



# **Recreation Areas Management Act 2006**

**Reprinted as in force on 27 August 2007**

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**Reprint No. 0A**

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This page is specific to this reprint. A table of reprints is included in the endnotes.

**Also see endnotes for information about when provisions commenced.**

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Queensland

# Recreation Areas Management Act 2006

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# Recreation Areas Management Act 2006

[reprinted as in force on 27 August 2007]

**An Act for the establishment, management and use of recreation areas, and for other purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Recreation Areas Management Act 2006*.

### 2 Commencement

This Act commences on a day to be fixed by proclamation.

### 3 Definitions

The dictionary in the schedule defines particular words used in this Act.

### 4 Purpose of Act

- (1) The main purpose of this Act is—
  - (a) the establishment, maintenance and use of recreation areas; and
  - (b) to provide, coordinate, integrate and improve recreational planning, recreational facilities and recreational management for recreation areas, having regard to—
    - (i) the conservation, cultural, educational, production and recreational values of the areas; and

- (ii) the interests of area land-holders.
- (2) The purpose is to be achieved mainly by—
- (a) providing for the declaration, planning and management of recreation areas, as far as practicable, in consultation with, and having regard to the views and interests of, area land-holders and other interested groups and persons, including relevant Aboriginal and Torres Strait Islander entities for the area; and
  - (b) recognising the rights and obligations of area land-holders; and
  - (c) ensuring the management of, and activities permitted in, a recreation area are not incompatible with the tenure of all land in the recreation area; and
  - (d) providing for access to recreation areas, including the use of recreation areas and facilities and services for recreation; and
  - (e) providing for the payment of fees and charges for the use of recreation areas and facilities and services for recreation; and
  - (f) publishing information about recreation areas and facilities and services for recreation; and
  - (g) enforcing compliance with this Act.

## **5 Act binds all persons**

- (1) This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) This Act does not make the Commonwealth, the State or another State liable to be prosecuted for an offence.

## Part 2 Recreation areas

### Division 1 Establishing recreation areas

#### 6 Agreement for inclusion of land in recreation area

- (1) Any land may be included in a recreation area.
- (2) However, land other than State land can not be included in a recreation area unless the land-holder enters into a written agreement (a *recreation area agreement*) with the State for its inclusion.
- (3) A recreation area agreement must—
  - (a) include any conditions of the inclusion; and
  - (b) be consistent with this Act; and
  - (c) not be incompatible with the tenure of the land and any conditions of the tenure; and
  - (d) in relation to land subject to an exclusive possession determination—be in the form of an indigenous land use agreement under the *Native Title Act 1993* (Cwlth).
- (4) In this section—

*land-holder* means a person who would be an area land-holder if the land were included in a recreation area.

#### 7 Declaration of recreation area

- (1) Subject to section 6, a regulation may declare an area to be a recreation area.
- (2) The regulation must—
  - (a) describe the land included in the recreation area; and
  - (b) give a name to the recreation area; and
  - (c) state the management intent for the recreation area.

## **Division 2                    Amalgamating, dividing and     revoking recreation areas**

### **8            Amalgamating or dividing recreation areas**

- (1) A regulation may—
  - (a) amalgamate recreation areas and give a name to the amalgamated area; or
  - (b) divide a recreation area into 2 or more recreation areas and give a name to each of the areas.
- (2) The regulation must also describe the land included in each resulting recreation area.
- (3) A recreation area agreement for land in the area amalgamated or divided still has effect for the land to which it relates.

### **9            Revoking recreation areas**

A regulation may revoke all or part of the declaration of a recreation area, whether or not an area land-holder asks for the revocation.

## **Division 3                    Recreation area agreements**

### **10          Recording particulars of agreements**

- (1) As soon as practicable after entering into a recreation area agreement, the chief executive must give notice of the agreement to—
  - (a) if the agreement relates to freehold land—the registrar of titles; or
  - (b) if the agreement relates to a lease or licence, or is a reserve, under the *Land Act 1994*—the chief executive administering that Act.
- (2) The person to whom the notice is given must record details of the notice in a way that a search of the relevant register will show the existence of the agreement.



**11 Agreements attach to land**

- (1) A recreation area agreement, notice of which is recorded under section 10, attaches to the land and binds—
  - (a) the land-holder who entered into the agreement and the land-holder's successors in title; and
  - (b) each other person who has an interest in the land.
- (2) In this section—

*land-holder's successor in title*, for land, includes a person who acquires title to the land whether or not the title is of a different tenure.

**12 Amending or cancelling agreements**

- (1) All of the parties to a recreation area agreement may, by signing another agreement, amend or cancel the recreation area agreement.
- (2) If the other agreement does not require land to be removed from the recreation area, the amendment has effect—
  - (a) if the other agreement states a day the amendment takes effect—from the day stated; or
  - (b) if no day is stated—from the day the other agreement is signed.
- (3) If the other agreement requires land to be removed from the recreation area or cancels the recreation area agreement, the Governor in Council must, by regulation, revoke the declaration of the recreation area to the extent required by the amendment or cancellation.
- (4) The amendment or cancellation has effect from the day the regulation has effect.
- (5) If all or part of the land the subject of a recreation area agreement becomes State land, other than for an immediate dealing with the land under the *Land Act 1994* by which the land will not remain State land, the agreement is cancelled to the extent the land becomes State land.
- (6) Also, if subsection (3) does not apply and all or part of the land the subject of a recreation area agreement is removed

from the recreation area under section 9, the agreement is taken to be amended or cancelled to the extent of the removal.

(7) In this section—

*parties*, to a recreation agreement, means—

- (a) the State; and
- (b) the land-holder who entered into the agreement or, if the land-holder no longer holds the title, the land-holder's current successor in title.

### **13 Recording amendment or cancellation of agreement**

(1) After a recreation area agreement is amended or cancelled under section 12(3), (5) or (6), the chief executive must give notice of the amendment or cancellation to—

- (a) if the agreement relates to freehold land—the registrar of titles; or
- (b) if the agreement relates to a lease or licence, or is a reserve, under the *Land Act 1994*—the chief executive administering that Act.

(2) The person to whom the notice is given must—

- (a) if the agreement is cancelled—remove reference to the agreement from the relevant register; or
- (b) if the agreement is amended to remove its application from the whole of a lot—remove reference to the agreement in relation to the lot from the register.

## **Division 4 Effect of declaration on land-holders and native title rights**

### **14 Rights and obligations of area land-holders not affected**

Unless a recreation area agreement expressly states otherwise, this Act does not affect the rights and obligations of an area land-holder concerning the land-holder's land included in the recreation area.

**15 Rights and obligations of interest holders not affected**

This Act does not affect the rights and obligations of a person who, in relation to land included in a recreation area, has—

- (a) an interest recorded in a relevant register; or
- (b) a prospecting permit or an exploration permit under the *Mineral Resources Act 1989*; or
- (c) an authority to prospect under the *Petroleum Act 1923*; or
- (d) an authority of a type mentioned in the *Petroleum and Gas (Production and Safety) Act 2004*, section 18.

**16 Native title rights and interests not affected**

To remove any doubt, it is declared that the declaration of an area as a recreation area does not extinguish or affect native title or native title rights and interests in relation to land included in the area.

**17 Effect of declaration of recreation area on mining interests**

- (1) The inclusion of land in a recreation area does not prevent a person from obtaining a mining interest over the land if the person could otherwise have obtained the interest.
- (2) Also, this Act does not operate to restrict the entry of a person on land in a recreation area under the authority of a mining interest over the land.
- (3) In this section—  
*mining interest* includes—
  - (a) a prospecting permit or an exploration permit under the *Mineral Resources Act 1989*; and
  - (b) an authority to prospect under the *Petroleum Act 1923*; and
  - (c) an authority of a type mentioned in the *Petroleum and Gas (Production and Safety) Act 2004*, section 18.

## **Part 3                      Management plans**

### **Division 1                      Preparing and approving management plans**

#### **18                      Preparing draft management plan**

- (1) As soon as practicable after a recreation area is established, the Minister must prepare a draft management plan for the area.
- (2) The draft plan may apply, adopt, or incorporate (with or without modification) the provisions of another document, whether of the same or a different kind.
- (3) A provision of another document applied, adopted or incorporated is the provision as in force from time to time, unless the draft plan expressly states otherwise.

#### **19                      Public notice of draft management plan**

- (1) The Minister must give public notice of the draft plan.
- (2) The notice must—
  - (a) state—
    - (i) the recreation area the draft plan relates to; and
    - (ii) that a copy of the draft plan and the provisions of any document applied, adopted or incorporated by the plan are available for inspection, without charge—
      - (A) during normal business hours at the department's head office and at each department office in the general area in which the recreation area is located; and
      - (B) on the department's web site; and
  - (b) invite members of the public, including area land-holders and relevant Aboriginal and Torres Strait Islander entities for the area, to make written

submissions about the draft plan to the Minister, within a stated period.

- (3) The stated period must be at least 20 business days after the public notice is given.
- (4) Subsection (2)(b) does not apply if—
  - (a) the draft plan is substantially uniform or complementary with—
    - (i) another Act; or
    - (ii) a law of the Commonwealth or another State; or
  - (b) the draft plan adopts an Australian or international protocol, standard, code, or intergovernmental agreement or instrument, and an assessment of the benefits and costs associated with the plan has already been made and the assessment was made for, or is relevant to, Queensland; or
  - (c) there has already been other public consultation about the matters, the subject of the plan, and the Minister is satisfied the public has been adequately consulted about the matters.
- (5) On payment of the fee decided by the chief executive, a person may obtain a copy of the draft plan from the chief executive.
- (6) The fee must not be more than the cost to the chief executive of—
  - (a) making the copy available to the person; and
  - (b) if the person asks for the material to be posted—the postage.

## **20 Content of draft management plan**

- (1) The draft management plan must state—
  - (a) the name of the recreation area; and
  - (b) the recreational objects to be achieved for planning, developing and managing the area.

- (2) Subsection (1) does not limit the matters for which the draft plan may provide.

**21 Minister to prepare final management plan**

After considering each submission made under section 19(2), the Minister must, having regard to the purpose of this Act, prepare a final management plan.

**22 Approval of final management plan**

- (1) If the final management plan has been prepared under sections 18 to 21, the Governor in Council may, by gazette notice, approve the final management plan.
- (2) The gazette notice must state where a copy of the approved final management plan is available for inspection.

