



Queensland

Nature Conservation and Other Legislation Amendment Regulation (No. 1) 2013

Subordinate Legislation 2013 No. 250

made under the

Nature Conservation Act 1992

State Penalties Enforcement Act 1999

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[s 1]

Part 1 Preliminary

1 Short title

This regulation may be cited as the *Nature Conservation and Other Legislation Amendment Regulation (No. 1) 2013*.

Part 2 Amendment of Nature Conservation (Administration) Regulation 2006

2 Regulation amended

This part amends the *Nature Conservation (Administration) Regulation 2006*.

3 Amendment of s 12 (Permits for animals other than in a protected area)

(1) Section 12(b) to (f)—

renumber as section 12(c) to (g).

(2) Section 12—

insert—

(b) a flying-fox roost management permit;

4 Amendment of s 21 (Maximum term for permits for wildlife)

(1) Section 21(1)(b) to (g)—

renumber as section 21(1)(c) to (h).

[s 7]

7 Amendment of ch 3, pt 1, hdg (Taking, keeping, using or moving protected animals other than under wildlife authority)

Chapter 3, part 1, heading, ‘or moving’—

omit, insert—

, moving or dealing with

8 Amendment of s 36 (Purpose of pt 1)

Section 36, after ‘moving of’—

insert—

, or dealing with,

9 Amendment of s 39 (Veterinary surgeons)

(1) Section 39(2)—

omit, insert—

(2) Also, the surgeon may euthanase the animal if the surgeon reasonably believes the animal—

(a) is sick or injured to the extent that the animal is unable or unlikely to recover from the sickness or injury; or

(b) is unable or unlikely to survive in the wild because the animal is orphaned.

(2) Section 39(3), ‘Also, if’—

omit, insert—

If

10 Insertion of new ss 41A and 41B

After section 41—

insert—

41A Local government dealing with flying-fox roost in urban flying-fox management area

- (1) This section applies to a local government dealing with a flying-fox roost located in an urban flying-fox management area in the local government area.
- (2) However, this section does not apply to an area for which the local government has been granted a flying-fox roost management permit.
- (3) The local government may, without a wildlife authority, do any of the following—
 - (a) destroy a flying-fox roost;
 - (b) drive away, or attempt to drive away, a flying-fox from a flying-fox roost;
 - (c) disturb a flying fox in a flying-fox roost.
- (4) The local government may take action under subsection (3) only in a way that complies with the flying-fox roost management code.
- (5) In this section—

local government includes a person acting under the authority of a local government.

41B Low impact activities affecting a flying-fox roost

- (1) A person may, without a wildlife authority, do any of the following to or near a tree that is a flying-fox roost—
 - (a) cut the branches of the tree;
 - (b) put mulch near the tree;

[s 11]

- (c) mow grass near the tree;
- (d) cut, remove or destroy vegetation near the tree.

Note—

The clearing of vegetation is regulated by the *Vegetation Management Act 1999*.

- (2) A person may take action under subsection (1) only in a way that complies with the flying-fox roost low impact activities code.

11 Amendment of ch 3, pt 4, hdg (Permits for taking, keeping or using animals)

Chapter 3, part 4, heading, ‘or using’—

omit, insert—

, using or dealing with

12 Amendment of s 180 (Restriction on grant of particular permits to children if weapon involved)

- (1) Section 180(b) and (c)—

renumber as section 180(c) and (d).

- (2) Section 180—

insert—

- (b) a flying-fox roost management permit;

13 Amendment of s 181 (Purpose of permit and div 2)

- (1) Section 181(1), ‘do an authorised act affecting’—

omit, insert—

take, keep or use

(2) Section 181(2), ‘do authorised acts affecting’—

omit, insert—

take, keep or use

(3) Section 181(3)(a), ‘do an authorised act affecting’—

omit, insert—

take, keep or use

(4) Section 181(4)—

omit.

14 Amendment of s 182 (General restriction about animals for which permit may be granted)

Section 182(2), from ‘do any’—

omit, insert—

take the animal under the permit.

