

Environmental Offsets Bill 2014

Explanatory Notes

Short Title

The short title of the Bill is the Environmental Offsets Bill 2014.

Introduction

Environmental offsets were first introduced in Queensland in the early 1980's as a means of counterbalancing unavoidable environmental impacts from development at one site by enhancing and protecting the environmental values at another. Since this introduction, a growing number of specific-issue offset policies have been developed, as well as an overarching policy to facilitate their development. Over time, multiple policies have led to an inconsistent, complex and onerous regulatory framework with little coordination in the assessment and delivery of environmental offsets across the state. This is a complex issue for any proponent addressing the unavoidable environmental impacts from development and requires significant time and resources to adequately address the current system.

Policy objectives and the reasons for them

Facilitating a coordinated environmental offsets framework

The Environmental Offsets Bill 2014 (the Bill) will introduce primary legislation to coordinate Queensland's environmental offsets framework, giving effect to a whole-of-government approach and replacing the complexities and duplication surrounding the five existing policies. The Bill also provides a single point-of-truth under primary legislation resulting in a more timely and affordable delivery of environmental offsets under an integrated regulatory framework.

The Bill also includes consequential amendments to existing legislation to align the environmental offset provisions in each Act. This includes *Vegetation Management Act 1999*, the *Nature Conservation Act 1992*, the *Environmental Protection Act 1994*, the *Fisheries Act 1994*, and the *Sustainable Planning Act 2009*.

Commitment to reducing green tape

The Bill supports the government's commitment to growing a four pillar economy based on construction, resources, agriculture and tourism development. The Bill provides proponents and the general public with a clearer, simpler environmental offsets framework that is easier to address, provides greater certainty and aims to reinstate industry confidence. The Bill reduces unnecessary delays associated with uncertainty by providing clearer obligations and simpler assessment of the environmental matters requiring an offset. This approach will

support a strong economic future by reducing green tape associated with environmental approvals and providing a framework with greater focus on environmental outcomes for Queensland's environmental values.

The Bill introduces a financial settlement offset which allows proponents to acquit their offset obligations post approval, by paying a calculated sum of money to an Offsets Account. This approach removes the proponent's obligation of delivering, managing and monitoring an environmental offset over time, allowing proponents to proceed with their activity whilst supporting a framework that delivers real environmental outcomes with the funds obtained. The funds are invested in the provision of on-ground offsets that benefit the matter impacted by development.

The Bill also gives effect to the revision of the number of environmental matters subject to offsets. This will result in efficiency gains by concentrating resources on those matters requiring the greatest protection and removing the need to administer matters which are not threatened under environmental legislation.

The Bill also provides a test of significance when considering the environmental impacts of a development. This test increases the current threshold of impact from any impact to one that is "significant". Such a pragmatic approach avoids onerous imposts on projects that have minor impacts on environmental matters and recognises the environment's ability to regenerate.

Removing inconsistency between specific-issue offset policies

This Bill will provide for the introduction of a single policy, replacing the five current offset policies in the state:

- Policy for Vegetation Management Offsets
- Queensland Biodiversity Offset Policy
- Offsets for Net Gain in Koala Habitat in South East Queensland Policy
- Marine Fish Habitat Offset Policy; and the overarching;
- Queensland Government Environmental Offset Policy

The current offset policies provide inconsistent approaches to offset delivery and can lead to duplication of offset requirements across the state. They cause confusion over how to address multiple matters assessed under separate policies. The Bill provides for the preparation of a single environmental offset policy under a regulation. This policy will remove inconsistencies across offset policies, simplify offset requirements, and provide flexibility to proponents in how offsets are provided. To avoid inconsistent offset policies in the future, the Bill also circumvents the creation of further specific-issue environmental offset policies, thereby providing certainty for prospective developers on State offset requirements.

Removing duplication of environmental assessments

Currently, the environmental impacts of a particular development can be assessed multiple times by separate levels of government, each imposing substantially different offset

requirements. This inconsistency has led to significant delays and additional costs to industry. The Bill addresses this issue by mandating there be only one offset for the same matter for the one activity. This means that where the Commonwealth requires an offset the State will not require an offset for the same matter. In addition, local government may not require an offset where the State requires an offset.

The Bill also provides for Commonwealth accreditation of the State Government environmental offsets assessment process. This will potentially enable the State to carry out assessment on behalf of both levels of government, removing duplication and allowing business and industry to get on with the job.

Stronger environmental outcomes through strategic offset delivery

The Bill provides proponents with a number of options to choose when delivering environmental offsets including, a financial settlement, a proponent-driven offset, or a combination of both. Each option has been redesigned over the current system to provide stronger environmental outcomes for the impacted matter of environmental significance.

Funds acquired through financial settlements must be spent on an environmental offset that links directly to the impacted matter of environmental significance. Financial settlements will enable offset payments from multiple projects to be combined in some circumstances, providing an ability to deliver more strategic offsets that co-locate multiple matters on a particular site and provide additional environmental outcomes.

The framework established by the Bill will enable strategic and landscape scale outcomes for impacted matters to be achieved through strategic investment corridors and Direct Benefit Management Plans. These shelf-ready products will facilitate a greater environmental benefit than the current ad-hoc and piecemeal approach to offset delivery.

This strategic offset approach will also provide opportunities for landholders to receive income in return for voluntarily agreeing to manage their land, or part of their land as an offset under a legally-binding agreement.

The Bill also maintains the flexibility for proponents to provide their own environmental offsets on land or waters and leads to a policy framework which recognises species recovery actions over broad areas as an effective proponent driven offset where it provides a better outcome than managing a single parcel of land.

Facilitating governance reform of the National Trust of Queensland and the Currumbin Wildlife Sanctuary

The Bill also includes minor amendments to facilitate governance reform of the National Trust of Queensland and Currumbin Wildlife Sanctuary. The *National Trust of Queensland Act 1963* (National Trust Act) and the *Currumbin Bird Sanctuary Act 1976* (Currumbin Act) will be repealed and a new company, independent of government, called the National Trust of Australia (Queensland), will be registered under part 5B.1 of the Commonwealth's Corporations Act.

Once independent of government, the National Trust and Currumbin Wildlife Sanctuary will no longer be subject to annual audit under Queensland's Auditor-General Act 2009.

Additionally, the requirement for the National Trust to submit an annual report to the Department of Environment and Heritage Protection will be removed, as will the requirement to seek Ministerial support and Governor in Council approval for actions such as selling property.

Clarify provisions under the Coastal Protection and Management Act 1995

The Bill also includes minor amendments to the *Coastal Protection and Management Act 1995* to clarify the removal of dredge management plans as an assessable development trigger under the *Sustainable Planning Act 2009*, and to also clarify the definition of tidal works and what it includes.

Minor amendments to the Environmental Protection Act 1994

The Bill also makes minor amendments to the *Environmental Protection Act 1994* to address specific unintended operational problems with the application of the Act.

Achievement of policy objectives

The Bill will achieve its objective of facilitating a coordinated environmental offsets framework by:

- Introducing primary legislation to provide a single head of power for delivering environmental offset conditions imposed by administering authorities on development activities
- Giving effect to a single environmental offset policy providing consistent application for environmental offsets in the State
- Removing the existing five environmental offset policies

The Bill will achieve its commitment to reducing green tape by:

- Giving effect to the single assessment and delivery of environmental offsets under the one environmental offset policy
- Giving effect to a clearer and more consistent framework that reduces assessment time and administration of environmental approvals
- Providing offset delivery options within primary legislation with clearer offset obligations to proponents
- Providing for a reduction in the number of environmental matters requiring environmental offsets and focusing resources on matters requiring the most protection
- Applying offsets only where significant impacts to a matter of environmental significance will occur, imposing more sensible obligations on proponents whose impacts are negligible

The Bill will remove inconsistency between specific-issues offset policies by:

- Introducing a single environmental offset policy providing consistent application across the state
- Introducing a single list of environmental matters to which environmental offsets apply
- Removing the existing specific-issue offset policies, namely:
 - Policy for Vegetation Management Offsets
 - Queensland Biodiversity Offset Policy

- Offsets for Net Gain in Koala Habitat in South East Queensland Policy
- Marine Fish Habitat Offset Policy
- Removing the overarching Queensland Government Environmental Offset Policy which enabled inconsistent application and development of disjunct policies

The Bill will achieve its objective of removing duplication of environmental assessments by:

- Mandating the single assessment of impacts to matters of environmental significance across all levels of government for the one development activity, when one level of government has already made the decision.
- Recognising Commonwealth matters of national environmental significance in addition to matters of state environmental significance and providing for a one-stop-shop through accreditation of the state's framework to assess matters on behalf of the Commonwealth.

