

Environmental Offsets Bill 2014

Amendments during consideration in detail to be moved by

The Honourable the Minister for Environment and Heritage Protection

1 **Clause 8 (What is a *significant residual impact*)**

Page 14, lines 17 to 20—

omit, insert—

- (2) If a prescribed environmental matter is a protected area and the adverse impact of the prescribed activity results, or will or is likely to result, in 1 or more of the following, for the purpose of subsection (1)(b), the impact is significant—

2 **Clause 8 (What is a *significant residual impact*)**

Page 15, lines 3 to 6—

omit, insert—

- (4) If a prescribed environmental matter is, or is in, a legally secured offset area and the adverse impact of the prescribed activity on all or part of the matter results, or will or is likely to result, in 1 or more of the following, for the purpose of subsection (1)(b), the impact is significant—

3 **Clause 8 (What is a *significant residual impact*)**

Page 15, line 14—

omit, insert—

this or another Act);

4 **Clause 8 (What is a *significant residual impact*)**

Page 15, after line 18—

insert—

(5) For subsection (2), a protected area does not include a nature refuge.

(6) To remove any doubt, it is declared that subsection (2) does not apply to a prescribed environmental matter in a protected area.

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

Page 16, line 14, ‘it is’—

omit.

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

Page 16, line 15, before ‘a matter’—

insert—

it is

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

Page 16, line 18, before ‘the subject’—

insert—

it is, or may be,

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

Page 16, lines 21 to 27—

omit.

9 Clause 13 (Content of environmental offsets policy)

Page 18, lines 7 to 8—

omit, insert—

- (e) set out the requirements for calculating the amount required for a financial settlement offset; or
- (f) include any other provision relating to the main purpose of this Act.

10 Clause 14 (Imposing offset condition)

Page 18, line 21, ‘cost-effective’—

omit, insert—

reasonable

11 Clause 14 (Imposing offset condition)

Page 18, lines 26 and 27, ‘for the same prescribed environmental matter.’—

omit, insert—

for—

- (a) the same, or substantially the same, prescribed activity; and
- (b) the same, or substantially the same, prescribed environmental matter; and
- (c) the same, or substantially the same, area of land.

12 Clause 14 (Imposing offset condition)

Page 18, line 29, ‘authority’—

omit, insert—

agency

13 Clause 15 (Restriction on imposition of offset condition)

Page 19, lines 4 to 33—

omit, insert—

- (1) An administering agency must not impose an offset condition on an authority if the significant residual impact on the prescribed environmental matter relates to an area—
 - (a) for which there is an existing Commonwealth condition about—
 - (i) the same, or substantially the same, prescribed activity; and
 - (ii) the same, or substantially the same, prescribed environmental matter; or
 - (b) about which the Commonwealth has decided not to impose a Commonwealth condition for—
 - (i) the same, or substantially the same, prescribed activity; and
 - (ii) the same, or substantially the same, prescribed environmental matter.
- (2) Subsection (1) applies regardless of whether the administering agency considers—
 - (a) if there is an existing Commonwealth condition—the significant residual impact on the prescribed environmental matter is, or is likely to be, more significant than the impact for which the existing Commonwealth condition was decided; or
 - (b) if the Commonwealth decided not to impose a Commonwealth condition—the Commonwealth should have imposed a Commonwealth condition.
- (3) Subsection (1) does not apply if the prescribed environmental matter to which the condition relates is a protected area.
- (4) An administering agency that is a local government must not impose an offset condition on an authority if the significant residual impact

on the prescribed environmental matter relates to an area—

- (a) for which there is an existing State condition about—
 - (i) the same, or substantially the same, prescribed environmental matter; and
 - (ii) the same, or substantially the same, prescribed activity; or
 - (b) about which the State has decided not to impose a State condition for—
 - (i) the same, or substantially the same, prescribed environmental matter; and
 - (ii) the same, or substantially the same, prescribed activity.
- (5) Subsection (4) applies regardless of whether the administering agency considers—
- (a) if there is an existing State condition—the significant residual impact on the prescribed environmental matter is, or is likely to be, more significant than the impact for which the existing State condition was decided; or
 - (b) if the State decided not to impose a State condition—the State should have imposed a State condition.
- (6) In this section—

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

existing means—

- (a) for a State condition—an offset condition that has been imposed; or

- (b) for a Commonwealth condition—a condition that has been imposed under a relevant Commonwealth Act.

14 Clause 15 (Restriction on imposition of offset condition)

Page 20, after line 6—

insert—

State condition means an offset condition.

15 Clause 16 (Conditions that apply under this Act to authority)

Page 20, after line 19—

insert—

- (5) Subsection (4) applies despite anything to the contrary in the *Sustainable Planning Act 2009*, section 347(1)(b) and (c).