15 Amendment of s 184 (Restriction about purposes for which permit may be granted)

Section 184(1)(b), ‘and’—

omit, insert—

or

16 Amendment of s 186 (Restriction on grant of permit for threat to human health and wellbeing)

(1) Section 186, heading, ‘and’—

omit, insert—

or

(2) Section 186(a), ‘and wellbeing’—

omit, insert—

or wellbeing

[s 17]

17 Omission of s 187A (Particular activities affecting flying-foxes authorised)

Section 187A—

omit.

18 Insertion of new ch 3, pt 4, div 2A

Chapter 3, part 4—

insert—

Division 2A Flying-fox roost management permits

Subdivision 1 Purposes

188A Purpose of permit and div 2A

- (1) The purpose of a flying-fox roost management permit is to allow a person to deal with a flying-fox roost if flying-foxes in the flying-fox roost—
 - (a) are causing, or may cause, damage to property; or
 - (b) represent a threat, or potential threat, to human health or wellbeing.
- (2) The purpose of this division is to ensure the grant of a flying-fox roost management permit to deal with a flying-fox roost does not adversely affect the conservation of flying-foxes.
- (3) The purpose mentioned in subsection (2) is achieved by—
 - (a) allowing the chief executive to grant a flying-fox roost management permit to deal with a flying-fox roost only in limited circumstances; and

- (b) limiting the activities that a person is authorised to do under a flying-fox roost management permit; and
 - (c) regulating the activities of persons acting under a flying-fox roost management permit.
- (4) In this section—
- deal with*, a flying-fox roost, means any of the following—
- (a) destroy a flying-fox roost;
 - (b) drive away, or attempt to drive away, a flying-fox from a flying-fox roost;
 - (c) disturb a flying-fox in a flying-fox roost.

Subdivision 2 Restrictions on grant of permit

188B Restriction about purposes for which permit may be granted

The chief executive may grant a flying-fox roost management permit only for 1 or both of the following purposes—

- (a) to prevent damage or loss caused, or likely to be caused, by flying-foxes;
- (b) to prevent or minimise a threat, or potential threat, to human health or wellbeing caused by flying-foxes.

188C Restriction on grant of permit for damage or loss

The chief executive may grant a flying-fox roost management permit for damage or loss caused, or likely to be caused, by flying-foxes only if the chief executive is satisfied—

[s 18]

- (a) the flying-foxes are causing, or may cause, damage; and
- (b) the landholder of the land on which the flying-foxes are causing, or may cause, damage has made a reasonable attempt to prevent or minimise the damage and the action taken has not prevented or minimised the damage; and

Examples of action that may be taken to prevent or minimise damage caused by flying-foxes—

- 1 covering fruit trees with netting
 - 2 moving cars or equipment to a sheltered location
- (c) if the damage is not prevented or controlled—
 - (i) individuals may suffer significant economic loss; or
 - (ii) the ecological sustainability of nature is likely to be harmed; and
 - (d) action under the permit will not adversely affect the survival of flying-foxes in the wild; and
 - (e) the proposed way of taking action under the permit is humane and not likely to cause unnecessary suffering to the flying-foxes.

188D Restriction on grant of permit for threat to human health or wellbeing

The chief executive may grant a flying-fox roost management permit for a threat, or potential threat, to human health or wellbeing caused by flying-foxes only if the chief executive is satisfied—

- (a) there is, or may be, a threat to a person's health or wellbeing resulting from harm

-
- caused by the flying-foxes to the person;
and
- (b) action under the permit will not detrimentally affect the survival of flying-foxes in the wild; and
 - (c) the proposed way of taking action under the permit is humane and not likely to cause unnecessary suffering to the flying-foxes.