The Bill will achieve its objective of providing stronger environmental outcomes through strategic offset delivery by:

- Allowing offset funds acquired through financial settlements to be combined to provide more resources for the environmental offsets
- Establishing a proponent driven offsets approach that is based on species recovery actions or the management of land
- Removing the current piecemeal approach to offset delivery and directing offsets into strategic locations with the greatest environmental outcome
- Ensuring the long term protection of matters by separating offsets away from competing land uses such as future mining, agricultural or urban development through the preparation of strategic offset investment corridors
- Introducing a legal security mechanism that applies over multiple tenures and sea and land.

The Bill will achieve its objective of facilitating governance reform leading to an independent National Trust of Australia (Queensland) by:

- Introducing legislation amendments to the National Trust Act to permit the National Trust to apply for, and meet the requirements for registration under part 5B.1 of the *Corporations Act*.
- Introducing legislation for the expiry of the National Trust Act and the Currumbin Act, to commence on a date to be fixed by proclamation. This will occur after the National Trust of Australia (Queensland) company is registered under the Corporations Act.

The Bill will achieve its objective of clarifying certain provisions under the *Coastal Protection and Management Act 1995* by:

- Addressing the relationship between the *Sustainable Planning Act 2009* with regard to the removal of dredge management plans as an assessable development trigger
- Defining the meaning of tidal works and what is included and not included under this definition

The Bill will achieve its objective in relation to the *Environmental Protection Act 1994* by correcting the specific unintended operational problems with the application of the Act identified in the clause by clause explanation in these Explanatory Notes.

Alternative ways of achieving policy objectives

Facilitation of coordinated environmental offsets framework

There are no alternative ways of providing a coordinated environmental offsets framework across the State other than to introduce primary legislation. Historically environmental offsets have been mandated through statutory and non-statutory policy and guidelines and have resulted in an inconsistent application of environmental offsets across multiple policies with little to no correlation. This approach has led to poor environmental outcomes, complexity in the process and unreasonable barriers to responsible development.

In early 2013 the government committed to addressing the major issues associated with the existing environmental offsets framework and began a review of the current approach. The Department of Environment and Heritage Protection led the process and proposed five options and consulted on these options with peak bodies from industry, local government, natural resource management, and conservation sectors.

These options included:

- Option 1: Maintain the current situation ‘status quo’.
- Option 2: Develop a single, integrated environmental offsets framework.
- Option 3: Transfer responsibility to industry for the delivery of offset obligations.
- Option 4: Exempt all State Government and community infrastructure from offset requirements.
- Option 5: Exempt all projects that are not subject to an Environmental Impact Assessment from offset obligations

After consultation the government made a decision to adopt the preferred option and develop a single, integrated environmental offsets framework across the state. Another decision was made to provide an effective head of power for environmental offsets by introducing specific environmental offsets legislation, leading to the subsequent development of this Bill.

This Bill generates the greatest benefit for the community by establishing a firm regulatory framework that delivers stronger and more strategic environmental outcomes with clearer more standardised statutory obligations for industry. The provisions contained within the Bill deliver greater flexibility for proponents delivering environmental offsets and provide clearer options upfront within the Bill to address the unavoidable impacts of a development.

Facilitating governance reform of the National Trust of Queensland and the Currumbin Wildlife Sanctuary

Establishing an independent company under the *Commonwealth Corporations Act* requires the National Trust of Queensland and the Currumbin Wildlife Sanctuary to relinquish their statutory status through the amendment and subsequent repeal of the *National Trust Act* and the *Currumbin Act*. The amendments facilitate easy transition to independence as a company limited by guarantee under the *Commonwealth Corporations Act*.

Other alternatives were considered, such as repealing of the *National Trust Act* and *Currumbin Bird Sanctuary Act* without any amendments to these Acts. This would result in the end of the entity of the National Trust and the Currumbin Wildlife Sanctuary. A new company would need to be established to undertake the same work of the National Trust and the Sanctuary, causing significant disruption to the work of the two organisations and business and operational strain.

Estimated cost for government implementation

Whole-of-government environmental offsets framework

Once passed, the Bill will provide significant savings for Government. The introduction of a single whole-of-government policy by replacing the existing five environmental offset policies will reduce administration and resourcing costs across multiple government departments associated with drafting, preparation and subsequent amendments. The Department of Environment and Heritage Protection are responsible for the development and coordination of the environmental offsets framework in consultation with other departments.

The Bill also provides for the revision of the number of environmental matters subject to offsets to include Queensland's most significant environmental values. This will result in efficiency gains for assessment officers by concentrating resources on those matters requiring the greatest protection and removing the need to regulate matters which are recognised as not threatened under environmental legislation.

An initial cost is likely to be incurred by government during implementation, in terms of developing subordinate legislation, guidance material, training, and public education. These costs are considered a one-off expense that will be compensated for by the long-term savings projected through this reform.

In addition, government will incur minor expenses establishing and managing an account to house offset payments. This is likely to be an on-going cost to government, though will eliminate any risks associated with the inappropriate use of funds by other entities, such as external providers. This approach also outweighs the cost of establishing and managing a system reliant on numerous offset providers receiving and administering funds through a trust.

Governance reform of the National Trust of Queensland and the Currumbin Wildlife Sanctuary

In relation to the National Trust of Queensland, the Bill will provide significant savings for Government. There will no longer be the cost of supporting the National Trust of Queensland, which has been receiving \$50,000 yearly to assist with administration, and the officer support provided by the Department of Environment and Heritage Protection. There will also be cost savings as once independent of government the National Trust of Australia (Queensland) and the Currumbin Wildlife Sanctuary will not have access to government loans. The most recent loan of \$830,000 was repaid on December 2013, as part of the associated financial reform directed by the Cabinet Budget Review Committee in March 2013.

Consistency with fundamental legislative principles

This Bill has been examined for compliance with the fundamental legislative principles outlined in section 4 the *Legislative Standards Act 1992* and has addressed the following issues.

Whether the Bill has sufficient regard to the institution of Parliament—Henry VIII provision

The Bill allows for matters of environmental significance and permit categories that will be subject to the Act to be defined in the regulations. This approach is necessary in order to confirm that not all permit categories will require offsets and not all impacted values will be addressed by an offset. The listing of matters and activities in the regulation rather in the Act reflects the dynamic nature of the permit system in Queensland, most of which is subject to review.

Consultation

Introduction to the whole-of-government environmental offsets framework

The Department of Environment and Heritage Protection held targeted consultation with representatives from industry, local government, natural resource management, and conservation sectors. This consultation was based on the preferred option to provide a single, integrated environmental offsets framework and associated policy. During consultation a number of issues were raised with the existing approach. As summary of these issues have been provided below:

- The current environmental offset policies are too complex
- Species and ecosystems are listed differently at the State and Commonwealth level
- Offsets are duplicated at the Commonwealth and State level for the same impact
- The Commonwealth allow offsets in remnant vegetation, the State does not
- A suitable offset site is difficult to find and manage
- Banking should be encouraged to minimise the delay between the impact and delivery
- The process for measuring ecological equivalence is too expensive and time consuming
- The Commonwealth employ different offset ratios than the State
- Focus should be on ecological outcomes with less reliance on numerical ratios that have little to no scientific justification

The results of consultation revealed strong support the introduction of a simpler environmental offsets framework that is easier to address. The specific entities engaged in consultation include:

- Local Government Association Queensland (LGAQ)
- Urban Development Industry Australia (UDIA)
- Property Council of Australia
- Queensland Resources Council (QRC)
- CO2 Australia (formerly Ecofund)
- Earthtrade
- AMEC (Environmental)
- RPS Group

- Queensland Trust for Nature
- Ecological
- Greening Australia
- Sunshine Coast Regional Council
- Council of Mayors South East Queensland
- Brisbane City Council
- Natural Resource Management Collective
- APPEA (Australian Petroleum Production & Exploration Association)
- Wilderness Society
- SCEC
- CCC
- Gold Coast City Council
- Saunders Havill Group
- Aurizon
- Association of Mining and Exploration Companies
- Cement and Concrete Aggregates Australia
- Powerlink
- Energex
- SWWB
- Ergon
- NQ

In addition, thorough consultation has occurred between government departments on the provisions of the Bill and subsequent environmental offsets regulatory framework which caters for the interests of each department. An interdepartmental committee including representatives from a number of relevant departments were also engaged in responding to an analysis of all the options considered, reaching agreement and contributing to the decision making process.