**23 When approved management plan has effect**

The approved management plan has effect on and from the later of the following days—

- (a) the day the gazette notice approving the plan is published;
- (b) the commencement day stated in the approved plan.

**24 Effect of management plan if there is an amalgamation or division**

- (1) A regulation amalgamating recreation areas may state that an approved management plan for 1 of the areas included in the amalgamated area is the approved management plan for the amalgamated area and applies for all, or a stated part, of the amalgamated area.
- (2) A regulation dividing a recreation area may state that the approved management plan for the undivided area is the approved management plan for each divided area and applies for each divided area to the extent stated in the regulation.

## **Division 2                      Amending and reviewing management plans**

### **25            Preparing draft amendment**

- (1) The Minister may prepare a draft amendment of an approved management plan.
- (2) The draft amendment may apply, adopt, or incorporate (with or without modification) the provisions of another document, whether of the same or a different kind.
- (3) A provision of another document applied, adopted or incorporated is the provision as in force from time to time, unless the draft amendment expressly provides otherwise.

### **26            Public notice of draft amendment**

- (1) The Minister must give public notice of the draft amendment.
- (2) The notice must—
  - (a) identify the management plan proposed to be amended; and
  - (b) state that a copy of the draft amendment and the provisions of any document applied, adopted or incorporated by the amendment are available for inspection, without charge by the chief executive—
    - (i) during normal business hours at the department's head office and at each department office in the general area in which the recreation area is located; and
    - (ii) on the department's web site; and
  - (c) invite members of the public, including area land-holders and relevant Aboriginal and Torres Strait Islander entities for the area, to make written submissions about the draft amendment to the Minister, within a stated period.
- (3) The stated period must be at least 20 business days after the public notice is given.

- (4) On payment of the fee decided by the chief executive, a person may obtain a copy of the draft amendment from the chief executive.
- (5) The fee must not be more than the cost to the chief executive of—
  - (a) making the copy available to the person; and
  - (b) if the person asks for the material to be posted—the postage.

## **27 Exceptions from ss 25 and 26**

- (1) Sections 25 and 26 do not apply if the proposed amendment prepared by the Minister is—
  - (a) a minor amendment—
    - (i) to correct an error in the approved management plan; or
    - (ii) to make a change, other than a change of substance, in the plan; or
  - (b) of a type that the plan states may be made under this subsection.
- (2) Also, the sections do not apply if—
  - (a) for an approved management plan that is substantially uniform or complementary with another Act or a law of the Commonwealth or another State—the amendment is needed to ensure the plan remains substantially uniform or complementary; or
  - (b) the amendment adopts an Australian or international protocol, standard, code, or intergovernmental agreement or instrument, and an assessment of the benefits and costs associated with the amendment has already been made and the assessment was made for, or is relevant to, Queensland; or
  - (c) there has already been other public consultation about the matters, the subject of the amendment, and the Minister is satisfied the public has been adequately consulted about the matters.



**28 Preparing final amendment**

- (1) For an amendment to which section 26 applies, the Minister must consider each submission made under that section and having regard to the purpose of this Act, prepare a final amendment.
- (2) For an amendment to which section 26 does not apply, the Minister must, having regard to the purpose of this Act, prepare a final amendment.

**29 Approval of amendment**

- (1) If the final amendment has been prepared under this division, the Governor in Council may, by gazette notice, approve the final amendment.
- (2) The gazette notice—
  - (a) is not subordinate legislation; and
  - (b) must state where a copy of the approved final amendment is available for inspection.

**30 When approved amendment has effect**

The approved amendment has effect on and from the later of the following days—

- (a) the day the gazette notice approving the amendment is published;
- (b) the commencement day stated in the amendment.

**31 Reviewing management plans**

- (1) Within 10 years after the day an approved management plan commences, the Minister must give public notice of the Minister's intention to review the plan.
- (2) The notice must—
  - (a) identify the management plan proposed to be reviewed; and
  - (b) state that a copy of the approved plan is available for inspection, without charge by the chief executive—

- (i) during normal business hours at the department's head office and at each department office in the general area in which the recreation area is located; and
  - (ii) on the department's web site; and
- (c) invite members of the public, including area land-holders and relevant Aboriginal and Torres Strait Islander entities for the area, to make written submissions about the review to the Minister, within a stated period.
- (3) The stated period must be at least 20 business days after the public notice is given.
- (4) After considering each submission made under subsection (2), the Minister may—
  - (a) prepare a new draft management plan for the recreation area under section 18; or
  - (b) prepare a draft amendment to the existing approved management plan for the recreation area under section 25; or
  - (c) leave the existing approved management plan for the recreation area unchanged.

## **Division 3                      Other matters about management plans**

### **32                      Public access to approved management plans**

- (1) The chief executive must keep a copy of each current approved management plan available for inspection, without charge, by members of the public—
  - (a) during normal business hours at the department's head office and at each department office in the general area in which the recreation area is located; and
  - (b) on the department's web site.

- (2) On payment of the fee decided by the chief executive, a person may obtain a copy of the approved management plan from the chief executive.
- (3) The fee must not be more than the cost to the chief executive of—
  - (a) making the copy available to the person; and
  - (b) if the person asks for the material to be posted—the postage.

### **33 Chief executive may enter into cooperative arrangement for approved management plan**

The chief executive may enter into an agreement or other arrangement with the following persons about the preparation, amendment, review or implementation of an approved management plan for a recreation area—

- (a) a person, or group of persons, including relevant Aboriginal and Torres Strait Islander entities for the area, having a special interest in the area; or
- (b) a person representing a person or group mentioned in paragraph (a).

## **Part 4 Access to, and permits for, recreation areas**

### **Division 1 Activities permitted**

#### **34 Types of permits**

- (1) The chief executive may issue the following permits for a recreation area—
  - (a) camping permit;
  - (b) vehicle access permit;
  - (c) group activity permit;

- (d) commercial activity permit.
- (2) As well as authorising the activity for which a permit is issued, a permit may also authorise another activity related to the authorised activity.

### **35 Terms of permits**

- (1) A permit is given for the term stated in it.
- (2) The term must not be more than the following—
  - (a) for a camping permit—30 days;
  - (b) for a vehicle access permit—1 year;
  - (c) for a group activity permit—1 year;
  - (d) for a commercial activity permit—3 years.
- (3) The permit expires at the end of the term.

## **Division 2                      Camping permits**

### **36 How to obtain a camping permit**

- (1) Subject to subsection (3), an application for a camping permit must be—
  - (a) made to the chief executive; and
  - (b) supported by sufficient information to enable the application to be decided.
- (2) The applicant must also pay the permit fee before the application is decided.
- (3) For a self-registration camping area a person may—
  - (a) fill in a camping form for the area in the way stated on the form; and
  - (b) either—
    - (i) place the camping fee in cash or a cheque in the camping fee envelope and seal the envelope; or

- (ii) properly complete and sign the credit card payment section of the camping form; and
- (c) put the envelope in the camping fee container.

### **37 When a camping permit granted**

- (1) Subject to subsections (2) and (3), a camping permit is granted when the chief executive decides the application and gives the applicant a permit.
- (2) A person who applies for a camping permit for an e-permit camping area by way of the Internet web-site authorised by the chief executive is taken to have been granted a permit when the person receives a notice stating the number identifying the permit.
- (3) A person who applies by phone for a camping permit for an e-permit camping area is taken to have been granted a permit when all of the following steps have been completed—
  - (a) the person gives the information required on the approved form;
  - (b) the person states that the person understands and accepts the conditions of the permit;
  - (c) the person pays the correct permit fee by giving the person's credit card details;
  - (d) the person is issued a number identifying the permit.
- (4) For a self-registration camping area, a person is taken to have been granted a camping permit for the area and period stated in the camping form when the person complies with section 36(3).
- (5) However, a camping permit for a self-registration camping area is taken not to have been granted if—
  - (a) the person pays the camping fee by cheque and the cheque is dishonoured; or
  - (b) the person completes the credit card payment section of the camping fee envelope and the person's financial institution does not authorise the payment.
- (6) Subsections (2) and (3) have effect subject to section 38.

**38 Extent to which camping permit granted**

- (1) A camping permit taken to have been granted under section 37(2) or (3) is taken to have been granted only—
  - (a) for the number of people stated by the person when applying for the permit; and
  - (b) for the number of days stated by the person when applying for the permit; and
  - (c) for the time when the area, the subject of the permit, is an e-permit camping area; and
  - (d) for not longer than 30 days or, if the e-permit camping notice or any additional conditions notice for the area states a shorter period as the longest period for which anyone may camp in the area, the shorter period.
- (2) A camping permit taken to have been granted under section 37(4) is taken to have been granted only—
  - (a) for the number of people stated on the camping form; and
  - (b) for not more than the number of people stated on the self-registration camping notice; and
  - (c) for the time when the area, the subject of the permit, is a self-registration camping area; and
  - (d) for not longer than 30 days or, if the self-registration camping notice states a shorter period as the longest period for which anyone may camp in the area, the shorter period.

**39 Conditions of camping permit**

- (1) For an e-permit camping area, the conditions stated in the e-permit camping notice, and any additional conditions notice, for the area are taken to be conditions of each camping permit for the area.
- (2) For a self-registration camping area, the conditions stated in the self-registration camping notice for the area are taken to be conditions of each camping permit for the area.

#### **40 Camping permit taken to be authorisation under other Acts**

A camping permit for a recreation area is, for the *Nature Conservation Act 1992*, the *Forestry Act 1959* and the *Marine Parks Act 1982*, taken to be an authorisation permitting camping in the area under those Acts.

### **Division 3 Vehicle access permits**

#### **41 How to obtain a vehicle access permit**

- (1) An application for a vehicle access permit must be—
  - (a) made to the chief executive; and
  - (b) supported by sufficient information to enable the application to be decided.
- (2) The applicant must also pay the permit fee before the application is decided.
- (3) On each occasion a rental vehicle is in a recreation area, the person who hired the vehicle for that occasion must be the person who applies for the vehicle access permit.
- (4) In this section—

*rental vehicle* means a vehicle that is rented without a driver for the vehicle being offered or made available by, through, or on behalf of, the person providing the vehicle for rent.

