fish for non-commercial purposes;
4. make minor clarification amendments to the movement conditions of animals kept after death and the circumstances in which a protected animal may be taken from an airport;
5. make amendments to the damage mitigation permit provisions to remove the chief executive's ability to grant a flying-fox lethal take permit for commercial crop protection purposes;
6. make minor amendments to the definition of 'prescribed natural habitat' and clarify what is considered suitable habitat for rehabilitated koalas to be released into to provide for improved conservation outcomes; and
7. make minor amendments to clarify what is considered when making a determination that an area in a koala district is a "koala habitat area".

Sections 76 to 80 of the *Nature Conservation Act 1992* (NC Act) provide for a regulation to prescribe wildlife to classes. 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 Ministerial approval, schedules 1 and 3 of the *Nature Conservation (Animals) Regulation 2020* (Animals Regulation) and schedule 1 of the *Nature Conservation (Plants) Regulation 2020* (Plants Regulation) must be amended for listings and taxonomy to reflect the most recent recommendations from the STC.

On 12 November 2022 and 13 March 2023, the STC made recommendations to the Honourable Meaghan Scanlon MP, the former Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs (the former Minister). The recommendations were approved by the former Minister on 1 December 2022 and 5 April 2023. The Amendment Regulation has been drafted to implement the reclassification of 11 fauna species and 15 flora species including the prescription of a newly protected invertebrate species, as follows:

Fauna

- one species upgraded to 'critically endangered' (*Lyon's soil-crevice skink*);
- five species upgraded to 'endangered' (*Bell's turtle*; *kowari*; *large-eared pied bat*; *Oxleyan pygmy perch*; and *Sutton's crayfish*);
- two species upgraded to 'vulnerable' (*pouched frog*; and *rainforest cool-skink*);
- one species downgraded to 'vulnerable' (*plains rat*); and
- two species downgraded to 'least concern' (*crimson finch (white-bellied subspecies)*; and *pink snake*).

Flora

- four species upgraded to 'critically endangered' (*Acacia lumholtzii*; *Bubbia whiteana*; *Melaleuca uxorum*; and *Mitranthia bilocularis*);
- four species upgraded to 'endangered' (*Acacia solenota*; *Auranticarpa edentata*; *Euodia pubifolia*; and *Hakea macrorrhyncha*);
- one species upgraded to 'vulnerable' (*Pimelea leptospermoides* subsp. *leptospermoides*);
- one species upgraded to 'near threatened' (*Goodenia nocoleche*);
- one species downgraded to 'vulnerable' (*Borya inopinata*);
- one species downgraded to 'endangered' (*Coleus acariformis*); and
- three species downgraded to 'near threatened' (*Acacia guymeri*; *Argophyllum cryptophlebium*; and *Goodenia stirlingii*).

The STC recommendation for the Sutton's crayfish (*Euastacus suttoni*) means this species will become newly protected wildlife under the NC Act. Instead of being regulated as a 'fish'

under the *Fisheries Act 1994* (Fisheries Act), this species will now be managed for conservation purposes under the NC Act.

The management of fish under the Animals Regulation also involves the keep and use of particular fish (as ‘relevant species’) for non-commercial purposes. After recent reassessment of the relevant species, it was determined that it would be more suitable to manage some of these fish under the ‘exempt animal’ authorisation. The proposed amendments will consequently remove a number of ‘relevant species’ and list them as ‘exempt animals’ to reflect contemporary keeping practices. This will allow recreational and commercial keep and use activities without the requirement for a licence or permit under the NC Act, reducing administrative burden while minimising risk to conservation outcomes. In addition, the proposed amendments will clarify provisions for the keep and use of particular fish for non-commercial purposes so that newly protected fish may be listed as ‘relevant species’ in future, where appropriate.

Minor amendments to the Animals Regulation are also required to clarify conditions for moving animals kept under an animal authority after death, and the circumstances in which a protected animal may be taken from an airport.

Under the Animals Regulation, an animal kept after death is required to be dealt with by incineration or burial, or by selling or giving the animal to the holder of a dealer licence, dead animal collection authority or a State museum. The animal is also permitted to be moved to the place of incineration or burial, or to the licensed premises of an authorised person or a State museum. The proposed amendments will clarify that suitable locations include the licensed premises for the holder of a dead animal collection authority for the purposes of moving a dead animal.

When dealing with protected animals at an airport, the Animals Regulation provides a general authorisation that allows an animal to be taken for damage mitigation purposes if the animal is causing or may cause damage to property, and/or is or may be a threat to a person’s health or wellbeing. However, this authorisation is only intended for use in circumstances in which a protected animal could impact or threaten transportation activities. Therefore, the proposed amendments will clarify that the taking of a protected animal at an airport must specifically relate to threat of damage to aviation infrastructure and/or safety of aircrafts or persons on/around them, to ensure the authorisation is applied appropriately.