Governance reform of the National Trust of Queensland and the Currumbin Wildlife Sanctuary

The Department of Environment and Heritage Protection has also consulted closely with the National Trust of Queensland and the Currumbin Wildlife Sanctuary in working through the governance reform with the aim of an independent National Trust. Both the National Trust and the Currumbin Wildlife Sanctuary are supportive and keen for independence from government. The Department of Environment and Heritage Protection has consulted with the Department of Treasury and Trade, the Department of Premier and Cabinet and the Queensland Treasury Corporation over the past few years on governance reform. The results of consultation revealed strong support for the governance reform.

Consistency with legislation of other jurisdictions

The Bill revitalises environmental offsets in Queensland by aligning with other states currently leading the way with contemporary environmental offsets legislation. The Bill gives effect to a primary legislation effectively raising the bar from the existing statutory policies and moving towards stronger regulation. This approach has also been adopted by New South Wales and provides the overarching provisions for environmental offsets under the *Threatened Species Conservation Act 1995* (NSW) and *Threatened Species Conservation (Biobanking) Regulation 2008* (NSW).

The Victorian government boast a highly developed and intricate environmental offsets framework. However, the requirements and underlying principles exist only under policy and practice notes and are not given statutory effect or a clear head of power under primary legislation.

The Commonwealth have also developed a regulatory framework with the principles and requirements for environmental offsets existing under policy, the '*Environment Protection and Biodiversity Act 1999* Environmental Offsets Policy – October 2012'. This policy does accompany the environmental legislation, the *Environment Protection and Biodiversity Conservation Act 1999*, though the act does not include any provisions for environmental offsets and relies solely on the policy for delivery.

The Northern Territory, Australian Capital Territory, Western Australian, South Australian and Tasmanian governments have also developed their environmental offsets frameworks through policy, draft policy or non-statutory arrangements, though primary legislation currently exists only in the bordering state of New South Wales.

Reasons for non-inclusion of information

No information has been deliberately withheld from the Bill.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 states that, when enacted, the Bill will be cited as the *Environmental Offsets Act 2014*.

Clause 2 Commencement

Clause 2 specifies which sections will commence on assent or on a day to be fixed by proclamation. All sections dealing with environmental offsets will commence by a day fixed by proclamation.

Part 2 Purpose and application of Act

Clause 3 Purpose and achievement

Clause 3 outlines the purpose of the Bill and how this is to be achieved.

The main purpose of this Bill is to counterbalance the significant residual impacts of particular activities on matters of environmental significance through the use of environmental offsets.

The Bill achieves its purpose primarily by:

- establishing a framework for environmental offsets;
- recognising the level of protection given to prescribed environmental matters under other legislation;
- providing for national, State and local matters of environmental significance to be prescribed environmental matters for the purpose of this Act;
- coordinating the implementation of the framework in conjunction with other legislation.

Clause 4 Act binds all persons

Clause 4 establishes the extent to which the Bill binds all persons in Queensland and Australia and states that the Commonwealth or any State cannot be prosecuted for an offence against this Bill.

Clause 5 Relationship with particular Acts

Clause 5 clarifies the relationship between the *Environmental Offsets Act 2014*, once enacted, with particular Acts.

In particular the Bill does not limit or affect the function or powers of the Coordinator-General under the *State Development and Public Works Organisation Act 1995* or decisions and obligations of other agencies arising from those functions or powers.

For example, the Bill does not affect or limit a requirement under section 54 of the *State Development and Public Works Organisation Act 1971* to take into consideration the Coordinator-General's report when making decisions in relation to relevant authorities.

The Bill also does not affect or limit the requirement under section 209 of the *Environmental Protection Act 1994*. The administering authority must still impose a condition recommended

in the Coordinator-General's report for an environmental authority or draft environmental authority issued under the *Environmental Protection Act 1994* as part of a site-specific application. In addition other conditions imposed on those authorities cannot be inconsistent with conditions stated in the Coordinator-General's report for the relevant activity.

Subsection (3) states that if there is an inconsistency between a deemed condition in relation to environmental offsets under Part 6 of the Bill and any imposed condition under the *State Development Public Works Organisation Act 1971*, or a condition imposed under another Act as a result of an power or obligation in relation to that Act, the latter prevails to the extent of the inconsistency.

Part 3 Interpretation

Division 1 Dictionary

Clause 6 Definitions

Clause 6 establishes that there is a dictionary in schedule 2 which defines particular words used in the Bill. Where a word or term is only used in one section of the Bill, it is not defined in the dictionary, but rather in the relevant section of the Bill. Key concepts and definitions are also stated in Division 2.

Division 2 Key concepts and definitions

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

Clause 7 defines the meaning of 'offset condition' and 'environmental offset' for the purposes of the Bill.

An environmental offset is an activity undertaken to counterbalance significant residual impacts of a prescribed activity for a prescribed environmental matter.

A financial settlement offset relates to an environmental offset but is not an environmental offset. However this option is authorised under the Bill as a means to allow a proponent to meet their environmental offset requirement earlier. Responsibility for delivery of the environmental offset transfers to local government and the department administering the Bill. This allows environmental offsets to be delivered in a more strategic manner with potentially larger benefits for matters of environmental significance that have been impacted by development.

An environmental offset for a matter of environmental significance that is a protected area, other than a nature refuge, may include the delivery of any activity that provides a social, cultural, economic or environmental benefit to the protected area. However this does not apply to other matters of environmental significance that may be within a protected area (such as threatened species and regional ecosystems) – an environmental offset for those matters must be designed to achieve a conservation outcome.

Clause 8 What is a *significant residual impact*

Clause 8 provides a definition for 'significant residual impact' in relation to protected areas, legally secured offset areas and other matters of environmental significance.

Clause 9 What is a *prescribed activity*

Clause 9 provides a definition for ‘prescribed activity.’

Activities prescribed under regulation will provide the means necessary to limit the imposition of environmental offset requirement to only those activities which may have a significant impact on matters of environmental significance.

The regulation is the necessary vehicle to define the range of activities for which an environmental offset condition may be imposed and may be updated from time to time to reflect any changes in legislation relating to the introduction or reclassification of permitted activities.

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

Clause 10 establishes the definition of ‘prescribed environmental matter’ and ‘matter of environmental significance’ which is used in the context of environmental offsets under this Bill.

Subsection (1) provides a regulation making power to prescribe matters of environmental significance dealt with under Commonwealth, State and Local Government statutory instruments.

Clause 10 also places limits on the matters that may be prescribed as matters of national environmental significance under the regulations. In particular, matters of national environmental significance under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* will not be prescribed under a regulation unless the matter is the subject of an approval for the taking of an action or a class of actions in relation to the matter under section 46 or 146B of the Commonwealth Act. This limitation reduces the ability for environmental offset requirements under the Act to duplicate Commonwealth offset requirements.

Clause 11 Conservation outcome achieved by environmental offset

Clause 11 introduces the term conservation outcome which is the defining term for measuring environmental offset success.

A conservation outcome for a proponent-driven offset or environmental offset delivered using financial settlement offset payments is an offset that is selected, designed and managed to maintain the viability of the impacted prescribed environmental matter. However this does not apply to environmental offsets for protected areas (except nature refuges and the prescribed environmental matters within a protected area).

Part 4 Environmental offsets policies**Clause 12 What is an *environmental offsets policy***

Clause 12 provides the definition for an environmental offset policy and outlines the requirements for making the policy available for inspection. An environmental offset policy must only be applied under the Act if the policy is prescribed by regulation.

In relation to State government environmental offset decisions, this provision gives effect to a single environmental offsets policy to ensure consistency. This definition ensures that

previous State government environmental offset policies in effect prior to the introduction of the Act will no longer be used or have any affect except potentially in relation to applications that were lodged before the commencement of the Bill.

The environmental offset policy is to be made publicly available on an appropriate website.

Clause 13 Content of environmental offsets policy

Clause 13 outlines what an environmental offset policy may contain.

Part 5 Imposing offset conditions

Clause 14 Imposing offset condition

Clause 14 limits the imposition of offset conditions by administering agencies. An environmental offset condition may only be imposed if an administering agency is satisfied that a prescribed activity will, or is likely to have, a significant residual impact on the prescribed environmental matter and all cost-effective on-site mitigation measures for the prescribed activity have been, or will be, undertaken.

Under clause 14 an environmental offset condition cannot be imposed to address impacts that

- 1) are not likely to be significant; or
- 2) may be cost-effectively avoided or minimised.