#### **42 When a vehicle access permit granted**

- (1) Subject to subsections (2) and (3), a vehicle access permit is granted when the chief executive decides the application and gives the applicant a permit.
- (2) A person who applies for a vehicle access permit on the Internet web-site authorised by the chief executive is taken to have been granted a permit when the person receives a notice stating the number identifying the permit.
- (3) A person who applies by phone for a vehicle access permit is taken to have been granted a permit when all of the following steps have been completed—

- (a) the person gives the information required on the approved form;
- (b) the person states that the person understands and accepts the conditions of the permit;
- (c) the person pays the correct fee by giving the person's credit card details;
- (d) the person is issued a number identifying the permit.

#### **43 Extent to which vehicle access permit granted**

A vehicle access permit taken to have been granted under sections 42(2) or 42(3) is taken to have been granted only—

- (a) for the vehicle stated by the person when applying for the permit; and
- (b) for the period stated by the person when applying for the permit.

#### **44 Vehicle access permit taken to be authorisation under Forestry Act 1959**

- (1) A vehicle access permit for a recreation area is, for the *Forestry Act 1959*, taken to be an authorisation under that Act for the person in control of the vehicle to traverse a road in the area.
- (2) Subsection (1) does not apply if a regulatory notice or other sign prohibits—
  - (a) the use of the vehicle on the road; or
  - (b) access to the area.

### **Division 4 Group activity permits**

#### **45 How to obtain a group activity permit**

- (1) An application for a group activity permit must be—
  - (a) made to the chief executive in the approved form; and



- (b) supported by sufficient information to enable the application to be decided.
- (2) The applicant must also pay the permit fee before the application is decided.

**46 Requirements for grant of application for group activity permit**

- (1) The chief executive may grant an application for a group activity permit only if the chief executive considers there is adequate insurance cover for the activities proposed to be conducted under the permit.
- (2) However, subsection (1) does not apply if the chief executive considers insurance cover is not required having regard to the nature of the activities.

**47 When a group activity permit granted**

A group activity permit is granted when the chief executive decides the application and gives the applicant a permit.

**48 Group activity permit taken to be authorisation under other Acts**

A group activity permit authorising an activity in a recreation area is, for the *Nature Conservation Act 1992* and the *Forestry Act 1959*, taken to be an authorisation permitting the activity in the area under those Acts.

**Division 5 Commercial activity permits**

**49 How to obtain a commercial activity permit**

- (1) An application for a commercial activity permit must be—
  - (a) made to the chief executive in the approved form; and
  - (b) supported by sufficient information to enable the chief executive to decide the application; and
  - (c) accompanied by the application and permit fees.

- (2) Information in the application must, if the approved form requires, be verified by a statutory declaration.

## **50 Requirements for holding commercial activity permit**

- (1) The chief executive may grant the application if the chief executive is satisfied—
- (a) the applicant is a suitable person to hold the permit; and
  - (b) there is adequate insurance cover for the activities proposed to be conducted under the permit.
- (2) However, subsection (1)(b) does not apply if the chief executive considers insurance cover is not required having regard to the nature of the activities.
- (3) In deciding whether the applicant is a suitable person to hold the permit, the chief executive may—
- (a) inquire about the applicant and an associated person of the applicant; and
  - (b) have regard to any matter relevant to the applicant's ability to carry on the commercial activities for which the permit is sought in a competent and ethical way.
- (4) In this section—
- associated person*, of the applicant, means—
- (a) if the applicant is a corporation—each executive officer of the corporation; or
  - (b) if the applicant is not a corporation, a person who—
    - (i) is regularly or usually in charge of the applicant's business; or
    - (ii) regularly directs staff of the applicant's business in their duties; or
    - (iii) is in a position to control or substantially influence the applicant's business.

**51 Chief executive may request public notice of application for commercial activity permit**

- (1) This section applies if the chief executive considers the grant of an application for a commercial activity permit for a recreation area may restrict the reasonable use of a part of the area by persons other than the applicant.
- (2) The chief executive may give the applicant a written notice stating—
  - (a) the applicant must give public notice of the application within a stated period; and
  - (b) the information that must be included in the public notice; and
  - (c) the number of times, being not more than 2, the public notice must be given.
- (3) The applicant must give the public notice and ensure it—
  - (a) includes the stated information; and
  - (b) invites interested persons to make written submissions to the chief executive, in relation to the application—
    - (i) at an address stated in the public notice; and
    - (ii) within a stated period of not less than 20 business days.
- (4) Before deciding whether or not to grant the permit, the chief executive must consider any written submissions received by the chief executive in response to the public notice.

**52 Deciding application for commercial activity permit**

- (1) The chief executive must consider the application and decide—
  - (a) to grant the application, with or without conditions decided by the chief executive, including, for example—
    - (i) limiting the activities that may be carried out under the permit; or
    - (ii) allowing activities that may be carried out under the permit to be monitored; or

- (b) to grant the application for a shorter period than applied for; or
  - (c) to refuse the application.
- (2) Subsection (3) applies if the application is for a new commercial activity permit to commence immediately after an existing commercial activity permit expires.
- (3) Without limiting subsection (1), when deciding the application, the chief executive may refuse to grant the application if the chief executive reasonably believes—
  - (a) the existing permit was obtained on the basis of incorrect or misleading information; or
  - (b) the holder of the existing permit has contravened a condition of the permit.
- (4) The chief executive must make the decision—
  - (a) if the chief executive asks for further information about the application under section 56—within 40 business days after receiving the information requested; or
  - (b) otherwise—within 40 business days after receiving the application.
- (5) If the chief executive decides to grant the application the chief executive must, as soon as practicable after making the decision, issue a permit to the applicant.
- (6) If the chief executive decides to grant the application with conditions, or to refuse the application, the chief executive must as soon as practicable after making the decision give the applicant an information notice about the decision.

### **53 Additional matters to be considered under s 52**

- (1) In deciding an application under section 52, the chief executive must have regard to each of the following—
  - (a) the purpose of this Act;
  - (b) the management intent for the recreation area, and the area's current draft or approved management plan;
  - (c) conservation of the area's cultural and natural resources;

- (d) the amenity of the area and adjacent areas;
  - (e) the size, extent and location of the proposed use in relation to other uses of the area or adjacent areas;
  - (f) the likely cumulative effect of the proposed use and other uses on the area;
  - (g) public health and safety;
  - (h) any relevant Australian or international code, instrument, protocol or standard or any relevant intergovernmental agreement;
  - (i) the requirements mentioned in section 50;
  - (j) whether there are any grounds for refusing the application.
- (2) Without limiting subsection (1), the chief executive may have regard to anything else the chief executive considers appropriate to achieve the purpose of this Act.
- (3) For subsection (1)(j), the following are grounds for refusing the application to the extent the chief executive is satisfied they are relevant to the activities to be carried out under the permit applied for—
- (a) the applicant has accumulated 10 or more demerit points in the 3 years immediately before the day the application is decided;
  - (b) the applicant is the former holder of a commercial activity permit, the permit was cancelled because the applicant accumulated 10 or more demerit points, and the application is made within 2 years after the permit was cancelled;
  - (c) the applicant has had an equivalent permit or other authority (however described) in another State or country suspended or cancelled in the 3 years immediately before the day the application is made;
  - (d) the applicant has, in the 3 years immediately before the day the application is made, been convicted of—
    - (i) an offence against this Act or the repealed Act; or

- (ii) an offence against the *Nature Conservation Act 1992* relating to a forest reserve or protected area; or
- (iii) an offence against the *Forestry Act 1959* relating to a State forest or timber reserve; or
- (iv) an offence against the *Marine Parks Act 1982* or the *Marine Parks Act 2004* relating to a marine park; or
- (v) an offence, however described, equivalent to an offence mentioned in subparagraphs (i) to (iv) in another State or country.

**54 Existing commercial activity permit taken to be in force while new application is considered**

- (1) This section applies if an application is made under section 49 for a new commercial activity permit intended to commence immediately after an existing commercial activity permit expires.
- (2) The existing permit is taken to continue in force from the day it would otherwise have expired until the day on which the earliest of the following happens—
  - (a) the chief executive grants the new permit;
  - (b) the chief executive decides to refuse the application and gives the applicant an information notice about the decision;
  - (c) the applicant is taken to have withdrawn the application under section 56(5);
  - (d) the existing permit has continued for 3 months after the day it would otherwise have expired.
- (3) If the chief executive grants the new permit, it is taken to have commenced immediately after the existing permit would otherwise have expired.
- (4) Subsection (2) does not stop the existing permit from being cancelled or suspended under this Act.

**55 Commercial activity permit taken to be authorisation under other Acts**

A commercial activity permit authorising an activity in a recreation area is, for the *Nature Conservation Act 1992* and the *Forestry Act 1959*, taken to be an authorisation permitting the activity in the area under those Acts.

**Division 6 General provisions about permits****56 Chief executive's power to require further information about permit application**

- (1) Before deciding an application for a permit, the chief executive may ask the applicant for any further information or document the chief executive reasonably requires to decide the application.
- (2) The chief executive may require the information or document to be verified by a statutory declaration.
- (3) If the application is for a commercial activity permit, the chief executive may give the applicant a written notice asking the applicant to give the information or document by the day stated in the notice.
- (4) The notice must—
  - (a) be given to the applicant within 20 business days after the chief executive receives the application; and
  - (b) state a reasonable period of at least 20 business days after it is given within which the information or document must be given.
- (5) The applicant is taken to have withdrawn the application if the applicant does not comply with the request within—
  - (a) for a commercial activity permit—the period stated in the notice; or
  - (b) in any other case—a reasonable period.
- (6) The chief executive may extend a period mentioned in subsection (5).

**57 Amending permit application**

If the chief executive agrees, the applicant may amend the application before the chief executive has finished considering it.

**58 Deciding permit application (other than commercial activity permit)**

- (1) The chief executive must consider the application and decide—
  - (a) to grant the application, with or without conditions decided by the chief executive; or
  - (b) to refuse the application.
- (2) In making the decision, the chief executive—
  - (a) must have regard to each of the following—
    - (i) the purpose of this Act;
    - (ii) the management intent for the recreation area, or the area's current draft or approved management plan;
    - (iii) conservation of the area's cultural and natural resources;
    - (iv) the amenity of the area and adjacent areas;
    - (v) the size, extent and location of the proposed use in relation to other use of the area or adjacent areas;
    - (vi) the likely cumulative effect of the proposed use and other uses on the area;
    - (vii) public health and safety;
    - (viii) any relevant Australian or international code, instrument, protocol or standard or any relevant intergovernmental agreement; and
  - (b) may have regard to anything else the chief executive considers appropriate to achieve the purpose of this Act.
- (3) The chief executive must make the decision—



- (a) if the chief executive asks for further information about the application under section 56—within 40 business days after receiving the information requested; or
  - (b) otherwise—within 40 business days after receiving the application.
- (4) This section does not apply for an application for a commercial activity permit.