188E Additional restriction on grant of permit outside an urban flying-fox management area

- (1) This section applies if the chief executive intends to grant a flying-fox roost management permit in an area (the *permit area*) that is outside an urban flying-fox management area.
- (2) Before granting the permit, the chief executive must consider whether the flying-foxes in the flying-fox roost in the permit area are likely to move to, and congregate at, a tree or other place within an urban-flying fox management area, taking into account—
 - (a) the proximity of the permit area to the urban flying-fox management area; and
 - (b) the direction, from the permit area, of trees or other places suitable for the flying-foxes to move to and congregate at.

Subdivision 3 Activities authorised by permit

188F Destruction etc. of flying-fox roost authorised

The holder of a flying-fox roost management permit, or a relevant person for the holder, may do any of the following stated on the permit—

[s 19]

- (a) destroy a flying-fox roost in the way stated on the permit;
- (b) drive away, or attempt to drive away, flying-foxes from a flying-fox roost in the way stated on the permit;
- (c) disturb flying-foxes in a flying-fox roost in the way stated on the permit.

Subdivision 4 Carrying out activities under permit

188G Giving return of operations

- (1) The holder of a flying-fox roost management permit must give the chief executive a return of operations for the permit.

Note—

For the requirements for returns of operations required to be given under the Act, see the Administration Regulation, part 7.

Maximum penalty—120 penalty units.

- (2) The holder complies with subsection (1) if a relevant person for the holder gives the return to the chief executive for the holder.

19 Amendment of s 278 (Restriction about purposes for which permit may be granted)

Section 278(b), ‘and’—

omit, insert—

or

20 Amendment of s 280 (Restriction on grant of permit for threat to human health and wellbeing)

(1) Section 280, heading, ‘and’—

omit, insert—

or

(2) Section 280, ‘and wellbeing’—

omit, insert—

or wellbeing

21 Amendment of s 332 (Tampering with animal breeding place)

Section 332(4)—

insert—

- (c) the breeding place is a flying-fox roost and—
 - (i) the person holds a flying-fox roost management permit authorising the removal or tampering; or
 - (ii) the removal or tampering is authorised under section 41A or 41B.

[s 22]

22 Insertion of new ch 8, pt 7

Chapter 8—

insert—

Part 7 Urban flying-fox management area map

Division 1 Preliminary

375 Main purpose of pt 7 and its achievement

- (1) The main purpose of this part is to manage the impacts of flying-foxes on human health or wellbeing in urban areas in a way that ensures the conservation of flying-foxes.
- (2) The main purpose is achieved by authorising the chief executive to—
 - (a) make a map of the areas in which a local government may deal with a flying-fox roost under section 41A; and
 - (b) allow or stop action under section 41A by amending the map in particular circumstances.

376 Definitions for pt 7

In this part—

local government includes a person acting under the authority of the local government.

urban flying-fox management area means an area described and shown on the urban flying-fox management area map.

urban flying-fox management area map means the electronic map of that name, held by the

department, as made and amended from time to time under division 3.

Division 2 Making, publishing and accessing map

377 Making and keeping map

- (1) The chief executive may make an urban flying-fox management area map.
- (2) The chief executive must keep digital electronic information that allows the exact location of the boundaries shown on the map to be identified.
- (3) The chief executive must continue to keep the information, including information about amendments under division 3.
- (4) The information is taken to form part of the map.

378 Public access to map

The chief executive must—

- (a) keep the urban flying-fox management area map published on the department's website; and
- (b) make the map available for inspection during office hours on business days, free of charge, by members of the public at the department's head office and each regional office of the department; and
- (c) permit anyone to take extracts from the map, free of charge, from the department's website, head office or regional office.

Division 3 Amending the map

379 Chief executive may amend map in particular circumstances

- (1) The chief executive may amend the urban flying-fox management area map under this division in any of the circumstances mentioned in subsections (2) and (3).
- (2) A local government may—
 - (a) give the chief executive information about an area zoned for use for residential or commercial purposes under the local government's planning scheme; and
 - (b) ask the chief executive to amend the map to include the area.
- (3) The chief executive may also amend the map without a request under subsection (2)—
 - (a) to include an area if the chief executive reasonably believes flying-foxes are impacting on human health or wellbeing in the area; or
 - (b) to remove an urban flying-fox management area if the chief executive reasonably believes—
 - (i) the local government for the area has contravened the flying-fox roost management code or the flying-fox roost low impact activities code; or
 - (ii) the conservation of flying-foxes cannot reasonably be achieved by allowing action authorised under section 41A to happen in the area.