Clause 14 also empowers administering agencies to have regard to any relevant offset condition that has been imposed on the applicant under another authority held by the applicant for the same prescribed environmental matter.

Clause 15 Restriction on imposition of offset condition

Clause 15 restricts the decision to impose or not to impose an environmental offset condition and reduces duplication of offset conditions.

Administering agencies (State and local agencies) must not impose environmental offset conditions for a prescribed environmental matter other than for protected areas where the Commonwealth has imposed an environmental offset condition for the same environmental matter for substantially the same impact in substantially the same area.

Similarly, local government is prevented from imposing environmental offset conditions that duplicate existing State offset conditions for the same matter for substantially the same impact in substantially the same area.

Previously duplication in the assessment and imposition of environmental offset requirements has led to unnecessary delays on environmental approvals, inconsistent application of environmental offset conditions, and increased regulatory burden for proponents.

Part 6 Requirements about offset conditions

Division 1 Deemed conditions

Clause 16 Conditions that apply under this Act to authority

Clause 16 states that if an offset condition is imposed under another Act on an authority for a

prescribed activity for a prescribed environmental matter sections 18, 21, 23 and 24 state further conditions (‘deemed conditions’) that, under this Act, are imposed on the authority. A reference in another Act to a condition (however described) of the authority includes each deemed condition.

Clause 17 Contravention of deemed condition

Clause 17 makes it an offence for any person who is the holder of an authority, or anyone acting under the authority, to contravene an imposed condition. This clause explicitly states that a person who contravenes this condition may be dealt with appropriately under the provisions of the Act to which the deemed condition was imposed.

Clause 17 requires a person who holds an authority granted under another Act or is acting under those authorities to comply with each deemed condition of the authority.

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.

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.

For example, section 580 (Compliance with a development approval) of the *Sustainable Planning Act 2009* states that a person must not contravene a development approval including any conditions in that approval and a maximum penalty of 1665 penalty units may apply to a contravention of a condition. Clause 17 of the Bill also makes it an offence under section 580 for failing to comply with a deemed condition under section 18, 21, 23 or 24 of the Bill where an environmental offset condition has been imposed on a development approval.

Division 2 Election before starting prescribed activity

Clause 18 Election about delivery of offset condition

Clause 18 outlines requirements in relation to an offset condition that must be met before starting a prescribed activity.

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—

- (a) elect, by notice given to the administering agency, to deliver the offset condition by—
 - (i) a proponent-driven offset; or
 - (ii) a financial settlement offset; or
 - (iii) a combination of a proponent-driven offset and a financial settlement offset; and
- (b) agree with the administering agency about the delivery of the offset condition.

Subsection (3) requires any notice of election that involves a proponent-driven offset to be accompanied by an offset delivery plan. The information required as part of an offset delivery plan includes a description of how the environmental offset will be undertaken to achieve a successful conservation outcome. The offset delivery plan must also be signed by both the proponent and the entity who owns the land or waters. A regulation may provide additional requirements that must be satisfied by an offset delivery plan.

Subsection (5) establishes, amongst other things, that the offset delivery plan must account for and manage the risks of the environmental offset failing to achieve a conservation outcome.

Subsection (6) states an authority holder may make an election despite conditions that may not be imposed under section 347(1)(b) or (c) of the *Sustainable Planning Act 2009*, in relation to infrastructure and a requirement for works to be carried out by another entity other than the applicant.

Clause 19 Reaching agreement about delivery

Clause 19 establishes a process for reaching, deciding and amending agreements about the delivery of an environmental offset condition.

A regulation may be made under the Act to provide for a review of the decision to give notice, for example, under subsection (3), and what happens if the authority holder and the administering agency cannot reach agreement within a stated reasonable time, including, for example, a dispute resolution process.

The regulation making power is justified on the basis that internal review and merit review processes for prescribed activities differ under the other Acts.

Division 3 Proponent-driven offsets

Clause 20 What is a proponent-driven offset

Clause 20 defines the term ‘proponent-driven offset’ as an environmental offset which is undertaken by the proponent. The offset may be delivered directly by the proponent on land owned by the proponent or indirectly, by someone else on behalf of the proponent. A proponent-driven offset may also be delivered on land that is not owned by the proponent.

A proponent-driven offset is never taken to be a financial settlement offset, but may be delivered in addition to a financial settlement offset in order to satisfy the authority holder’s offset condition.

Clause 21 Requirement for proponent-driven offset

Clause 21 states that 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.

Subsection (2) establishes an authority holder’s requirement to comply with an agreed delivery arrangement, including the offset delivery plan, as a condition of the authority.

Division 4 Financial settlement offsets

Clause 22 What is a financial settlement offset

Clause 22 defines the term financial settlement offset.

A financial settlement offset is a payment made by an authority holder to the department or a local government of an amount required by the administering agency that granted the authority.

A financial settlement offset is never a proponent-driven offset but may be delivered in addition to a proponent-driven offset in order to satisfy the authority holder's legislative requirements to provide an offset.

Clause 23 Requirements for financial settlement offsets

Clause 23 requires an authority holder to pay the amount of money approved by the relevant agency, to the local government for an environmental offset relating to a matter of local environmental significance, or to the chief executive in all other circumstances. Where a proponent has elected to deliver the environmental offset wholly or partly as a financial settlement offset, this transaction, of the amount approved by the administering agency, must be made prior to commencing the prescribed activity to which the environmental offset condition relates.

Subsection (3) requires the administering agency to calculate the exact sum of money in a way stated in the regulation. The regulation is an appropriate instrument to provide the level of detail required to calculate the sum of money applicable to the delivery of an environmental offset, based on the specific parameters of the prescribed environmental matter, the location of the significant residual impact and other considerations.

Division 5 Further condition about legally secured offset areas

Clause 24 Impacts on legally secured offset area

Clause 24 prohibits the carrying out of prescribed activities in a legally secured offset area mentioned in section 28 if the activity will delay, hamper or stop the delivery of the conservation outcome under the relevant delivery or management plan or agreement.

Clause 24 however only applies to a holder of an authority mentioned in section 16 of the Bill.

Part 7 Environmental offset agreements

Clause 25 Environmental offset agreement

Clause 25 provides for the chief executive or local government to enter into an environmental offset agreement with any entity in relation to the delivery of an environmental offset. This clause outlines the minimum requirements of an environmental offset agreement and allows a regulation to make further provision about offset agreements.

Clause 26 Duration of environmental offset agreement

Clause 26 outlines the period that the environmental offset agreement remains effective.

Clause 27 Variation etc. of environmental offset agreement

Clause 27 allows the relevant agency and entity bound by an environmental offset agreement to enter into another environmental offset agreement that varies, or terminates and replaces the earlier agreement by agreement.

Part 8 Legally secured offset areas

Clause 28 What is a legally secured offset area

Clause 28 defines the term legally secured offset area as an area of land or waters, that is:

- an environmental offset protection area;
- an area declared as an area of high nature conservation value under section 19F of the *Vegetation Management Act 1999*; or
- another area prescribed under a regulation.

However, under subsection (1)(b) the area is only taken to be a legally secured offset area if the area is subject to a delivery or management plan or agreement (however described in the Act or another Act) to achieve a conservation outcome.

Also, an area is a *legally secured offset area* in relation to an offset condition or an environmental offset agreement if, after the offset condition is imposed or agreement is entered into, the area is dedicated, or declared by regulation, as mentioned in the *Nature Conservation Act 1992*, section 29(1) or 46.

Subsection (3) and (4) of the Bill enable legally secured areas established before the commencement of the Act to be taken to be legally secured areas under this Act.

Clause 29 Declaration of environmental offset protection area

Clause 29 provides for the declaration of environmental offset protection areas and review of decisions in relation to such declarations.

Under subsection 29(6)(d) of the Bill, the chief executive must not declare an environmental offset protection area unless the chief executive reasonably believes that each person who has an interest (such as mining interest) in the area has consented to the declaration.

The chief executive may also consult with an entity that may or is likely to be affected by the declaration.

Clause 30 Recording of declared areas, etc.

Clause 30 requires the chief executive to record the declaration in the register under section 85, and provide to the registrar of titles a notice that the declaration has been made.

The Bill also outlines requirements in relation to the register of titles. No fees are payable in relation to the declaration or recording of the declaration.

Clause 31 Environmental offset agreement binding

Clause 31 establishes that while the declaration of the environmental offset protection area is in effect, the environmental offset agreement in relation to the area is binding on the current landowner who owns the land at this point in time, as well as each person who has a registered interest in the area, including interests that are registered on title under the *Land Act 1994* or *Land Title Act 1994*.