## **59 Steps to be taken after permit application decided (other than commercial activity permit)**

- (1) If the chief executive decides to grant the application, with or without conditions, the chief executive must, as soon as practicable after making the decision—
- (a) for a group activity permit to be issued with conditions—issue a permit to the applicant and give the applicant an information notice about the decision; or
  - (b) for any other permit—issue a permit to the applicant.
- (2) If the chief executive decides to refuse the application, the chief executive must as soon as practicable after making the decision—
- (a) for a group activity permit—give the applicant an information notice about the decision; or
  - (b) for any other permit—tell the applicant about the refusal.
- (3) This section does not apply for an application for a commercial activity permit.

## **60 Permits**

- (1) A permit must be in writing and state each of the following—
- (a) its issue date;
  - (b) if it does not commence on the issue date—its commencement date;
  - (c) its term or expiry date;
  - (d) the following information about the permit holder—

- (i) the holder's name and, if the holder is a corporation, its ABN or ACN;
    - (ii) the holder's place of business;
  - (e) the recreation area to which the permit relates;
  - (f) the purpose for which the permit is issued;
  - (g) any conditions imposed by the chief executive, under section 58(1)(a), on the permit.
- (2) Subsection (1) does not apply to a permit issued under section 37(2), (3) or (4) or section 42(2) or (3).

## **61 Minor amendments**

- (1) This section applies if—
- (a) the chief executive reasonably considers a permit should be amended; and
  - (b) the proposed amendment is a minor amendment.
- (2) The chief executive may amend the permit by—
- (a) for a camping or vehicle access permit—advising the permit holder of the amendment; or
  - (b) for a group activity or commercial activity permit—giving the holder written notice of the amendment.
- (3) The advice or notice must state the reasons for the amendment.
- (4) Sections 62 to 64 do not apply to the amendment.
- (5) The amendment takes effect on the later of the following days—
- (a) the day when the advice or notice is given to the holder;
  - (b) the day of effect advised or stated in the notice.
- (6) The effect of the amendment does not depend on the amendment being noted on the permit.
- (7) In this section—
- minor amendment*** means an amendment that—

- (a) omits a condition; or
- (b) corrects an error; or
- (c) makes another change, other than a change of substance, that does not adversely affect the holder's interests.

## **62 Amendments by application**

- (1) The holder of a permit may apply to the chief executive for an amendment of the permit.
- (2) The application must be—
  - (a) accompanied by the fee prescribed under a regulation; and
  - (b) if the application relates to a group activity or commercial activity permit—made in writing.
- (3) If the chief executive decides to make the amendment, the chief executive must—
  - (a) for a camping or vehicle access permit—advise the holder of the amendment; or
  - (b) for a group activity or commercial activity permit—give the holder written notice of the amendment.
- (4) The amendment takes effect on the later of the following days—
  - (a) the day when the advice or notice is given to the holder;
  - (b) the day of effect advised or stated in the notice.
- (5) The effect of the amendment does not depend on the amendment being noted on the permit.
- (6) If the chief executive decides to refuse the application, the chief executive must as soon as practicable after making the decision—
  - (a) for a camping or vehicle access permit—advise the holder of the decision; or
  - (b) for a group activity or commercial activity permit—give the holder an information notice about the decision.

**63 Other amendments (other than immediately)**

- (1) The chief executive may amend a permit—
  - (a) if the chief executive reasonably believes—
    - (i) the permit was obtained because of incorrect or misleading information; or
    - (ii) the holder has contravened a condition of the permit; or
    - (iii) for a commercial activity permit—the holder is no longer a suitable person to hold the permit; or
    - (iv) the amendment is necessary having regard to the purpose of this Act; or
  - (b) if the holder has failed to—
    - (i) pay a fee required to be paid under this Act for the permit, by the date or within the period during which the fee must be paid; or
    - (ii) give the chief executive information required to be given under this Act for the permit, by the date or within the period during which the information must be given; or
  - (c) if the holder is convicted of an offence against this Act or the repealed Act; or
  - (d) to secure the safety of a person or a person's property; or
  - (e) to conserve or protect the cultural or natural resources of the recreation area; or
  - (f) if the permit relates to an area that has been declared as a restricted access area or an area closed to the public.
- (2) If the chief executive proposes to make the amendment and the address of the holder is shown on the permit, the chief executive must give the holder a notice stating each of the following—
  - (a) the proposed amendment;
  - (b) the ground for the proposed amendment;
  - (c) an outline of the facts and circumstances forming the basis for the ground;

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- (d) an invitation to make representations, within a stated period, about why the proposed amendment should not be made.
- (3) If the permit is a group activity or commercial activity permit—
    - (a) the notice must be in writing; and
    - (b) the stated period must be at least 20 business days after the notice is given; and
    - (c) the representations must be in writing.
  - (4) The chief executive may amend the permit, if, after considering any representations made within the stated period, the chief executive still believes the amendment should be made—
    - (a) in the way stated in the notice; or
    - (b) in another way, having regard to the representations.
  - (5) If the chief executive amends the permit, the chief executive must—
    - (a) for a camping or vehicle access permit—advise the holder of the amendment; or
    - (b) for a group activity or commercial activity permit—give the holder an information notice about the decision.
  - (6) The amendment takes effect on the later of the following days—
    - (a) the day when the advice or information notice is given to the holder;
    - (b) the day of effect stated in the advice or information notice.
  - (7) The effect of the amendment does not depend on the amendment being noted on the permit.
  - (8) If the chief executive decides not to make the amendment, the chief executive must as soon as practicable after making the decision—
    - (a) for a camping or vehicle access permit—advise the holder of the decision; or

- (b) for a group activity or commercial activity permit—give the holder written notice of the decision.

## **64 Immediate amendment or suspension of permits for safety or conservation**

- (1) This section applies if the chief executive reasonably believes a permit should be amended or suspended—
  - (a) to secure the safety of a person or a person's property; or
  - (b) because of a fire or other natural disaster; or
  - (c) to conserve or protect the cultural or natural resources of the recreation area to which the permit applies.
- (2) The chief executive may, verbally or by signs, advise the permit holder that—
  - (a) the permit is taken to be amended in the way the chief executive advises; or
  - (b) the permit is suspended, to the extent the chief executive advises.
- (3) If the chief executive acts under subsection (2), the amendment or suspension takes effect immediately after the holder is advised of the amendment or suspension and continues until the chief executive advises that the chief executive is satisfied the reason for the amendment or suspension no longer exists.
- (4) The effect of the amendment does not depend on the amendment being noted on the permit.
- (5) The chief executive must as soon as practicable put a notice on the department's web site advising when the amendment or suspension no longer applies.
- (6) In this section—

**sign** includes a sign erected—

  - (a) at or near a usual access point to the recreation area; or
  - (b) in a position that would normally be seen by a person accessing the area.

**65 Cancellling a permit or suspending a permit (other than immediately)**

- (1) The chief executive may cancel a permit or suspend a permit other than immediately—
  - (a) for a reason mentioned in section 64; or—
  - (b) if the chief executive reasonably believes—
    - (i) the permit was obtained because of incorrect or misleading information; or
    - (ii) the permit holder has contravened a condition of the permit; or
    - (iii) for a commercial activity permit—the holder is no longer a suitable person to hold the permit; or
  - (c) if the holder of the permit has failed to—
    - (i) pay a fee required to be paid under this Act for the permit, by the date or within the period during which the fee must be paid; or
    - (ii) give the chief executive information required to be given under this Act for the permit, by the date or within the period during which the information must be given; or
  - (d) if the holder is convicted of an offence against this Act or the repealed Act.
- (2) The chief executive may take action (the *proposed action*) under subsection (1) by giving the holder of the permit a notice stating each of the following—
  - (a) the proposed action;
  - (b) the ground for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the ground;
  - (d) if the proposed action is suspension of the permit—the proposed suspension period;
  - (e) an invitation to make representations, within a stated period, about why the proposed action should not be taken.

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- (3) If the permit is a group activity or commercial activity permit—
  - (a) the notice must be in writing; and
  - (b) the stated period must not be less than 20 business days after the notice is given; and
  - (c) the representations must be in writing.
- (4) If, after considering any representations made within the stated period, the chief executive still considers the ground to take the proposed action exists, the chief executive may decide—
  - (a) if the proposed action was to suspend the permit—to suspend it for not longer than the proposed suspension period; or
  - (b) if the proposed action was to cancel the permit—either to cancel it or to suspend it for a period.
- (5) If the chief executive decides to suspend or cancel the permit, the chief executive must—
  - (a) for a camping or vehicle access permit—advise the holder of the action taken; or
  - (b) for a group activity or commercial activity permit—give the holder an information notice about the decision.
- (6) A decision to suspend or cancel the permit takes effect on the later of the following days—
  - (a) the day when the advice or information notice is given to the holder;
  - (b) the day of effect stated in the advice or information notice.
- (7) If the chief executive decides not to take the proposed action, the chief executive must as soon as practicable after making the decision—
  - (a) for a camping or vehicle access permit—advise the holder of the decision; or
  - (b) for a group activity or commercial activity permit—give the holder written notice of the decision.



**66 Surrendering permits**

- (1) The holder of a permit may surrender it by returning it and giving written notice of surrender to the chief executive.
- (2) A permit surrendered under subsection (1) no longer has effect from—
  - (a) the day for surrender stated in the notice; or
  - (b) if paragraph (a) does not apply—the day the notice is received.

**67 Replacing permits**

- (1) A permit holder may apply to the chief executive for the replacement of a damaged, destroyed, lost, or stolen permit.
- (2) The application must be made in writing and be accompanied by the fee prescribed under a regulation.
- (3) The chief executive must grant the application if the chief executive is satisfied the permit has been—
  - (a) damaged in a way that requires its replacement; or
  - (b) destroyed, lost, or stolen.
- (4) If the chief executive grants the application, the chief executive must issue another permit to the holder to replace the damaged, destroyed, lost, or stolen permit.

**68 Permits and approvals not transferable**

A permit or written approval of the chief executive is not transferable.