Further amendments to the Animals Regulation are required to remove the ability to shoot flying-foxes to prevent damage or loss to commercial fruit crops. The lethal take of flying-foxes in Queensland is currently permitted through a damage mitigation permit (DMP) under the Animals Regulation. However, because the shooting of flying-foxes has been found to be ineffective and inhumane, the Queensland Government made an election commitment to repeal changes to the flying-fox management regulations to return to a modern framework of protection. Therefore, the proposed amendments will omit provisions that allow DMPs to be applied for or issued in relation to the lethal take of flying-foxes for crop protection. Other minor amendments to make it clear that any take of flying-foxes must be in a humane way which does not include shooting the animal.

To assist with the move away from permitting shooting flying-foxes to protect crops, the proposed amendments will provide an adjustment period of three years for affected growers. This will allow growers who have held a DMP at any time since 2012 to continue to apply for

a DMP during the adjustment period. The *Code of practice – ecologically sustainable lethal take* will also be amended to make reductions to the annual quota for the shooting of flying-foxes during this period. This will enable the government to fulfil the election commitment to repeal flying-fox lethal take laws and return to a modern framework of protection, whilst supporting the fruit growing industry in moving towards non-lethal crop protection methods to achieve animal welfare and conservation outcomes.

Minor administrative amendments have also been made to the damage mitigation and flying-fox roost management provisions to specify that take under a DMP or action taken under a flying-fox roost management permit (FFRMP) must be done in a humane way or as per the method stated in a permit.

Amendments to the *Nature Conservation (Koala) Conservation Plan 2017* (Koala Plan) are proposed to amend the definition of ‘prescribed natural habitat’ to provide greater flexibility and guidance to rehabilitators when selecting suitable release sites for rehabilitated koalas and to improve conservation outcomes associated with koala rehabilitation.

Koalas can sometimes become sick, injured and/or orphaned and may require rescuing by authorised persons for veterinary care and treatment and/or ongoing rearing and rehabilitation by rehabilitation permit holders. Once assessed as physically and behaviourally fit for release to the wild by a veterinarian, the koala must be released at a suitable release site. If the location where the koala was rescued is suitable for release, the koala must be released there; however, if the rescue site is not suitable for release, the koala must be released as close as practicable to the rescue site. The proposed amendments will increase the maximum release distance from 5 kilometres to 10 kilometres, and 20 kilometres for koalas that were rescued as orphans.

Other minor amendments are proposed to the conditions for rehabilitation permits for particular koalas as part of the proposed release requirements. These amendments also establish requirements to comply with and follow the guidance provided in the new code of practice: *Code of practice — rehabilitation of sick, injured or orphaned koalas in Queensland*.

Amendments to the Koala Plan are also proposed to clarify what the chief executive considers when making a determination that an area in a koala district is a koala habitat area to remove ambiguity. The proposed amendments aim to remove doubt about the intent of the considerations for determining a koala habitat area.

The 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 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 and Plants Regulations to provide nomenclature updates.

Achievement of policy objectives

To achieve its objectives, the Amendment Regulation will amend:

1. the conservation status of wildlife under the Animal Regulation and Plants Regulation by:
 - updating the conservation status of native fauna and flora species to reflect recent scientific assessments against criteria outlined under sections 76 to 80 of the NC Act;
 - updating the taxonomy of native flora and fauna species and provide nomenclature updates to reflect current scientific knowledge; and
 - making consequential amendments to the Offsets Regulation to refer to the most recent version of the Queensland Environmental Offsets Policy, which is amended to reflect the updates to conservation status and taxonomy;
2. provisions relating to dealing with animals under the Animals Regulation to:
 - ~ make minor amendments to clarify where an animal that is kept after death under a relevant animal authority may be moved;
 - ~ make minor amendments to clarify the circumstances in which a protected animal may be taken from an airport; and
 - ~ make minor administrative amendments to specify conditions for taking humane actions under a DMP and FFRMP;
3. provisions relating to the management of protected fish under the Animals Regulation to:
 - ~ list particular fish under the ‘exempt animal’ category to allow for recreational and commercial keep and use; and
 - ~ make minor amendments to allow for the recreational keep and use of particular newly protected fish species;
4. provisions relating to the management of flying-foxes under the Animals Regulation to:
 - no longer allow the grant of a damage mitigation permit for the shooting of flying-foxes for crop protection purposes;
 - provide a transitional permit period of three years for affected fruit growers to assist with the phase-out of flying-fox lethal management practices; and
 - make minor clarification amendments to ensure the way flying-foxes are taken is humane;
5. provisions relating to requirements for release conditions and to koala habitat areas under the Koala Plan to:
 - ~ make amendments to increase the maximum distance rehabilitated koalas can be released from their rescue locations; and
 - ~ clarify the considerations for the determination of koala habitat areas.