Clause 32 Amending or revoking declaration

Clause 32 provides for the regulation to provide the chief executive with the power to amend the declaration, revoke and remake the declaration or revoke the declaration.

Clause 33 Correcting, updating or removing registry record

Clause 33 provides for correcting, updating or removing records kept by the registrar of titles about the declaration of an environmental offset protection area.

To remove any doubt, it is declared that the registry record can not be amended, withdrawn, revoked or replaced other than under this section, or section 15 of the *Land Title Act 1994*.

Part 9 Compliance notices

Clause 34 Local government or chief executive may give compliance notice

Clause 34 provides for the local government or chief executive to give a compliance notice in relation to an agreement mentioned in this Act, requiring a person to start complying with an agreement, or remedy the contravention of the agreement in a way stated in the notice.

Subsection (3) clarifies that 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.

Clause 35 Requirements for compliance notice

Clause 35 specifies the general requirements of a compliance notice. It provides that in the event the notice requires action, the notice must include details of the work to be performed. If the notice is to require a person to refrain from doing something, it must include a period of time for which the requirement applies, or state that the requirement applies until further notice. Subclauses (4) and (5) require that the notice state the time period or periods for the performance of an act or acts if specified.

Clause 36 Offence relating to compliance notice

Clause 36 specifies the offence and penalty for not complying with a compliance notice.

Clause 37 Review of decision to give compliance notice

Clause 37 provides the ability for a person to have the compliance notice reviewed by the Queensland Civil and Administrative Tribunal by making an application for the review.

Clause 38 Taking action

Clause 38 allows the local government or chief executive that issued the notice to perform an action if a person contravenes the notice by not doing that action. Subclause (2) allows the recovery of costs and expenses for performing the action.

Part 10 Investigation and enforcement

Division 1 Preliminary

Clause 39 Definitions for pt 10

Clause 39 provides the definition of appointing authority and relevant offence for this part.

Clause 40 Enforcement officers under pt 10

Clause 40 states that this part includes provision for the appointment of enforcement officers, and gives them particular powers.

Clause 41 Functions of inspectors

Clause 41 provides for the functions of inspectors to investigate, monitor and enforce compliance.

Clause 42 References to exercise of powers

Clause 42 is a clarifying provision with regard to references to exercise powers.

Clause 43 Reference to document includes reference to reproductions electronic document

Clause 43 is a clarifying provision which states that a reference in this part to a document includes a reference to an image or writing produced, or capable of being produced, from an electronic document.

Division 2 General provisions about enforcement officers**Subdivision 1 Appointment****Clause 44 Appointment and qualifications**

Clause 44 provides the chief executive or chief executive officer of a local government may, by instrument in writing, appoint certain persons as an enforcement officer, if the chief executive is satisfied that the person is appropriately qualified for the appointment.

Clause 45 Appointment conditions and limit on powers

Clause 45 specifies that an enforcement officer holds office on the conditions stated in their instrument of appointment, or in a notice signed by the chief executive given to the enforcement officer, or in a regulation. The instrument of appointment, the signed notice or a regulation, may limit the powers of an enforcement officer under this Act.

Clause 46 When office ends

Clause 46 states that the office of an enforcement officer ends if the term of office stated in a condition of office ends; or under another condition of office, the office ends; or the authorised person resigns. However, the clause does not limit the ways the office of a person as an enforcement officer ends.

Clause 47 Resignation

Clause 47 provides that an enforcement officer may resign by signed notice given to the chief executive.

Subdivision 2 Identity cards**Clause 48 Issue of identity card**

Clause 48 requires the appointing authority (the chief executive or chief executive officer of a local government) to issue an identity card to each enforcement officer. The identity card must contain a recent photo of the person, a copy of their signature, identify them as an enforcement officer under the Act, and state the expiry date of the card. This clause does not prevent a single identity card being issued to a person for this Act and other purposes.

Clause 49 Production or display of identity card

Clause 49 requires that the enforcement officer produces or displays their identity card to a person when exercising powers in relation to that person under this Act. If that is not

practicable, then the enforcement officer must produce their identity card at the first reasonable opportunity. The purpose of the clause is to ensure a person, in relation to whom a power is being exercised, can readily identify an enforcement officer in a timely way. The clause also identifies circumstances where an enforcement officer, in entering a place, has not exercised a power in relation to a person.

Clause 50 Return of identity card

Clause 50 requires an enforcement officer to return their identity card to the relevant appointing authority (the chief executive or the chief executive officer of a local government) within 21 days after the office ends unless the person has a reasonable excuse. The maximum penalty for this offence is 50 penalty units.

Division 3 Entry of places by enforcement officers

Subdivision 1 Power to enter

Clause 51 General power to enter places

Clause 51 prescribes the circumstances when an enforcement officer may enter a place. This clause does not authorise entry to any part of the place where a person resides. If entry was authorised by consent then the power is subject to any conditions of the consent and ceases if the consent is withdrawn. If the power to enter is under a warrant, the entry is subject to the terms of the warrant.

Subdivision 2 Entry by consent

Clause 52 Application of sdiv 2

Clause 52 provides that this subdivision applies if an enforcement officer intends to ask an occupier of a place for consent to enter the place.

Clause 53 Incidental entry to ask for access

Clause 53 provides that the enforcement officer may, without the occupier's consent or a warrant, enter land around premises at the place to an extent that is reasonable to contact the occupier. For this purpose the enforcement officer may enter part of the place the enforcement officer reasonably considers that members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

Clause 54 Matters enforcement officer must tell occupier

Clause 54 requires the enforcement officer to explain to the occupier the purpose of the entry, including the powers intended to be exercised; that the occupier is not required to give consent; and that the consent may be given subject to conditions and may be withdrawn at any time.

Clause 55 Consent acknowledgement

Clause 55 provides that where consent is given the enforcement officer may ask the occupier to sign an acknowledgement of consent. The clause provides the minimum details to be included in the acknowledgement. The clause also provides that if the occupier signs the acknowledgment, a copy must be given to the occupier. The clause further provides that if proceedings arise about whether the occupier consented to entry and an acknowledgement notice is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Subdivision 3 Entry under warrant

Clause 56 Application for warrant

Clause 56 states that an enforcement officer may apply to a magistrate for a warrant for a place. The enforcement officer must prepare a written application that states the grounds on which the warrant is sought. The written application must be sworn, and 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.

Clause 57 Issue of warrant

Clause 57 provides the criteria that the magistrate must be satisfied of, in order to issue a warrant for the place. The clause also provides the details that the warrant must state, including the day, within 14 days after the warrant's issue, the warrant ends.

Clause 58 Electronic application

Clause 58 allows an application for a warrant to be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the enforcement officer reasonably considers it necessary because of urgent circumstances or other special circumstances, including, for example, the enforcement officer's remote location. The application may not be made before the enforcement officer prepares the written application but may be made before the written application is sworn.

Clause 59 Additional procedure if electronic application

Clause 59 provides, for an electronic application, that the magistrate must be satisfied that the application is necessary and that it was properly made. The provision also provides how, once the magistrate issues the original warrant, a duplicate warrant is to be issued by the magistrate or otherwise how a duplicate warrant is to be completed by the enforcement officer. A duplicate warrant, in either circumstance, is as effectual as the original. This clause also provides that the enforcement officer must, as soon as is reasonable, send to the magistrate the written application and secondly if the enforcement officer completed a form of warrant—the duplicate warrant. The magistrate must keep the original warrant and, on receiving the documents from the enforcement officer mentioned above attach the documents to the original warrant; and give the original warrant and documents to the clerk of the court of the relevant magistrate's court.

If an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and the original warrant is not produced in evidence; 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. This clause does not limit the ability to make an application for a warrant.

Clause 60 Defect in relation to a warrant

Clause 60 provides that a warrant, including a duplicate 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.

Clause 61 Entry procedure

Clause 61 states the actions, if an enforcement officer is intending to enter a place under a warrant or duplicate warrant, that the enforcement officer must do, or make reasonable attempts to do before entering the place. However, the clause provides that the enforcement

officer need not undertake these actions if the enforcement officer reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.

Division 4 Other powers and related matters

Subdivision 1 General powers of enforcement officers after entering places

Clause 62 Application of sdiv 1

Clause 62 provides that the power under this subdivision may be exercised if an enforcement officer enters a place under a warrant or otherwise a place of business of an entity that is mentioned in the environmental offset agreement. However, if the authorised person enters under by consent or under a warrant, the powers under this division are subject to any conditions of the consent or terms of the warrant.