## **Part 5                      Commercial activity    agreements for recreation    areas**

### **Division 1                      Preliminary**

#### **69                      Chief executive may enter into commercial activity    agreement**

- (1) The chief executive may, for the State, enter into an agreement (a *commercial activity agreement*) with a person authorising the person to conduct a commercial activity in a recreation area.
- (2) The chief executive may enter into the agreement in any 1 or more of the following ways—
  - (a) by using an expression of interest process under division 2 for entering into the agreement;
  - (b) by using an application process under division 3 for entering into the agreement;
  - (c) by entering into the agreement with the holder of a commercial activity permit for the activity for the area.

#### **70                      Restrictions on entering into commercial activity    agreement**

- (1) A commercial activity agreement must be consistent with this Act and the management intent for the recreation area it concerns.
- (2) Also, a commercial activity agreement must not—
  - (a) create an interest in land in a recreation area; or
  - (b) authorise the carrying out of major earthworks, or the installation of a permanent structure, in a recreation area.
- (3) Sections 50, 52 and 56 apply for the chief executive when entering into a commercial activity agreement as if—

- (a) a reference in those sections to a permit or the application were a reference to a commercial activity agreement; and
- (b) a reference in those sections to the applicant were a reference to the person seeking to enter into the agreement with the chief executive.

(4) In this section—

*major earthworks* means earthworks that cause a major disturbance to the cultural or natural resources of a recreation area.

*Examples of major earthworks—*

construction of a road, drainage channels

## 71 **Content of commercial activity agreements**

- (1) A commercial activity agreement must be written and must include each of the following details—
  - (a) the name of the recreation area it concerns;
  - (b) the date the agreement is entered into;
  - (c) its term;
  - (d) the name of the person with whom it is entered into and, if the person is a corporation, its ABN or ACN;
  - (e) the person's place of business;
  - (f) the activities authorised under the agreement;
  - (g) any conditions of the agreement;
  - (h) the amount payable to the State under the agreement, or a way of working out the amount.
- (2) Subsection (1) does not limit the matters that may be included in the agreement.
- (3) The parties to the agreement may amend it at any time.

## 72 **Mandatory conditions of commercial activity agreements**

- (1) This section applies if the chief executive reasonably believes a commercial activity agreement should be subject to a

condition that will assist in achieving the purpose of this Act (a *recreation management condition*).

- (2) The chief executive must not enter into the agreement unless—
  - (a) the agreement is made subject to the condition; and
  - (b) the agreement identifies the condition as a recreation management condition and states that a breach of the condition is an offence against this Act.

## **Division 2                      Expression of interest process**

### **73            Application of div 2**

This division applies if the chief executive uses an expression of interest process for entering into a commercial activity agreement for conducting a commercial activity in a recreation area.

### **74            Invitation for submissions**

- (1) The chief executive may invite expressions of interest for a commercial activity agreement for the activity for the area from—
  - (a) only the holders of a commercial activity permit for the activity for the area; or
  - (b) the members of the public the chief executive reasonably believes would be interested in submitting an expression of interest for the agreement.
- (2) The invitation must be made in the way the chief executive considers appropriate having regard to the need to ensure the invitees—
  - (a) are made aware that the process is being conducted; and
  - (b) have enough time to make an appropriate submission.
- (3) The invitation must state the following—
  - (a) the commercial activity and the recreation area that will be the subject of the agreement;

- (b) if the commercial activity is a prescribed commercial activity for the area—
  - (i) that the commercial activity is a prescribed commercial activity for the area; and
  - (ii) that, under section 111(2), a person may only conduct the prescribed commercial activity in the area under a commercial activity agreement;
- (c) if the expression of interest process is only open to the holders of a commercial activity permit for the activity for the area—that only those holders may submit an expression of interest for the agreement;
- (d) how the expression of interest may be submitted to the chief executive;
- (e) the day and time by which the expression of interest must be submitted to the chief executive;
- (f) that a fee prescribed under a regulation is payable for submitting the expression of interest;
- (g) that details of each of the following are available at a stated place—
  - (i) the matters the chief executive will consider to decide whether to enter into the agreement;
  - (ii) any proposed conditions of the agreement that are likely to impact on the conducting of the activity under the agreement.

## **75 Requirements for submissions**

An expression of interest for a commercial activity agreement must be—

- (a) in writing; and
- (b) accompanied by the fee prescribed under a regulation; and
- (c) submitted in the way, and by the day and time, stated in the invitation under section 74.

**76 Requirements for process of deciding**

- (1) Subject to section 70(3), any process the chief executive considers appropriate may be used to decide which expressions of interest should be further negotiated toward a commercial activity agreement.
- (2) Without limiting subsection (1), in considering an expression of interest, the chief executive must have regard to—
  - (a) the matters the chief executive must have regard to for considering an application for a commercial activity permit; and
  - (b) any other matter the chief executive reasonably considers relevant.

**77 Chief executive may request further information**

- (1) Without limiting section 76(1), the chief executive may also, by written notice, ask the submitter to give the chief executive further reasonable information by the date, not less than 20 business days after the submitter receives the notice, stated in the notice.
- (2) If the submitter does not, without reasonable excuse, give the chief executive the further information by the stated day—
  - (a) the submission is taken to have been withdrawn; and
  - (b) the chief executive must give the applicant a written notice stating that—
    - (i) under this section the application is taken to be withdrawn; and
    - (ii) the applicant may make a new application.
- (3) However, the chief executive may extend the period for the applicant to give the further information.

**78 Amending the submission**

If the chief executive agrees, the submitter may amend the submission before the chief executive has finished considering it.

**79 Notice to unsuccessful submitters**

The chief executive must, within 14 days after making a decision under section 76, give each unsuccessful submitter a written notice about the decision.

**Division 3 Application process****80 Application of div 3**

This division applies if the chief executive uses an application process for entering into a commercial activity agreement for conducting a commercial activity in a recreation area.

**81 Applying for commercial activity agreement**

- (1) A person may apply to the chief executive for a commercial activity agreement for conducting a commercial activity in recreation area.
- (2) The application must be—
  - (a) in writing; and
  - (b) accompanied by the fee prescribed under a regulation.

**82 Matters to be considered for application**

In considering the application, the chief executive must have regard to—

- (a) the matters the chief executive must have regard to for considering an application for a commercial activity permit; and
- (b) any other matter the chief executive reasonably considers relevant.

**83 Chief executive may request further information**

- (1) The chief executive may, by written notice, ask the applicant to give the chief executive further reasonable information by the date, not less than 20 business days after the applicant receives the notice, stated in the notice.

- (2) If the applicant does not, without reasonable excuse, give the chief executive the further information by the stated day—
  - (a) the application is taken to have been withdrawn; and
  - (b) the chief executive must give the applicant written notice stating that—
    - (i) under this section the application is taken to be withdrawn; and
    - (ii) the applicant may make a new application.
- (3) However, the chief executive may extend the period for the applicant to give the further information.

#### **84 Amending the application**

If the chief executive agrees, the applicant may amend the application before the chief executive has finished considering it.

#### **85 Application of s 51 to commercial activity agreements**

Section 51 applies for the chief executive when considering the grant of an application for a commercial activity agreement as if—

- (a) a reference in section 51 to a permit were a reference to a commercial activity agreement; and
- (b) a reference in section 51 to the applicant were a reference to the person seeking to enter into the agreement with the chief executive.

#### **86 Negotiating application for commercial activity agreement**

- (1) The chief executive must consider each application for a commercial activity agreement and decide—
  - (a) to negotiate the signing of a commercial activity agreement for the application; or
  - (b) to refuse to negotiate the signing of a commercial activity agreement for the application.



- (2) The chief executive must give the applicant written notice of the decision within 10 business days of making the decision.
- (3) If the decision is a refusal under subsection (1)(b), the notice must be an information notice.

## **87 Steps to be taken after application decided**

- (1) If, after negotiation, the chief executive decides to enter into a commercial activity agreement, the chief executive must, as soon as practicable after making the decision, enter into the agreement with the applicant.
- (2) If, after negotiation, the chief executive decides to refuse to enter into a commercial activity agreement, the chief executive must, within 10 business days after making the decision, give the applicant an information notice for the decision.

## **Division 4 Requirements applying to and nature of agreements**

### **88 Term and review of commercial activity agreements**

- (1) A commercial activity agreement must not be for a term longer than 10 years from the day the agreement commences.
- (2) However, the agreement may allow for the term of the agreement to be extended at any time, so long as the term of the agreement is not, at any time, longer than 10 years.
- (3) The agreement may also provide for—
  - (a) reviews of the agreement to be conducted at stated intervals; and
  - (b) the matters to be considered at the review.

### **89 Nature of commercial activity agreements**

A commercial activity agreement—

- (a) authorises the party to the agreement other than the chief executive (the *other party* for the agreement) to

conduct, subject to the conditions stated in the agreement, the commercial activity stated in the agreement in the recreation area, or the part of the recreation area, stated in the agreement; and

- (b) may be transferred in the way mentioned in division 6.

## **Division 5                      Amendment, termination and    suspension of agreement by chief    executive**

### **90                      Immediate amendment or suspension of commercial    activity agreements for safety or conservation**

- (1) This section applies if the chief executive reasonably believes a commercial activity agreement should be amended or the authorisation under it suspended—
  - (a) to secure the safety of a person or a person's property; or
  - (b) because of a fire or other natural disaster; or
  - (c) to conserve or protect the cultural or natural resources of the recreation area to which the agreement applies.
- (2) The chief executive may, verbally or by signs, advise the other party to the agreement that—
  - (a) the agreement is taken to be amended in the way the chief executive advises; or
  - (b) the authorisation under the agreement is suspended, to the extent the chief executive advises.
- (3) If the chief executive acts under subsection (2), the amendment or suspension takes effect immediately after the other party is advised of the amendment or suspension and continues until the chief executive advises that the chief executive is satisfied the reason for the amendment or suspension no longer exists.
- (4) The effect of the amendment does not depend on the amendment being noted on the agreement.

- (5) The chief executive must as soon as practicable put a notice on the department's web site advising when the amendment or suspension no longer applies.
- (6) In this section—
  - sign* includes a sign erected—
    - (a) at or near a usual access point to the recreation area; or
    - (b) in a position that would normally be seen by a person accessing the area.

