



New South Wales

Biodiversity Conservation Amendment (Controlled Actions) Regulation 2019

under the

Biodiversity Conservation Act 2016

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Biodiversity Conservation Act 2016*.

MATTHEW KEAN, MP
Minister for Energy and Environment

Explanatory note

The *Biodiversity Conservation Regulation 2017* (the **principal Regulation**) prescribes the rules that apply for the purposes of the biodiversity offsets scheme under the *Biodiversity Conservation Act 2016* in determining the measures required to offset the impacts on biodiversity values of development and the clearing of native vegetation. The principal Regulation also sets out the circumstances in which the ordinary rules for the determination of the like-for-like biodiversity credits required to be retired as an offsetting measure may be varied (the **variation rules**).

This Regulation excludes from the application of the variation rules the impact on listed threatened species or ecological communities within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, or their habitats, of development or an activity that—

- (a) is required to be authorised by certain planning approvals under the *Environmental Planning and Assessment Act 1979*, or vegetation clearing approvals under the *Local Land Services Act 2013* or *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*, and
- (b) is a controlled action requiring environmental assessment and approval under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

This Regulation also limits the circumstances in which amounts paid into the Biodiversity Conservation Fund may be applied towards securing biodiversity offsets relating to the impact (including by excluding the use of the variation rules for the purpose of retiring biodiversity credits).

This Regulation is made under the *Biodiversity Conservation Act 2016*, including sections 6.4, 6.6, 6.31 and 14.10 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Biodiversity Conservation Amendment (Controlled Actions) Regulation 2019*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Biodiversity Conservation Regulation 2017

[1] **Clause 1.3 Definitions**

Insert in appropriate order in clause 1.3(1)—
variation rules—see clause 6.4.

[2] **Clause 6.4 Variation rules under biodiversity offsets scheme (section 6.4 (4))**

Insert at the end of the clause—
Note. See also clause 6.6A.

[3] **Clause 6.6 Offset and other rules applying to Biodiversity Conservation Trust applying Fund money towards securing biodiversity offsets (sections 6.31 and 10.12)**

Insert at the end of the clause—
Note. See also clause 6.6A.

[4] **Clause 6.6A**

Insert after clause 6.6—

6.6A Limitation of variation rules in relation to controlled actions under Environment Protection and Biodiversity Conservation Act 1999 (Cth) (sections 6.4, 6.6 and 6.31)

- (1) The variation rules do not apply to the impact on a listed threatened species or ecological community, or its habitat, of a proposed action that is a controlled action.
- (2) A person who pays an amount into the Biodiversity Conservation Fund for the purpose of satisfying a requirement to retire biodiversity credits in connection with the impact on a listed threatened species or ecological community, or its habitat, of a proposed action that is a controlled action is to notify the Biodiversity Conservation Trust when making the payment that the action is a controlled action.
- (3) The following provisions apply for the purposes of the application of amounts paid into the Biodiversity Conservation Fund under Division 6 of Part 6 of the Act in connection with the impact on a listed threatened species or ecological community, or its habitat, of a proposed action that the Biodiversity Conservation Trust has been notified is a controlled action—
 - (a) the variation rules may not be used for the purposes of the retirement of biodiversity credits in respect of the impact of the action on the listed threatened species or ecological community, or its habitat,
 - (b) in the application of clause 6.6(1)(e), the conservation measure approved by the Minister must be a measure that benefits the listed threatened species or ecological community, or its habitat.
- (4) A *proposed action* is a proposed development or activity that is, or would be, authorised by a planning approval or a vegetation clearing approval.
- (5) A proposed action is a *controlled action* if the Minister administering the Commonwealth Act has decided under Part 7 of Chapter 4 of that Act—
 - (a) that the action is a controlled action, and
 - (b) that provisions of section 18 or 18A (or both) of that Commonwealth Act are controlling provisions for the action.

(6) In this clause—

Commonwealth Act means the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

listed threatened species or ecological community means a listed threatened species, or a listed threatened ecological community, within the meaning of the Commonwealth Act.