Clause 63 General powers

Clause 63 provides an enforcement officer with a range of powers, each a general power. The enforcement officer may take a necessary step to allow the exercise of a general power. The power includes taking on to a place any reasonably required person, for instance persons with technical qualifications to assist in application processing when consent for entry cannot otherwise be obtained for the purpose. The clause further provides conditions on specific general powers.

Clause 64 Power to require reasonable help

Clause 64 gives an enforcement officer the power to require help of an occupier of the place or a person at the place to give the enforcement officer reasonable help to exercise a general power, including, for example, to produce a document or to give information. When making the help requirement, the enforcement officer must inform the person that it is an offence not to comply with a help requirement without a reasonable excuse.

Clause 65 Offence to contravene help requirement

Clause 65 establishes a maximum penalty of 50 penalty units for a failure of a person to comply with a help requirement without a reasonable excuse. 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 unless the document or information is required to be held or kept by the defendant under an environmental offset agreement.

Subdivision 2 Other information-obtaining powers of enforcement officers

Clause 66 Power to require name and address

Clause 66 gives an enforcement officer the power to require the name and address of a person in certain circumstances.

Clause 67 Offence to contravene personal details requirement

Clause 67 provides that a person who fails to comply with a requirement to give their name and address is guilty of an offence but only if they are found guilty of the substantive offence.

Clause 68 Power to require information

Clause 68 provides that an enforcement officer may require a person to produce information.

Clause 69 Offence to contravene information requirement

Clause 69 provides that it is an offence to contravene an information production requirement unless the person has a reasonable excuse.

Division 5 Miscellaneous provisions relating to enforcement officers

Subdivision 1 Damage

Clause 70 Duty to avoid inconvenience and minimise damage

Clause 70 provides that in exercising a power an enforcement officer must minimise inconvenience and damage.

Clause 71 Notice of damage

Clause 71 provides that an enforcement officer must give certain notice of any damage done to property in exercising a power under this part.

Subdivision 2 Compensation

Clause 72 Compensation

Clause 72 provides that a person may claim compensation if he or she incurs loss or expense because of actions of an enforcement officer under this part.

Subdivision 3 Other offences relating to enforcement officers

Clause 73 Giving enforcement officer false or misleading information

Clause 73 provides that a person must not give an enforcement officer false or misleading information.

Clause 74 Obstructing enforcement officer

Clause 74 provides that a person must not obstruct an enforcement officer.

Clause 75 Impersonating enforcement officer

Clause 75 provides that a person must not impersonate an enforcement officer.

Subdivision 4 Other provisions

Clause 76 Evidential immunity for individuals complying with particular requirements

Clause 76 provides for evidential immunity for certain persons complying with particular requirements.

Division 6 Legal proceedings

Clause 77 Summary proceedings for offence

Clause 77 establishes proceedings for an offence in relation to the contravention of, a compliance notice under this Act, or a provision of part 10 of this Act, is to be taken in a summary way under the *Justices Act 1886*.

Clause 78 Limitation on time for starting proceeding

Clause 78 establishes the timeframe for which proceedings in relation to an offence under this Act must start. This is established to be within the period of one year from the date of the commission of the offence, or within six months after the offence comes to the complainant's knowledge.

Clause 79 Evidentiary aids generally

Clause 79 provides for a certificate signed by the chief executive which states that any particular mentioned in this section is taken to be evidence of the matter.

Clause 80 Responsibility for act or omissions of representatives

Clause 80 Establishes that a person, who has another individual (representative) acting on their behalf, is taken to be responsible for this individual and is liable for the offence committed by this individual with the state of mind.

Part 11 Amounts received as financial settlement offsets etc.**Division 1 Amounts received by the department****Clause 81 Application of div 1**

Clause 81 states that this division applies to any amount received as a financial settlement offset by the department.

Clause 82 Establishment of offset account

Clause 82 establishes the Financial Offset Account (the *offset account*).

Clause 83 Object of offset account

Clause 83 outlines the object of the offset account is to provide funding for the delivery of environmental offsets.

Clause 84 Payment of amounts into offset account

Clause 84 provides for amounts received by the department for the purposes of a financial settlement offset as well as other amounts to be paid into the offset account.

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 section 7(2)(c) of the *Financial Accountability Act 2009* and therefore a controlled receipt.

Clause 85 Payment of amounts from offset account

Clause 85 limits chief executive's use of the money in the offset account.

Clause 86 Administration of offset account

Clause 86 states that accounts for the offset account must be kept as part of the departmental accounts of the department. Subsection (2) clarifies that amounts received for the offset account may be deposited in a departmental financial institution account of the department with other moneys of the department.

Division 2 Payments received by a local government

Clause 87 Application of div 2

Clause 87 states that this division applies to any amount received as a financial settlement offset by a local government.

Clause 88 Payment of amounts into and from trust fund

Clause 88 requires amounts received by a local government as a financial settlement offset as well as other amounts to be credited to the local government's trust fund and limits the use of money in the trust fund once credited.

Part 12 General**Clause 89 Register to be kept by each administering agency**

Clause 89 provides for a register to be kept by each administering agency and outlines the details which must be recorded. This register must be made available for inspection, including for example, in electronic form. If the chief executive requests information held on the register this must be provided by the administering agency to the chief executive free of charge.

Clause 90 Delegation by chief executive

Clause 90 provides the chief executive with the power to delegate certain functions to an appropriately qualified public service employee.

Clause 91 Approved forms

Clause 87 allows for the chief executive to approve forms for use under this Act.

Clause 92 Regulation-making power

Clause 92 provides the Governor in Council with the power to make a regulation under the Act. This power includes, but is not limited to, penalties for contravention of a provision of a regulation of not more than 20 penalty units, fees payable under the Act, and details relating to the identification and establishment of advanced offsets.

Part 13 Transitional provisions**Clause 93 Definitions for pt 13**

Clause 93 provides definitions for particular terms under part 13 of the Bill.

Clause 94 Application of this Act or existing Act

Clause 94 outlines when this Act or an existing Act applies.

The 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.

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; and
- c) an authority granted under an existing Act on or after the commencement as the result of an application mentioned in paragraph (b).

However any amendment to an authority after the commencement of the Act that may or is likely to result in a significant residual impact on a prescribed environmental matter must be dealt with under this Act.

Clause 95 Transitional regulation-making power

Clause 95 provides a transitional regulation making power.

Part 14 Amendment of Coastal Protection and Management Act 1995**Clause 96 Act amended**

Clause 96 states that this part amends the *Coastal Protection and Management Act 1995*.

Clause 97 Insertion of new s 201A

Clause 97 provides clarification to transitional provisions for dredge management plans made in 2011 to ensure that royalties remain payable for the commercial removal of material under such plans.

Clause 98 Insertion of new ch 6, pt 7

Clause 98 provides clarification on when operational works within a coastal management district, including within a tidal watercourse, are tidal works under the *Coastal Protection and Management Act 1995* and referred to by the *Sustainable Planning Act 2009*.

As the *Coastal Protection and Management Act 1995* provides tidal works with a general right to occupy and use State land upon which the works are situated and requires the works to be maintained in a safe condition, the amendments also provide for these provisions to apply to works deemed to be tidal works.

Clause 99 Amendment of schedule (Dictionary)

Clause 99 clarifies the definition of tidal works under the *Coastal Protection and Management Act 1995* by making it clear what tidal work does, and does not, include.

Part 15 Amendment of Currumbin Bird Sanctuary Act 1976**Clause 100 Act amended**

Clause 100 states that this part of the Bill amends the *Currumbin Bird Sanctuary Act 1976*.

Clause 101 Insertion of new ss 14 and 15

Clause 101 inserts new sections 14 and 15 into the *Currumbin Bird Sanctuary Act 1976* which relate to the application of the Act upon the registration of the National Trust of Australia (Queensland) Limited.

- Section 14 of this clause states that sections 3 to 13 and schedules 1 and 2 stop applying if the National Trust of Australia (Queensland) Limited is registered under the Commonwealth *Corporations Act 2001*, part 5.1. This section should be read in conjunction with the *National Trust of Queensland Act 1963*, part 3A (Transfer of incorporation of National Trust and related matters).
- Section 15 of this clause provides for the Act to expire on the day this section commences.

Part 16 Amendment of Duties Act 2001**Clause 102 Act amended**

Clause 102 provides for amendments to the *Duties Act 2001*.