16 Clause 18 (Election about delivery of offset condition)

Page 21, lines 15 to 29 and page 22, line 1—

omit, insert—

- (1) This section applies if, under an authority granted under another Act by an administering agency, the authority holder may—
- (a) carry out a prescribed activity to which an offset condition relates for a prescribed environmental matter; or
 - (b) carry out a prescribed activity mentioned in paragraph (a) in stages (a *staged activity*) and deliver an environmental offset for each stage of the staged activity.
- (2) It is a condition of the authority that, before the authority holder starts any part of the prescribed activity mentioned in paragraph (a), or each stage

of a staged activity mentioned in paragraph (b), the holder must—

- (a) elect, by notice in the approved form given to the administering agency, to deliver the offset condition, or the offset condition for each stage of the staged activity, 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 for the prescribed activity mentioned in paragraph (a) or the stage of the staged activity.
- (3) If an authority holder gives a notice of election that involves a proponent-driven offset, it is also a condition of the authority that the notice

17 Clause 18 (Election about delivery of offset condition)

Page 22, line 17, after ‘requirement of’—

insert—

, or of an authority under,

18 Clause 18 (Election about delivery of offset condition)

Page 22, lines 21 and 22, from ‘Land’ to ‘2002’—

omit, insert—

*Land Protection (Pest and Stock Route Management) Act
2002*

19 Clause 18 (Election about delivery of offset condition)

Page 22, lines 30 to 32—

omit.

20 Clause 19 (Reaching agreement about delivery)

Page 23, after line 23—

insert—

- (3A) If the administering agency fails to give notice under subsection (2) or (3) within 40 business days after the administering agency receives the notice of election, the holder of the authority may apply for a review of failure to give notice in the way provided for under subsection (6).

21 Clause 19 (Reaching agreement about delivery)

Page 23, line 27, after ‘**arrangement)**’—

insert—

before the authority holder starts any relevant prescribed activity under the authority

22 Clause 19 (Reaching agreement about delivery)

Page 23, lines 32 to 34—

omit, insert—

- (6) A regulation may provide for—
 - (a) a review of the decision to give a notice under subsection (3), or a failure to give a notice under subsection (2) or (3), within 40 business days after the administering agency receives the notice of election; and
 - (b) what happens if the authority holder and administering agency do not reach

23 After clause 19

Page 24, after line 2—

insert—

Division 2A Amending agreements after prescribed activity starts

19A Amending agreement after prescribed activity starts

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

24 Clause 23 (Requirements for financial settlement offsets)

Page 25, lines 8 to 18—

omit, insert—

required by, and in the way stated in, the agreed delivery arrangement—

- (a) if the offset condition relates to a matter of local environmental significance that is prescribed as a prescribed environmental matter—to the local government that is the administering agency; or
- (b) if the offset condition relates to a matter of State environmental significance that is prescribed as a prescribed environmental matter and further prescribed as relevant for this section—to the local government that is the administering agency; or
- (c) otherwise—to the department.

Note—

See also sections 84 and 88.

- (3) In deciding the amount to be required as a financial settlement offset, an administering agency must calculate the amount in accordance with the environmental offsets policy.

25 Clause 25 (Environmental offset agreement)

Page 26, lines 12 to 15—

omit, insert—

- government's trust fund—the local government;
- (b) otherwise—the chief executive.

26 Clause 28 (What is a *legally secured offset area*)

Page 28, lines 12 to 16—

omit, insert—

- (2) Also, an area is a *legally secured offset area* if, after an offset condition is imposed on an authority—
 - (a) the area is dedicated, or declared by regulation, as mentioned in the *Nature*

Conservation Act 1992, section 29(1) or 46;
and

- (b) the area is subject to a delivery or management plan or agreement (however described in the *Nature Conservation Act 1992*) to achieve a conservation outcome for a prescribed environmental matter.

27 Clause 29 (Declaration of environmental offset protection area)

Page 28, lines 25 to 28—

omit, insert—

- (1) An owner of land may apply, in the approved form, to the chief executive for a declaration the land stated in the application is an environmental offset protection area.
- (1A) The application must be accompanied by—
 - (a) an environmental offset agreement and offset delivery plan, which are designed to achieve a conservation outcome; and
 - (b) the signed consent to the declaration of each person with an interest in the land stated in the application.

28 Clause 29 (Declaration of environmental offset protection area)

Page 29, lines 27 to 31—

omit, insert—

- (c) each other person with an interest in the land within the area has consented to the declaration.

29 Clause 30 (Recording of declared areas, etc.)

Page 30, lines 27 to 30 and page 31, lines 1 to 10—

omit, insert—

- (b) give notice to the land registrar that the declaration has been made.
- (2) The notice under subsection (1)(b) must—
 - (a) include particulars of the land within the area the subject of the declaration; and
 - (b) state that an environmental offset agreement and, if relevant, an offset delivery plan, exist in relation to the land.
- (3) If the land registrar is given a notice under subsection (1)(b) about land within the area the subject of the declaration, the land registrar must keep a record in a way that a search of a register kept by the land registrar will show—
 - (a) the declaration has been made in relation to the land; and
 - (b) an environmental offset agreement and, if relevant, an offset delivery plan exist in relation to the land.