Example for subparagraph (ii)—

The destruction of flying-fox roosts, when combined with a heatwave in the local government area, will adversely affect the survival of flying-foxes in the area.

- (4) In this section—

planning scheme see the *Sustainable Planning Act 2009*, section 79.

380 Period for considering requests by local government

The chief executive may give a local government notice stating that the chief executive will only consider a request by the local government under section 379(2) during a stated period each year.

381 Amending map on request by local government

- (1) This section applies to an amendment of the urban flying-fox management area map requested by a local government under section 379(2).
- (2) The chief executive must consider whether to make the amendment, taking into account the impact of the amendment on—
 - (a) human health or wellbeing; and
 - (b) the conservation of flying-foxes.
- (3) The chief executive may amend the map in the way decided by the chief executive.
- (4) If the chief executive decides to amend the map, the chief executive must—
 - (a) give the local government notice of the amendment at least 7 days before the day the map is amended; and

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- (b) publish a notice, stating the nature of the amendment, on the department's website on the day the amendment is made.
- (5) If the chief executive decides not to amend the map, the chief executive must—
 - (a) give the local government notice of the chief executive's decision and reason for the decision; and
 - (b) publish a notice, stating the chief executive's decision and the reason for the decision on the department's website.

382 Amending map in other circumstances

- (1) The chief executive may, in a circumstance mentioned in section 379(3), amend the urban flying-fox management area map in the way decided by the chief executive.
- (2) The chief executive must—
 - (a) give the local government for the affected urban flying-fox management area notice of the amendment at least 2 days before the day the map is amended; and
 - (b) publish a notice, stating the nature of the amendment, on the department's website on the day the amendment is made.
- (3) A notice under subsection (2) must state—
 - (a) the period of not more than 3 months that the amendment takes effect; and
 - (b) the reason for the amendment.

383 Chief executive to decide whether to reinstate removed area

- (1) This section applies to an area removed from the urban flying-fox management area map in a circumstance mentioned in section 379(3)(b).
- (2) Before the end of the period stated in the notice for the removal under section 382(2)(b), the chief executive must—
 - (a) ask the local government for the area for any information relevant to the removal of the area from the map; and
 - (b) consider any information given to the chief executive by the local government under paragraph (a); and
 - (c) decide—
 - (i) to amend the map to reinstate the area, or part of the area; or
 - (ii) not to amend the map.
- (3) The chief executive must—
 - (a) give the local government notice of the chief executive's decision under subsection (2)(c); and
 - (b) publish a notice stating the chief executive's decision on the department's website.
- (4) A notice under subsection (3) must state—
 - (a) the reason for the chief executive's decision; and
 - (b) if the chief executive decides not to amend the map—the day the decision takes effect.
- (5) If the chief executive decides to amend the map under subsection (2)(c)(i), the chief executive—

[s 23]

- (a) may amend the map in the way decided by the chief executive; and
- (b) must publish a notice, stating the nature of the amendment, on the department's website on the day the amendment is made.

Division 4 Map or amendment taking effect

384 When map or amendment takes effect

- (1) The urban flying-fox management area map takes effect when it is published on the department's website.
- (2) An amendment of the map takes effect on the day the chief executive publishes the notice for the amendment on the department's website.

23 Amendment of sch 5 (Dictionary)

Schedule 5—

insert—

flying-fox roost low impact activities code means the document called 'Code of practice—low impact activities affecting flying-fox roosts', approved by the chief executive under section 174A of the Act.

flying-fox roost management code means the document called 'Code of practice—Ecologically sustainable management of flying-fox roosts', approved by the chief executive under section 174A of the Act.

local government, for chapter 8, part 7, see section 376.