Clause 103 Amendment of s 141 (Exemption—particular statutory bodies)

Clause 103 amends section 141 (Exemption – particular statutory bodies) of the *Duties Act 2001*, to omit reference to the National Trust, as once the National Trust becomes an independent company, they lose eligibility for this exemption. Once the reference to the National Trust is omitted, the relevant section in the *Duties Act 2001* will be renumbered.

Clause 104 Amendment of s 285 (Exemption—mortgages under particular Acts)

Clause 104 amends section 285 (Exemption – mortgages under particular Acts) of the *Duties Act 2001*, to omit reference to the National Trust, as once the National Trust becomes an independent company, they lose eligibility for this exemption. Once the reference to the National Trust is omitted, the relevant section in the *Duties Act 2001* will be renumbered.

Part 17 Amendment of Environmental Protection Act 1994**Clause 105 Act amended**

Clause 105 states that this part amends the *Environmental Protection Act 1994*.

Clause 106 Amendment of s 39 (Other definitions)

Clause 106 amends section 39 of the *Environmental Protection Act 1994* to remove redundant words from the section. As part of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, the requirement for a statutory environmental management plan was removed from the assessment of an application for an environmental authority for a resource activity. However, due to an oversight, the definition of “environmental management plan” in chapter 3 (Environmental Impact Statements) was not amended to reflect this change. An administrative environmental management plan is still a useful document in assessing an environmental impact statement and should still be required, but this document would not propose the conditions for the environmental authority. Consequently, this section is amended to remove the reference to a document which proposes conditions.

Clause 107 Amendment of s 168 (When decision must be made—generally)

Clause 107 amends section 168 of the *Environmental Protection Act 1994* to ensure that a decision on the environmental authority cannot be made when an operator is not registered as a suitable operator. An applicant may be a registered suitable operator prior to making their application for an environmental authority, in which case a further suitable operator application is not needed. However, if the operator is not registered, they are required to make an application for registration as part of the approved form for applying for their environmental authority.

This amendment clarifies that the decision stage cannot commence until a person has been assessed and registered as a suitable operator.

Clause 108 Amendment of s 173 (When particular applications must be refused)

Clause 108 amends section 173 of the *Environmental Protection Act 1994* to clarify that an application for an environmental authority must be refused if the applicant is not a registered suitable operator. This amendment corrects the circular drafting of the previous section 173 which stated that the application must be refused if the person is both not a registered suitable operator, and their application for registration has been refused since, if the application is refused, then the operator will not be registered.

Clause 109 Amendment of s 185 (Referral to Land Court)

Clause 109 amends section 185 of the *Environmental Protection Act 1994* to include all circumstances in which an objection may be received, so that referral to the Land Court is not required until after the latest time objections can be received. The previous drafting could lead to an inconsistency where (for instance) an objection notice is received at the beginning of the prescribed timeframe and referred to the Land Court, but a later objection notice comes in which would have extended the timeframe. This would lead to information being provided to the Land Court piecemeal. This amendment allows all objections/requests for referrals to be received and referred to the Land Court at the same time.

Clause 110 Amendment of s 202 (Environmental authority includes conditions)

Clause 110 inserts a new note under section 202 informing the reader that Part 6 of the Environmental Offset Act 2014 states further conditions that apply to an environmental authority and that a breach of those conditions may be dealt with under the *Environmental Protection Act 1994*.

Clause 111 Amendment of s 207 (Conditions that may be imposed)

Clause 111 provides for a replacement of subsection (1)(c) of the *Environmental Protection Act 1994* to remove redundant wording already provided for under the *Environmental Offsets Act 2014*.

Clause 112 Amendment of s 209 (Environmental offset conditions)

Clause 112 amends section 209 of the *Environmental Protection Act 1994* to ensure the provisions relating to environmental offset conditions are consistent with the provisions in the Bill.

Clause 113 Amendment of s 318 (Making eligibility criteria)

Clause 113 amends section 318 of the *Environmental Protection Act 1994* to reduce red tape in the making of eligibility criteria for an activity. Currently, the process for making eligibility criteria requires that the criteria must be both gazetted and approved by a regulation. Since the regulation must also be gazetted, this involves double handling. This amendment removes the need for gazettal since, in any event, the eligibility criteria only take effect once they are prescribed in the regulation.

Clause 114 Insertion of new ch 13, pt 20

Clause 114 inserts transitional provisions to support the implementation of the new environmental offset framework.

New section 713 provides for environment offset payments to be made to the environmental offset trust if required under an environmental offset condition imposed before the commencement of the Act.

New section 714 applies if, on or after the commencement of this section, an environmental authority or draft environmental authority becomes, under this Act, subject to an environmental offset condition. To the extent the environmental offset condition is inconsistent with a deemed condition, the deemed condition prevails.

New section 715 provides a transitional regulation-making power.

Clause 115 Amendment of sch 4 (Dictionary)

Clause 115 amends certain definitions to align with the definitions used to define certain terms under this Bill.

Part 18 Amendment of Fisheries Act 1994

Clause 116 Act amended

Clause 116 states that this part amends the *Fisheries Act 1994*.

Clause 117 Amendment of s 76IA (Environmental offset conditions)

Clause 117 aligns the power to impose an environmental offset condition with the Bill.

Amendment of s 118 (Fisheries Research Fund)

Clause 118 removes reference to environmental offset conditions mentioned in s 76IA as an amount received into the Fisheries Research Fund.

Clause 119 Insertion of new pt 12, div 8

Clause 119 inserts a new division in Part 12 of the Act.

New section 259 states that if an environmental offset condition imposed before the commencement of the Bill required a payment to be made to the Fisheries Research Fund the payment must still be made to that Fund.

New section 260 provides a transitional regulation-making power.

Part 19 Amendment of Marine Parks Act 2004

Clause 120 Act amended

Clause 120 states that this part amends the *Marine Parks Act 2004*.

Clause 121 Amendment of s 49 (Noncompliance with condition of an authority)

Clause 121 establishes the maximum penalty for noncompliance with a condition imposed under the *Environmental Offsets Act 2014* to be 3000 penalty units. This maximum penalty is identical to similar offences relating to unlawful impacts on natural and cultural resources under the *Marine Parks Act 2004* and *Nature Conservation Act 1992*. The high penalty is justified on the basis that an environmental offset condition is imposed to counterbalance significant impacts on matters of environmental significance. The amount is proportional to the magnitude of the impact.

Clause 122 Insertion of new ss 151A and 151B

Clause 122 inserts new sections 151A and 151B.

New section 151A clarifies that an environmental offset condition may be imposed on a marine park authority.

New section 151B applies if, on or after the commencement of this section, a marine park authority becomes, under this Act, subject to an environmental offset condition. To the extent the environmental offset condition is inconsistent with a deemed condition, the deemed condition prevails.

Clause 123 Insertion of new pt 13

Clause 123 inserts a transitional regulation-making power.

Part 20 Amendment of National Trust of Queensland Act 1963**Clause 124 Act amended**

Clause 124 states that this part amends the National Trust of Queensland Act 1963.

Clause 125 Amendment of s 2 (Definitions)

Clause 125 inserts a new definition for company into the definitions list of the *National Trust of Queensland Act 1963*. The definition for company directs the reader to section 38B.

Clause 126 Insertion of new pt 3A

Clause 126 inserts a new Part 3A into the *National Trust of Queensland Act 1963*. This part is about the transfer of incorporation of the National Trust, and other related matters.

The new Division 1 under Part 3A provides for a definition for a company. It refers the reader to section 38B of the Act.

The new Division 2 (Transfer of incorporation) allows for the National Trust of Queensland to apply for incorporation as a company under the *Corporations Act 2001*, part 5B.1. Part 5B.1 of the *Corporations Act 2001* deals with circumstances in which a body corporate that is not a company can be registered as a company. Registration under Part 5B.1 has the effect of transferring the incorporation of the relevant body to the *Corporations Act 2001* framework.

The new section 38B under Division 2 directs the National Trust to apply under the *Corporations Act 2001*, part 5B.1, for registration as a company limited by guarantee.

38B Section (1) directs that the name of the company will be the National Trust of Australia (Queensland) Limited.

38B Section (2) directs the National Trust to publish the constitution on its website. The website of the National Trust is www.nationaltrust.org.au. Publishing the constitution provides for transparency of the business of the National Trust of Australia (Queensland) Limited, by allowing the public to view the constitution.

The new section 38C provides for Authority to transfer incorporation.

38C Section (1) gives authority for the National Trust to transfer incorporation to a company limited by guarantee under the *Corporations Act 2001*, part 5B.1. This is necessary as Section 601BC(8)(d) of the *Corporations Act 2001* states that the application to be registered as a company must be accompanied by evidence that, under the law of its place of incorporation, the transfer of the body's incorporation is authorised. This clause permits, or authorises, the National Trust to become an incorporated company.