In addition, the Amendment Regulation will achieve the objectives by making other minor consequential and administrative amendments to subordinate legislation under the NC Act to ensure consistency across provisions and reflect modern drafting standards.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the object of the NC Act, that is, to ensure the conservation of nature while allowing for the involvement of First Nations peoples in the management of protected areas in which they have interest under Aboriginal tradition or Island custom.

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

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with any other legislation.

Alternative ways of achieving policy objectives

Management of protected fish

Alternative approaches were considered for the management of protected fish under the NC Act for recreational and commercial purposes. For the management of particular fish species, alternative approaches included maintaining status quo (i.e., allowing the species to remain available for recreational but not commercial use), listing the fish as class 1 or class 2 animals under the Native Animal Licencing Framework (NALF) or limiting the keep and use under a permit to keep. Status quo was an appropriate alternative, however, was not considered most suitable for the ongoing conservation and awareness of native fish species – a number of fish experts encouraged the keep and use of native fish in captive environments to discourage the keeping of invasive fish species. Listing the fish under the NALF was also considered unsuitable given the difficulties in species identification and, therefore, decreased capacity for compliance and enforcement, the undue administrative and monetary burden on licence holders, and increased burden on government to keep fish under a licencing framework. The preferred option is considered low risk, achieves conservation outcomes, is consistent with previous management frameworks (i.e., when the fish were previously regulated under fisheries legislation), and ensures keep and use is consistent with exempt animal conditions.

Flying-fox management regulations

Alternative ways of achieving policy objectives were considered to achieve the government's election commitment to repeal flying-fox lethal take laws for crop protection. The proposed alternative approaches included maintaining status quo or an immediate repeal of the flying-fox lethal take provisions.

Maintaining status quo would prevent the government from fulfilling the election commitment to repeal changes to flying-fox management regulations and return to a modern framework of protection. While allowing current flying-fox lethal take provisions to remain in effect would have a neutral cost/benefit effect, it would not achieve welfare and

conservation outcomes that are consistent with the taking of other protected animals for damage mitigation purposes.

The alternative approach of immediately repealing flying-fox lethal take laws would achieve the government election commitment, however, this was not preferred as it would negatively impact growers that would not otherwise have time to transition to non-lethal crop protection measures given individual financial capacities, the economic climate and supply chain disruptions. The lack of consideration to the impact on industry would also likely limit cooperation to move towards this industry change and limit best possible welfare and conservation outcomes for flying-foxes.

By comparison, the proposed approach of removing flying-fox lethal take management provisions and providing a three-year transitional period for growers will better meet the government's election commitment. Consultation with the fruit growing industry provided government with a clearer indication of the costs and benefits to growers associated with the repeal, and the transitional period will mitigate economic impacts by allowing more time for affected growers to invest in alternative control measures ahead of the repeal. Providing a balanced approach to repealing lethal take DMPs is likely to promote industry change and provide better on-ground welfare and conservation outcomes for flying-foxes.

Release conditions for rehabilitated koalas

Alternative ways of achieving policy objectives were also considered for providing greater flexibility and guidance when selecting suitable release sites for rehabilitated koalas. The Department of Environment and Science (DES) also considered the option of maintaining status quo, and two alternative approaches, namely DES identifying release sites for each koala, and DES attempting to place koalas in captivity through the Queensland Zoos and Aquariums Association (QZAA) Ex Situ Placement Process (Q-ZEPP) where a suitable release site cannot be found (e.g., a DES Discovery Centre, a captive breeding program, or a QZAA member institution).

Maintaining status quo would prevent improvements to the selection of suitable release sites and reduce the likelihood of rehabilitated koalas surviving in the wild following release, thus limiting the conservation outcomes that could be achieved through koala rehabilitation. Additionally, status quo is resource intensive as it requires chief executive approval to release koalas outside prescribed natural habitat where suitable habitat does not exist within the 5-kilometre radius. This can take between five and 15 days to process and costs between \$3,000 and \$7,500 to house the pre-release koala in a wildlife hospital or, for koalas that remain with rehabilitators, an estimated two to five hours per day spent on caring-related duties.