**91 Amending commercial activity agreements (other than immediately)**

- (1) The chief executive may amend a commercial activity agreement other than immediately—
  - (a) if the chief executive reasonably believes—
    - (i) the agreement was obtained because of incorrect or misleading information; or
    - (ii) the other party to the agreement has contravened a condition of the agreement; or
    - (iii) the other party to the agreement is no longer a suitable person to be a party to the agreement; or
    - (iv) the amendment is necessary having regard to the purpose of this Act; or
  - (b) if the other party to the agreement is convicted of an offence against this Act or the repealed Act; or
  - (c) to secure the safety of a person or a person's property; or
  - (d) to conserve or protect the cultural or natural resources of the recreation area to which the agreement applies; or
  - (e) if the agreement relates to an area that has been declared as a restricted access area or an area closed to the public.
- (2) If the chief executive decides to make the amendment, the chief executive may give the other party to the agreement a written notice stating each of the following—
  - (a) the proposed amendment;
  - (b) the ground for the proposed amendment;

- (c) an outline of the facts and circumstances forming the basis for the ground;
  - (d) an invitation to make written representations, within a stated period of at least 20 business days after the notice is given, about why the proposed amendment should not be made.
- (3) The chief executive may amend the agreement, if, after considering any representations made within the stated period, the chief executive still believes the amendment should be made—
- (a) in the way stated in the notice; or
  - (b) in another way, having regard to the representations.
- (4) If the chief executive amends the agreement, the chief executive must give the other party an information notice about the decision.
- (5) The amendment takes effect on the later of the following days—
- (a) the day when the information notice is given to the other party;
  - (b) the day of effect stated in the information notice.
- (6) The effect of the amendment does not depend on the amendment being noted on the agreement.
- (7) If the chief executive decides not to make the amendment, the chief executive must as soon as practicable after making the decision give the other party written notice of the decision.

**92 Cancellling commercial activity agreements or suspending authorisations under agreements (other than immediately)**

The chief executive may cancel a commercial activity agreement or suspend the authorisation under the agreement other than immediately—

- (a) for a reason mentioned in section 90(1); or
- (b) if the chief executive reasonably believes—

- (i) the agreement was obtained because of incorrect or misleading information; or
- (ii) the other party to the agreement has contravened a condition of the agreement; or
- (iii) the other party to the agreement is no longer a suitable person to be a party to the agreement; or
- (c) if the other party to the agreement is convicted of an offence against this Act; or
- (d) if the chief executive reasonably believes the activities being conducted under the agreement are having an unacceptable impact on—
  - (i) the conservation of cultural or natural resources of the recreation area to which it applies; or
  - (ii) the amenity of the recreation area to which it applies and areas adjacent to the area; or
- (e) if the chief executive reasonably believes the activities being conducted under the agreement are threatening public health or safety; or
- (f) if the chief executive reasonably believes the cancellation or suspension is necessary to ensure the fair and equitable access to the area.

*Example for paragraph (f)—*

environmental factors have affected the availability of public access to a recreation area to which the commercial activity agreement applies and the agreement currently restricts the remaining access to the area

## **93 Process for cancelling or suspending under s 92**

- (1) The chief executive may take action (the *proposed action*) under section 92 by giving the other party to the agreement a written notice stating each of the following—
  - (a) the proposed action;
  - (b) the ground for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the ground;

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- (d) if the proposed action is suspension of the agreement—the proposed suspension period;
  - (e) an invitation to make written representations, within a stated period of at least 20 business days after the notice is given, about why the proposed action should not be taken.
- (2) If, after considering any representations made within the stated period, the chief executive still considers the ground to take the proposed action exists, the chief executive may decide—
- (a) if the proposed action was to suspend the authorisation under the agreement—to suspend the authorisation for not longer than the proposed suspension period; or
  - (b) if the proposed action was to cancel the agreement—either to cancel it or to suspend the authorisation under it for a period.
- (3) If the chief executive decides to cancel or suspend the authorisation under the agreement, the chief executive must give the other party to the agreement an information notice about the decision.
- (4) A decision to cancel or suspend the authorisation under the agreement takes effect on the later of the following days—
- (a) the day when the information notice is given to the other party to the agreement;
  - (b) the day of effect stated in the information notice.
- (5) If the chief executive decides not to take the proposed action, the chief executive must as soon as practicable after making the decision give the other party to the agreement written notice of the decision.
- (6) Despite subsections (3) and (4), if the authorisation under a commercial activity agreement is suspended because of the conviction of a person for an offence and the conviction is quashed, the suspension period ends on the day the conviction is quashed.
- (7) Also, despite subsections (3) and (4), if a commercial activity agreement is cancelled because of the conviction of a person

for an offence and the conviction is quashed, the cancellation has no further effect.

## **Division 6                      Transfer of authorisations under commercial activity agreements**

### **94            Application to transfer authorisation under commercial activity agreement**

- (1) The other party to a commercial activity agreement (the *seller*) may transfer the authorisation under the agreement to another person (the *buyer*).
- (2) The seller and the buyer must apply to the chief executive to—
  - (a) approve the transfer; and
  - (b) if the chief executive approves the transfer, give effect to the transfer under this division.

### **95            Approval or non approval of transfer**

- (1) The chief executive may approve the transfer only if the chief executive is satisfied the buyer is a suitable person for the commercial activity the subject of the authorisation.
- (2) If the chief executive refuses to approve the transfer, the chief executive must give the seller and buyer an information notice for the decision.

### **96            Giving effect to transfer**

- (1) This section applies if—
  - (a) the chief executive approves the transfer; and
  - (b) the fee prescribed under a regulation for amending a commercial activity agreement to give effect to the transfer has been paid; and
  - (c) if the buyer has to enter into a commercial activity agreement with the chief executive—the fee prescribed

- under a regulation for an application for the commercial activity agreement has been paid; and
- (d) all fees payable by the seller under the seller's commercial activity agreement have been paid.
- (2) If the seller transfers all of the authorisation under the agreement, the chief executive must give effect to the transfer by cancelling the seller's agreement and—
- (a) if the buyer is the other party to another commercial activity agreement—amending the other agreement to reflect the transfer; or
- (b) if the buyer is not the other party to another commercial activity agreement—entering into, with the buyer, a commercial activity agreement for conducting the commercial activity the subject of the authorisation.
- (3) If the seller transfers only part of the authorisation under the agreement, the chief executive must give effect to the transfer by amending the seller's commercial activity agreement to reflect the transfer and—
- (a) if the buyer is the other party to another commercial activity agreement—amending the other agreement to reflect the transfer; or
- (b) if the buyer is not the other party to another commercial activity agreement—entering into, with the buyer, a commercial activity agreement for the conducting of the commercial activity the subject of the authorisation.

## **Division 7                      General provisions about commercial activity agreements**

### **97        Declaration of prescribed commercial activity**

- (1) The chief executive may, by public notice, declare a commercial activity to be a prescribed commercial activity for a recreation area.
- (2) The notice must state the following—
- (a) the stated commercial activity is a prescribed commercial activity for the stated recreation area;



- (b) that, under section 111(2), a person may conduct the prescribed commercial activity in the area only under a commercial activity agreement;
  - (c) how the person may obtain further information about entering into a commercial activity agreement for the conducting of the prescribed commercial activity in the area.
- (3) The chief executive must also publish the notice on the department's web site.
- (4) In deciding whether to make the declaration, the chief executive must have regard to the following—
- (a) the purpose of this Act;
  - (b) the orderly and proper management of the area;
  - (c) the conservation of the cultural and natural resources of the area;
  - (d) the existing use and amenity, and the future or desirable use and amenity, of the recreation area, and areas adjacent to the recreation area, including the likely cumulative effect of the proposed use and other uses on the area;
  - (e) the likely contributions that potential parties to commercial activity agreements applying to the recreation area will make to the management of the area, including for example, contributions to the conservation and presentation of the values of the area.

## **98 Commercial activity agreement taken to be authorisation under other Acts**

A commercial activity agreement authorising an activity in a recreation area is, for the *Nature Conservation Act 1992* and the *Forestry Act 1959*, taken to be an authorisation permitting the activity in the area under those Acts.

## Part 6                      Regulatory and other notices and restricted access areas

### Division 1                Regulatory and other notices

#### 99        Regulatory notices

- (1) This section applies for an activity that—
  - (a) relates to a public health and safety act; or
  - (b) under this Act may be authorised, regulated or prohibited by a regulatory notice.
- (2) The chief executive may erect or display a notice (a *regulatory notice*) in, at or near the entrance to a recreation area or part of the area to which the notice relates.
- (3) If the chief executive erects a regulatory notice, the notice must—
  - (a) be easily visible to passers-by; and
  - (b) specify the limits of the area to which the notice applies; and
  - (c) state the activity to which it applies and how the activity is authorised, regulated or prohibited.
- (4) The notice may expressly state that a contravention of a requirement of the notice is an offence against this Act and the penalty for the offence.

#### 100      Regulatory information notices

- (1) This section applies if a regulatory notice for a recreation area or part of the area does not expressly state that a contravention of a requirement of the notice is an offence against this Act and the penalty for the offence.
- (2) The chief executive must erect or display in, at or near an entrance to the recreation area, or the part of the area, to which the regulatory notice relates, and other places the chief executive considers appropriate, a notice (a *regulatory information notice*) expressly stating—

- (a) that a contravention of a requirement of the regulatory notice is an offence against this Act; and
  - (b) the penalty for the offence.
- (3) The regulatory information notice must be easily visible to passers-by.
- (4) The regulatory information notice may contain other information about the recreation area the chief executive considers appropriate.

## **Division 2                      Restricted access areas**

### **101      Immediate declaration of restricted access area**

- (1) The chief executive may declare all or part of a recreation area to be a restricted access area by erecting or displaying a notice (a *restricted access area notice*) in, at or near an entrance to the restricted access area.
- (2) The chief executive may make the declaration only if the chief executive considers that access to, or activity in, the restricted access area should immediately be restricted or prohibited—
- (a) to secure the safety of a person or a person's property; or
  - (b) because of a fire or other natural disaster; or
  - (c) to conserve or protect the cultural or natural resources of the recreation area or native wildlife.
- (3) The restricted access area notice must—
- (a) be easily visible to passers-by; and
  - (b) specify the limits of the area to which the notice applies; and
  - (c) state how access to, or activity in, the area is restricted or prohibited; and
  - (d) state that a contravention of a requirement of the notice is an offence against this Act and the penalty for the offence.
- (4) When the notice is erected or displayed, the chief executive—

- (a) must publish a copy of the notice on the department's web site; and
  - (b) may publish the notice in other ways the chief executive considers appropriate.
- (5) If the chief executive is satisfied the reason for making the declaration no longer exists, the chief executive must remove the restricted access area notice as soon as practicable.