38C Section (2) directs the National Trust to undertake all necessary action to apply for registration as a company limited by guarantee under the *Corporations Act 2001*, part 5B.1. This necessary action may include such things as administrative paperwork and gaining the National Trust Board endorsement of the company's constitution.

38C Section (3) states that this part applies despite any other provisions of the *National Trust of Queensland Act 1963* or the *Currumbin Bird Sanctuary Act 1976*.

A new section 38D provides for entries in relation to the National Trust in registers, such as a relevant land register. This section states that if a person keeps a register and there is an entry in the register in relation to the National Trust, then, that person must change the register so that the entry is in relation to the company of the National Trust of Australia (Queensland) Limited. This change to the register must occur if the company of the National Trust of Australia (Queensland) Limited provides a copy of the registration certificate to the company.

A new section 38E directs the company of the National Trust of Australia (Queensland) Limited to give a copy of the certification of registration to the chief executive, as soon as practicable, and publish it on the company's website.

A new Division 3 provides for the application of particular provisions on registration of company.

A new Section 38F provides for the provisions of the *National Trust of Queensland Act 1963* which stop applying once the National Trust becomes an incorporated company.

38F (a) provides for sections 3 to 38 (the bulk of the *National Trust of Queensland Act 1963*) and sections 39 and 42, to no longer apply if the National Trust becomes an incorporated company.

38F (b) relates to the *Duties Act 2001*. As an incorporated company, the National Trust of Australia (Queensland) Limited will no longer have statutory standing, and will not be eligible for exemptions under the *Duties Act 2001*, for the payment of duties relating to obtaining a mortgage, or buying or acquiring a property. Instead of having a set exemption that is legislated, the independent National Trust of Australia (Queensland) Limited has the option of seeking ex-gratia fee relief for these types of duties.

38 (c) relates to the *Statutory Bodies Financial Arrangements Regulation 2007*, schedules 2 and 5, entry for *National Trust of Queensland Act 1963*. Once the National Trust becomes an independent company, they are no longer eligible for inclusion in these schedules which relate to statutory bodies.

Clause 127 Insertion of new pt 5

Clause 127 inserts a new Part 5 Expiry of Act. The new Section 43 states that the Act expires on the day this section commences.

Part 21 Amendment of Nature Conservation Act 1992**Clause 128 Act amended**

Clause 128 states that this part amends the *Nature Conservation Act 1992*.

Clause 129 Insertion of new s 66 and 66A

Clause 129 inserts a new section 66 and 66A.

New section 66 clarifies that an environmental offset condition may be imposed on a protected area authority under the Act.

New section 66A applies if, on or after the commencement of this section, a protected area authority becomes, under this Act, subject to an environmental offset condition. To the extent the environmental offset condition is inconsistent with a deemed condition, the deemed condition prevails.

Clause 130 Insertion of new pt 5, div 9

Clause 130 inserts new section 100I and 100J.

New section 100I clarifies that an environmental offset condition may be imposed on a wildlife authority.

New section 100J applies if, on or after the commencement of this section, a wildlife authority becomes, under this Act, subject to an environmental offset condition. To the extent the environmental offset condition is inconsistent with a deemed condition, the deemed condition prevails.

Clause 131 Insertion of new pt 12, div 6

Clause 131 inserts a transitional regulation-making power.

Part 22 Amendment of Queensland Heritage Act 1992**Clause 132 Act amended**

Clause 132 states that this part amends the *Queensland Heritage Act 1992*.

Clause 133 Amendment of s 10 (Membership of council)

Clause 133 provides for the amendment of section 10 (Membership of council) of the *Queensland Heritage Act 1992*, to allow for the continuation of the National Trust's membership of the Queensland Heritage Council, after the National Trust becomes an incorporated company. This is done by omitting the name of the National Trust of Queensland and replacing it with the name of the National Trust of Australia (Queensland) Limited.

Clause 134 Insertion of new pt 15, div 4

Clause 134 provides for the insertion of a new Part 15, Division 4 – Transitional provision for Environmental Offsets Act 2014, into the *Queensland Heritage Act 1992*.

The new section 196 provides for a reference to the National Trust of Queensland in the *Queensland Heritage Act* to taken to be a reference to the National Trust of Australian (Queensland) Limited, if the National Trust becomes registered under the *Corporations Act 2001*.

Clause 135 Omission of pt 15, div 4

Clause 135 provides for the current part 15, division 4 to be omitted.

Part 23 Amendment of Sustainable Planning Act 2009**Clause 136 Act amended**

Clause 136 states that this part amends the *Sustainable Planning Act 2009*.

Clause 137 Amendment of s 244 (Development approval includes conditions)

Clause 137 amends section 244 to clarify that a development approval also includes any conditions that under another Act must apply to the development approval. This amendment is to align with Part 6.

Clause 138 Amendment of s 346A (Environmental offset conditions)

Clause 138 aligns the existing power to impose environmental offset conditions with the Bill.

Clause 139 Insertion of new ch 10, pt 10

Clause 139 inserts new sections 970, 971, 972 and 973.

New section 970 provides for environment offset payments to be made to the environmental offset trust if required under an environmental offset condition imposed before the commencement of the Act.

New section 971 continues the effect of local planning instruments in force immediately before the commencement of the Bill. If a provision of a local planning instrument, local planning scheme or development control plan to which this section applies is inconsistent with the requirements with parts 3, 5, 6, 8 or 11, the instrument, scheme or plan prevails to the extent of the inconsistency.

New section 972 applies if, on or after the commencement of this section, a development approval becomes, under this Act, subject to an environmental offset condition. To the extent the environmental offset condition is inconsistent with a deemed condition, the deemed condition prevails.

New section 973 provides a transitional regulation-making power.

Part 24 Amendment of Vegetation Management Act 1999

Clause 140 Act amended

Clause 140 states that this part amends the *Vegetation Management Act 1999*.

Clause 141 Omission of pt 2, div 2A, sdiv 2A

Clause 141 removes part 2, divisions 2A, subdivision 2A to remove reference to the ‘Policy for Vegetation Management Offsets’. The removal of this section is necessary to provide for the environmental offset policy established under the *Environmental Offsets Act 2014*.

Clause 142 Amendment of section 19L (Ending declaration)

Clause 142 provides for the ending of a declaration for an area of high nature conservation value if the area is also a legally secured offset area and the holder of an authority has entered into an agreed delivery arrangement in relation to an environmental offset for impacts to the area.

Clause 143 Omission of pt 2, div 6A

Clause 143 removes additional references to the vegetation management offsets which are made redundant through the introduction of the *Environmental Offsets Act 2014*.

Clause 144 Insertion of new pt 6, div 10

Clause 144 inserts new sections 122 and 123.

New section 122 provides for the continued effect of particular agreements issued prior to the commencement of the Act despite the repeal of section 22DG in the *Vegetation Management Act 1999*.

New section 123 provides a transitional regulation-making power.

Clause 145 Amendment of schedule (Dictionary)

Clause 145 amends certain terms in relation to environmental offsets. This clause also provides for sufficient removal of the term ‘Policy for Vegetation Management Offsets’ and explicitly refer to the environmental offsets policy provided for under the Environmental Offsets Act to be applied for the purposes of the *Vegetation Management Act 1999*.

Part 25 Minor amendments**Clause 146 Act amended**

Clause 146 states that Schedule 1 amends the Acts mentioned in it.

Part 26 Consequential amendments of Environmental Offsets Act 2014**Clause 147 Amendment of long title**

Clause 141 amends the long title.

Schedule 1 Minor Amendments**Coastal Protection and Management Act 1995**

1. *This clause removes the term ‘erecting’ from item 4(a) and replaces with ‘the erection of’ in the Coastal Protection and Management Act 1995.*
2. *This clause removes the term ‘building’ from item 4(b) and replaces with ‘the construction of’ in the Coastal Protection and Management Act 1995.*
3. *This clause removes the term ‘removing’ from item 4(d) and (e), and replaces with ‘the removal of’ in the Coastal Protection and Management Act 1995.*
4. *This clause removes the term ‘constructing’ from item 4(f) and replaces with ‘the construction of’ in the Coastal Protection and Management Act 1995.*
5. *This clause renumbers item 4 as item 3 in the Coastal Protection and Management Act 1995.*

Schedule 2 Dictionary

Schedule 2 contains definitions for various terms used in the Act.