30 Clause 30 (Recording of declared areas, etc.)

Page 31, lines 13 and 14, from ‘the land’ to ‘registered’—

omit, insert—

a record may not be included in a register

31 Clause 33 (Correcting, updating or removing registry record)

Page 32, lines 1 to 19—

omit, insert—

33 Updating or removing registry record

- (1) This section applies if there is a registry record kept by the land registrar about a declaration of

-
- an environmental offset protection area (a *registry record*).
- (2) The chief executive may ask the land registrar to remove the registry record if—
 - (a) there was an error in the notice given to the registrar; or
 - (b) the declaration has been amended; or
 - (c) the declaration has been revoked and replaced.
 - (3) The land registrar must remove the registry record if asked to do so by the chief executive.
 - (4) After the removal, the chief executive may give the land registrar a notice containing information about—
 - (a) a declaration of an environmental offset protection area that was previously made; or
 - (b) a new declaration of an environmental offset protection area.
 - (5) The notice must comply with section 30(2).
 - (6) If the land registrar is given a notice under subsection (4), the land registrar must keep a registry record in a way that a search of a register kept by the land registrar will show the information given under subsection (4).
 - (7) No fee is payable in relation to a removal or recording of a registry record under this section.

32 Clause 36 (Offence relating to compliance notice)

Page 34, lines 11 and 12—

omit, insert—

- conservation outcome—1665 penalty units;
or
- (b) otherwise—300 penalty units.

33 Clause 41 (Functions of inspectors)

Page 35, line 16, ‘inspectors’—

omit, insert—

enforcement officers

34 Clause 44 (Appointment and qualifications)

Page 36, lines 25 and 26—

omit, insert—

(d) other persons prescribed by regulation.

35 Clause 83 (Object of offset account)

Page 57, line 18, after ‘offsets’—

insert—

to achieve conservation outcomes

36 Clause 85 (Payment of amounts from offset account)

Page 58, line 15, before ‘The’—

insert—

(1)

37 Clause 85 (Payment of amounts from offset account)

Page 58, lines 25 to 30—

omit, insert—

(d) paying other amounts required or permitted under this Act to be part of the offset account.

(2) If a financial settlement payment has been made for a prescribed environmental matter that is a protected area, the chief executive must give the amount to the department responsible for the administration of the protected area for the

delivery of an environmental offset as mentioned in section 7(3).

- (3) However, subsection (2) does not apply for financial settlement payments received in relation to impacts on—
 - (a) other matters of environmental significance within a protected area; or
 - (b) a protected area that is a nature refuge.

38 Clause 88 (Payment of amounts into and from trust fund)

Page 59, lines 26 to 28 and page 60, lines 1 and 2—

omit, insert—

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

39 Clause 92 (Regulation-making power)

Page 61, line 20, ‘identified’—

omit, insert—

registered

40 Clause 94 (Application of this Act or existing Act)

Page 63, lines 10 to 12, from ‘if the’ to ‘offset’—

omit, insert—

to the extent a new environmental offset condition is imposed on the amended authority

41 Clause 95 (Transitional regulation-making power)

Page 63, after line 32—

insert—

- (5) To remove any doubt, it is declared that the operation of an existing Act includes the operation of subordinate legislation or other statutory instruments under the existing Act.

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

Page 88, after line 8—

insert—

- (3B) Section 347(1)(b) and (c) does not apply in relation to a deemed condition.

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

Page 88, lines 16 to 19—

omit, insert—

omit.

44 After clause 138

Page 88, after line 19—

insert—

138A Insertion of new s 346B

After section 346A—

insert—

346B Conditions of authority

- (1) This section applies if, on or after the commencement of this section, a condition comes into force that is an environmental offset condition under section 346A.
- (2) To the extent the environmental offset condition is inconsistent with a deemed condition, the deemed condition prevails.

Note—

See the *Environmental Offsets Act 2014*, section 5(3). Under that provision, particular imposed conditions prevail over deemed conditions.

45 Clause 139 (Insertion of new ch 10, pt 10)

Page 89, lines 13 to 31 and page 90, lines 1 to 20—

omit.

46 After clause 139

Page 91, after line 10—

insert—

139A Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

deemed condition see the *Environmental Offsets Act 2014*, schedule 2.

environmental offset see the *Environmental Offsets Act 2014*, schedule 2.

47 Schedule 2 (Dictionary)

Page 97, line 6, ‘section 19’—

omit, insert—

sections 19 and 19A.

48 Schedule 2 (Dictionary)

Page 98, after line 19—

insert—

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

© State of Queensland 2014

Authorised by the Parliamentary Counsel