The alternative option of DES identifying preferred release sites for all rehabilitated koalas would likely facilitate improved conservation outcomes. However, it would have significant resourcing implications for DES due to the volume of work involved in assessing and identifying suitable release sites and the number of rehabilitated koalas released each year (for example, 435 koalas were released in southeast Queensland from November 2020 to November 2021).

The alternative option of DES attempting to place non-releasable koalas in captivity through the Q-ZEPP is also not a desirable conservation outcome as it results in otherwise physically and behaviourally fit rehabilitated koalas being kept captive rather than being released back

into the wild to contribute to the preservation of the species. Further, if the Q-ZEPP process fails to place a koala in a suitable captive facility, the Q-ZEPP and *Code of practice — care of sick, injured or orphaned protected animals in Queensland* require a non-releasable animal to be euthanised, even as a threatened species suitable for release to the wild.

The status quo and alternative approaches are not suitable because they do not adequately address rehabilitation success (i.e., inability to identify suitable koala habitat or suitable habitat within the specified range, with limited resources to help inform this process). The proposed approach under the Amendment Regulation increases the maximum distance a rehabilitated koala can be released from its rescue location and provides greater guidance to assist koala rehabilitators with selecting a suitable release site as close as practicable to the initial area. As a result, post-release survival rates of rehabilitated koalas are likely to increase, which will positively contribute to the conservation of the species.

Other proposed amendments

Alternative approaches were not considered for all other proposed amendments as they are either machinery in nature, consequential or clarifications.

Benefits and costs of implementation

The Amendment Regulation will ensure that the prescription, conservation status, and taxonomy of fauna and flora species reflect current scientific knowledge. Without the amendments, there is a risk that, over time, conservation and land use requirements applied based on 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 objectives of the NC Act, particularly the protection of native wildlife and its habitat, as well as the appropriate management of other types of wildlife.

The benefits and costs of implementation of the proposed amendments to the flying-fox management provisions were assessed through the Preliminary Impact Assessment (PIA) process. It was determined that while there may be some adverse impacts, they do not appear to be significant and further consultation and analysis is unlikely to provide additional substantive information to inform a decision. Therefore, no further regulatory impact analysis is required.

The benefits and costs of implementation of the proposed amendments to the Koala Plan regarding koala rehabilitation were also consulted on through the PIA process, and it was determined that no further regulatory impact analysis is required. The proposed amendments provide greater guidance and flexibility for rehabilitators without imposing costs or limitations. The proposal reduces administrative burden and costs incurred by the State and koala carers and is unlikely to result in significant adverse impacts.

The proposed minor amendments to clarify what the chief executive considers when making a determination that an area in a koala district is a koala habitat area will not result in a change in policy. The change will improve clarity and remove ambiguity when requests are made to make, amend or revoke determinations.

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

Amendments to the reclassification of wildlife are administrative and reflect the scientific assessment of the STC. DES consulted the STC to confirm details of species reclassifications and nomenclature for species. Other associated amendments did not require consultation as they are consequential or minor in nature.

External consultation was undertaken with stakeholders, including fish experts, hobbyists, and researchers, to determine appropriate management approaches for the recreational and commercial keep and use of protected fish and to evaluate threats to their conservation. Targeted stakeholders raised no concerns over the proposed management approach for particular protected fish species.

External consultation was undertaken with stakeholders directly involved or affected by flying-foxes and their management for crop protection purposes to inform the government's strategy for repealing lethal take laws. Consultation was undertaken with fruit growers, industry bodies, conservation, welfare and wildlife rescue organisations, and community. While the outcomes of the consultation indicated support both for and against changes to the lethal take laws for crop protection, the proposed approach allows affected fruit growers to transition to non-lethal control measures over a three-year phase-out period, while providing welfare and conservation outcomes for flying-foxes.

External consultation was also undertaken with koala rescue and rehabilitation stakeholders on guidance and criteria for enhancing release site conditions for rehabilitated koalas. The outcomes of the consultation supported the proposed amendments as the current requirements for release of koalas were identified as affecting success of rehabilitation efforts.

In accordance with *The Queensland Government Guide to Better Regulation* (the Guide), the Office of Best Practice Regulation (OBPR) was consulted where appropriate on the proposed amendments. For amendments relating to the management of protected fish species and flying-fox lethal take laws under the Animals Regulation, and for release conditions under the Koala Plan, OBPR determined that no further regulatory impact analysis was required.

For the remaining amendments, in accordance with the Guide, DES applied a self-assessable exclusion for certain amendments that fell into 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. In relation to adding a point of clarification regarding the determination of a koala habitat area, OPBR agreed with the agency-assessed exclusion category of g) as there is no substantive policy change has been made.

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