**102 Declaration of restricted access area (other than immediately)**

- (1) A regulation may, for a purpose mentioned in subsection (2) declare—
- (a) all or part of a recreation area to be a restricted access area; or
  - (b) an area that is under section 101 a restricted access area to continue to be a restricted access area under this section.
- (2) The following are purposes for subsection (1)—
- (a) the conservation of the cultural or natural resources of the area, including, for example—
    - (i) to protect significant cultural or natural resources; or
    - (ii) to enable the restoration or rehabilitation of the area or part; or
    - (iii) to protect a breeding area for native wildlife; or
    - (iv) to manage a significant Aboriginal area in the area in a way that is consistent with Aboriginal tradition; or
    - (v) to manage a significant Torres Strait Islander area in the area in a way that is consistent with Island custom;
  - (b) protection of individuals from potential danger;
  - (c) protection of a facility or service in the area, including, for example, infrastructure, water supply facilities or power generating equipment;

- (d) protection of the amenity of an area adjacent to the area;
- (e) the orderly or proper management of the area.
- (3) The regulation may be made only after the consultation process mentioned in section 103 has been completed for the declaration.
- (4) The declaration has effect—
  - (a) on the day stated in the regulation; or
  - (b) if no day is stated in the regulation—on the day the regulation is notified in the gazette.
- (5) The chief executive must, as soon as possible after the declaration has effect, erect or display a restricted access area notice in, at or near an entrance to the restricted access area.
- (6) Section 101(3) and (4) applies for the notice.
- (7) In this section—

*significant Aboriginal area* see the *Aboriginal Cultural Heritage Act 2003*, section 9.<sup>1</sup>

*significant Torres Strait Islander area* see the *Torres Strait Islander Cultural Heritage Act 2003*, section 9.<sup>2</sup>

### **103 Consultation with stakeholders about declarations (other than immediately)**

- (1) This section applies if the nature or extent of activities being conducted, or to be conducted under a commercial activity permit or a commercial activity agreement would be significantly affected by the making of a regulation under section 102.
- (2) The chief executive must, give the holder of the permit or the other party to the agreement a written notice stating the following—

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1 *Aboriginal Cultural Heritage Act 2003*, section 9 (Meaning of *significant Aboriginal area*)

2 *Torres Strait Islander Cultural Heritage Act 2003*, section 9 (Meaning of *significant Torres Strait Islander area*)

- (a) consideration is being given to the making of a regulation under section 102;
  - (b) the holder or other party is invited to make written submissions, in relation to the proposed declaration.
- (3) The submissions must be made to the chief executive—
- (a) at the address stated in the notice; and
  - (b) within the period, of at least 20 business days, stated in the notice.
- (4) The chief executive must consider all submissions received in response to the notice.

#### **104 When declarations end**

- (1) A declaration made under section 101 for a restricted access area ends on the day the earlier of the following happens—
- (a) the chief executive removes the restricted access area notice for the area;
  - (b) 6 months after the notice was erected or displayed.
- (2) A declaration made under section 102 for a restricted access area ends on the day the declaration is revoked.
- (3) If under subsection (1)(b) or (2) a declaration ends, the chief executive must remove the restricted access area notice for the restricted access area as soon as practicable.
- (4) When a restricted access area notice for a restricted access area is removed, the chief executive—
- (a) must remove the copy of the notice on the department's web site; and
  - (b) must publish notice of the removal in the same way the chief executive published the notice under section 101(4).

## **Division 3                      Effect of notices**

### **105      Restricted access area notices and regulatory notices prevail over permits, agreements, or authorities**

If there is an inconsistency between a restricted access area notice or a regulatory notice and any of the following, the notice prevails to the extent of the inconsistency—

- (a) a permit;
- (b) a commercial activity agreement;
- (c) an authority issued under this or another Act.

## **Part 7                              Offences**

### **Division 1                      Access to, using and conduct in recreation areas**

#### **106      Unlawfully entering restricted access area**

A person must not enter or remain in a restricted access area unless the person—

- (a) enters the area under a written approval from the chief executive; or
- (b) enters the area under a commercial activity permit or commercial activity agreement that specifically authorises entry to the restricted access area; or
- (c) has a reasonable excuse.

Maximum penalty—80 penalty units.

**107 Failing to comply with particular regulatory notices**

A person in a recreation area must comply with a regulatory notice regulating or prohibiting a public health and safety act, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

**108 Unlawful camping**

- (1) A person must not camp in a recreation area unless authorised by a camping permit, group activity permit, commercial activity permit or commercial activity agreement.

Maximum penalty—20 penalty units.

- (2) However, subsection (1) does not apply if—
- (a) a corresponding authority authorises the person to camp in an area that is also a recreation area and the person complies with the authority and the Act under which the authority was issued; or
  - (b) the person is camping in a vessel anchored or moored below low water mark in the area.
- (3) The holder of a camping permit must not allow more people to camp under the permit than the number authorised under the permit.

Maximum penalty—20 penalty units.

- (4) A person must not camp in a recreation area contrary to a regulatory notice.

Maximum penalty—80 penalty units.

**109 Unlawful use of motor vehicles**

- (1) A person must not take a motor vehicle into a recreation area or drive or ride a motor vehicle in a recreation area unless the taking, driving or riding is authorised by a vehicle access permit, commercial activity permit or commercial activity agreement.

Maximum penalty—20 penalty units.

- (2) However, subsection (1) does not apply for—



- (a) the Inskip Peninsula recreation area; or
  - (b) a recreation area or part of a recreation area prescribed under a regulation; or
  - (c) an emergency vehicle or another class of vehicle prescribed under a regulation.
- (3) In this section—
- emergency vehicle* includes the following—
- (a) an ambulance;
  - (b) a fire engine;
  - (c) a police vehicle;
  - (d) another vehicle, including a tow truck, helicopter or mobile crane, if used in circumstances of an emergency.

### **110 Unlawful conduct of group activity**

A person must not conduct a group activity in a recreation area unless the person conducts the activity under a group activity permit, commercial activity permit or commercial activity agreement.

Maximum penalty—50 penalty units.

### **111 Unlawfully conducting commercial activity**

- (1) A person must not conduct a commercial activity in a recreation area unless the person is authorised to conduct the activity under—

- (a) a commercial activity permit; or
- (b) a commercial activity agreement.

Maximum penalty—165 penalty units.

- (2) If a commercial activity is a prescribed commercial activity for a recreation area, a person must not conduct the activity in the area except under—

- (a) a commercial activity agreement; or

- (b) a commercial activity permit that is in force when the prescribed commercial activity is declared under section 97 and is still in force.

Maximum penalty for subsection (2)—165 penalty units.

## **112 Compliance with recreation management conditions**

A person acting under a commercial activity agreement must comply with each recreation management condition of the agreement.

Maximum penalty—80 penalty units.

## **113 Unauthorised interference with cultural or natural resources**

- (1) A person must not interfere with a cultural or natural resource of a recreation area unless the person has the chief executive's written approval.

Maximum penalty—165 penalty units.

- (2) However, subsection (1) does not apply if a corresponding authority authorises the person to interfere with the resource in the area and the person complies with the authority and the Act under which the authority was issued.
- (3) Also, taking a fish in accordance with the *Fisheries Act 1994*, is not interfering with a cultural or natural resource, unless the taking is prohibited in the area by another Act.
- (4) In this section—  
*interfere with*, in relation to a cultural or natural resource, includes destroy, damage, mark, move or dig up the resource.

## **114 Unauthorised structures and works**

- (1) A person must not erect or keep a structure, other than a camping structure under a camping permit, or carry out works in a recreation area—
  - (a) without the chief executive's written approval; or
  - (b) in contravention of the approval.

Maximum penalty—165 penalty units.

- (2) However, subsection (1) does not apply if a corresponding authority authorises the person to erect or keep the structure or carry out the works in the area and the person complies with the authority and the Act under which the authority was issued.

## **Division 2            Fires**

### **115    Unlawful lighting of fires**

- (1) A person must not, at any time, light a fire on a beach adjoining a lake in a recreation area.

Maximum penalty—80 penalty units.

- (2) A person must not light a fire, or a type of fire, in a recreation area, or part of a recreation area, if lighting a fire, or the type of fire, is prohibited, in the area or part, by—
- (a) a regulatory notice; or
  - (b) a condition of a permit; or
  - (c) another authority held by the person.

*Example of types of fires—*

- a fire using a material other than sawn timber
- a fire using a material other than timber provided in the recreation area for making fires

Maximum penalty—165 penalty units.

- (3) A person must not light, keep or use a fire in a place, in a recreation area, other than—
- (a) a barbecue or fireplace provided by the chief executive; or
  - (b) if a barbecue or fireplace is not provided—a place that is more than 2m from flammable material.

Maximum penalty—165 penalty units.

- (4) This section does not apply to—

- (a) a person lighting a fire with the written approval of the chief executive; or
  - (b) a person lighting or using a specified cooking or heating appliance or lighting or smoking a smoking product if the person takes reasonable steps to ensure the lighting, using or smoking does not result in damage to—
    - (i) a cultural or natural resource of the recreation area; or
    - (ii) property, other than property owned by the person, in the recreation area.
- (5) In this section—  
*smoking product* see the *Tobacco and Other Smoking Products Act 1998*, schedule.

### **116 Unattended fires**

- (1) A person who lights or assumes control of a fire in a recreation area must put the fire out before leaving the fire.  
Maximum penalty—165 penalty units.
- (2) Subsection (1) does not apply to the person if another person assumes control of the fire before the person mentioned in subsection (1) leaves the fire.

### **117 Unauthorised things relating to fires**

- (1) A person must not deposit any of the following in a recreation area—
  - (a) a lit match, pipe, cigar, cigarette or tobacco;
  - (b) hot ashes;
  - (c) a burning or smouldering substance;
  - (d) a substance or device that ignites on impact or by spontaneous combustion.Maximum penalty—165 penalty units.
- (2) Subsection (1) does not apply to a person depositing a thing mentioned in subsection (1) for—

- (a) lighting or using a specified cooking or heating appliance; or
- (b) lighting a fire in a barbecue or fireplace provided by the chief executive; or
- (c) if a barbecue or fireplace is not provided by the chief executive for the area—lighting a fire in a place that is more than 2m from flammable material.

### **Division 3                      Animals and plants**

#### **118      Unauthorised feeding of animals**

- (1) A person in a recreation area must not, without the chief executive's written approval, feed an animal that is dangerous, venomous or capable of injuring a person.

Maximum penalty—40 penalty units.

- (2) A person in a recreation area must not, without the chief executive's written approval, feed an animal if a regulatory notice prohibits the feeding of the animal.

Maximum penalty—40 penalty units.

- (3) However, a person may, without the chief executive's written approval, feed—

- (a) a guide dog in a recreation area; or
- (b) another domesticated dog under control in the Inskip Peninsula recreation area or another recreation area prescribed under a regulation; or
- (c) an animal taken into the recreation area under a corresponding authority or a regulatory notice.

- (4) In this section—

*feed*, in relation to an animal, includes—

- (a) use food to tease or lure the animal; and
- (b) attempt to feed the animal.

**119 Unauthorised disturbance of animals**

- (1) A person in a recreation area must not disturb an animal if—
  - (a) it is dangerous, venomous or capable of injuring a person; or
  - (b) a regulatory notice prohibits the disturbance of the animal.

Maximum penalty—40 penalty units.

- (2) Subsection (1) does not apply to a person who disturbs an animal—
  - (a) with the chief executive's written approval; or
  - (b) in the course of a lawful activity that was not directed towards the disturbance if the disturbance could not have been reasonably avoided.

- (3) In this section—

*disturb*, an animal, means approach, lure, pursue, tease or attempt to disturb the animal.

**120 Food to be kept from animals**

- (1) A person in a recreation area must ensure food in the person's possession or under the person's control is kept—
  - (a) in a way that prevents an animal that is dangerous, venomous or capable of injuring a person from gaining access to the food; or
  - (b) if a regulatory notice states the way in which the food must be kept—in the stated way.

Maximum penalty—40 penalty units.

- (2) In subsection (1)—

*food* does not include food—

- (a) at the time it is being consumed by a person or prepared for human consumption; or
- (b) that is lawfully deposited or disposed of under this Act; or
- (c) given to a guide dog; or

- (d) given to another domesticated dog under control in the Inskip Peninsula recreation area or another recreation area prescribed under a regulation; or
- (e) given to an animal taken into the recreation area in accordance with a corresponding authority or regulatory notice.

### **121 Restriction on animals in recreation area**

- (1) A person must not, other than in accordance with the chief executive's written approval or a corresponding authority—
  - (a) take a live animal into a recreation area; or
  - (b) keep a live animal in a recreation area.

Maximum penalty—20 penalty units.

- (2) In subsection (1)—

*animal* does not include—

  - (a) a guide dog; or
  - (b) a fish, sand crab or mud crab lawfully taken in a recreation area or a place adjacent to the area; or
  - (c) an invertebrate animal lawfully taken in a recreation area or a place adjacent to the area for use as bait for fishing; or
  - (d) an animal taken into the recreation area in the way prescribed under a regulatory notice or a regulation.

### **122 Taking into and keeping of dogs in recreation areas**

- (1) A person must not take a dog into, or keep a dog in, a recreation area unless the dog is under control.

Maximum penalty—20 penalty units.

- (2) A person who takes a dog into, or keeps a dog in, a recreation area must, if the dog defecates in the area—
  - (a) immediately collect the faeces deposited by the dog and enclose them in a secure bag or wrapping; and

- (b) deposit the enclosed faeces in 1 of the bins provided in the area or in the way prescribed under a regulatory notice.

Maximum penalty—20 penalty units.

### **123 Unlawfully bringing plants into recreation areas**

- (1) A person must not take a plant into a recreation area unless—
  - (a) it is for consumption by humans as food; or
  - (b) the person takes the plant into the area in accordance with—
    - (i) the chief executive’s written approval; or
    - (ii) a regulatory notice; or
    - (iii) a corresponding authority; or
    - (iv) a regulation.

Maximum penalty—50 penalty units.

- (2) In this section—

*plant* includes part of a plant.

## **Division 4 Pollution and waste**

### **124 Polluting and misusing water**

- (1) A person must not pollute a dam, lake or watercourse in a recreation area.

Maximum penalty—50 penalty units.

- (2) Without limiting subsection (1), a person pollutes a dam, lake or watercourse if the person—
  - (a) discharges waste from a boat into the dam, lake or watercourse; or
  - (b) uses soap, detergent or shampoo in the dam, lake or watercourse; or
  - (c) puts oil, grease or a harmful or dangerous substance in the dam, lake or watercourse; or



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- (d) washes a vehicle, clothing, cooking utensils or another thing in the dam, lake or watercourse.
- (3) A person must not, in a recreation area—
  - (a) take water from a lake, watercourse or other water storage, other than for personal use within the area; or
  - (b) dam or divert a watercourse; or
  - (c) tamper with or damage a water supply or water storage facility; or
  - (d) allow water from a tap to run to waste.

Maximum penalty—50 penalty units.

- (4) Subsection (3) does not apply to the person doing a thing mentioned in subsection (3) if—
  - (a) the person has the written approval of the chief executive to do the thing; or
  - (b) the person has a corresponding authority authorising the person to do the thing and the person complies with the authority and the Act under which the authority was given.

## **125 Unlawful disposal of offensive or harmful substances**

- (1) A person must not bury or otherwise dispose of, or leave, a noxious, offensive or harmful substance or animal waste in a recreation area.

Maximum penalty—120 penalty units.

- (2) Subsection (1) does not apply to the animal waste of a fish or crab taken in a recreation area, or a place adjacent to a recreation area, if a person deposits or disposes of the waste—
  - (a) in a receptacle provided by the chief executive specifically for depositing or disposing of the waste; or
  - (b) in the way required by a regulatory notice; or
  - (c) in the way prescribed under a regulation.
- (3) In this section—

*animal waste* means offal, a carcass or skeleton.

**126 Dumping or abandoning vehicles or vessels**

A person must not dump or abandon a vehicle or vessel, or part of a vehicle or vessel, in a recreation area.

Maximum penalty—120 penalty units.

**127 Dumping or abandoning waste material**

A person must not dump or abandon used or waste materials, including for example, building materials, fencing materials, drums or vegetation, in a recreation area.

Maximum penalty—120 penalty units.

**Division 5 Other conduct****128 Unauthorised use of generators, compressors or motors**

A person must not use a generator, compressor or other similar motor in a recreation area unless its use is permitted under, and it is used in accordance with—

- (a) a regulatory notice; or
- (b) the chief executive's written approval; or
- (c) a corresponding authority; or
- (d) a regulation.

Maximum penalty—50 penalty units.

**129 Disturbance by radio, tape recorder or sound system**

A person must not use a radio, tape recorder or other sound or amplifier system in a way that may cause unreasonable disturbance to a person or native animal in a recreation area.

Maximum penalty—50 penalty units.

**130 Unlawful possession or use of weapons, explosives or traps**

- (1) A person must not possess or use in a recreation area—

- (a) a bow, catapult or weapon; or
- (b) an explosive device; or
- (c) a net, snare or trap.

Maximum penalty—120 penalty units.

- (2) Subsection (1) does not apply if the possession or use is authorised under—
  - (a) the chief executive’s written approval; or
  - (b) a regulation; or
  - (c) another Act and the person complies with the Act and the possession or use is not prohibited in the area by a further Act.

*Example for paragraph (c)—*

a crab pot, net or other fishing apparatus possessed and used in accordance with the *Fisheries Act 1994*, the possession or use of which is not prohibited in a particular area, for example, a marine park, under a further Act

- (3) A person must not, in a recreation area, carry a loaded spear gun or discharge a spear gun, unless the person is in tidal waters where spear fishing is permitted under an Act.<sup>3</sup>

Maximum penalty—120 penalty units.

- (4) In this section—

***tidal waters*** means waters that are within the ebb and flow of the tide at spring tides.

***weapon*** see the *Weapons Act 1990*, schedule 2.

### **131 Unauthorised use of recreational craft**

A person must not use or operate a recreational craft in a recreation area unless the use or operation is authorised—

- (a) by the chief executive’s written approval; or

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<sup>3</sup> See the *Fisheries Regulation 1995*, schedule 3 (Closed waters—recreational fishing), part 5 (Waters where spear fishing is not allowed).

(b) under a regulation.

Maximum penalty—80 penalty units.

### **132 Unauthorised landing of aircraft**

(1) A person must not land an aircraft in a recreation area, other than on a designated landing area, unless the landing is authorised by—

(a) the chief executive's written approval; or

(b) a permit, agreement or other authority under the *Forestry Act 1959*, the *Marine Parks Act 1982* or the *Nature Conservation Act 1992*.

Maximum penalty—120 penalty units

(2) In this section—

*designated landing area*, for an aircraft or a type of aircraft, means the area—

(a) designated by the chief executive as an appropriate landing area for the aircraft; and

(b) details of which are published on the department's web site.

### **133 General misconduct**

(1) A person in a recreation area must not, unless the person has a reasonable excuse—

(a) be disorderly or create a disturbance; or

(b) do anything that interferes, or is likely to interfere, with the safety or health of the person or someone else in the area.

Maximum penalty—50 penalty units.

(2) A person in a recreation area must not, unless the person has a reasonable excuse or the chief executive's written approval—

(a) restrict access to, for example, by cordoning off, a part of the area or a barbecue, table or other facility in the area; or

- (b) claim to have an exclusive right to use a part of the area or a barbecue, table or other facility in the area.

Maximum penalty—50 penalty units.

- (3) A person in a recreation area must not, unless the person has a reasonable excuse—

- (a) defecate within 10m of a lake, watercourse, natural water storage, walking track or other facility, other than in a facility provided by the chief executive for the purpose; or

- (b) bury human waste, other than in a facility provided by the chief executive for the purpose, within 10m of any of the following—

- (i) a lake, watercourse or natural water storage;
- (ii) an occupied or established campsite;
- (iii) a site designated by a regulatory notice as a campsite;
- (iv) a walking track or other public facility; or

- (c) leave human waste unburied.

Maximum penalty—50 penalty units.

- (4) A person must not tamper with a building, fence, gate, notice, sign or structure in a recreation area unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

#### **134 False or misleading information given by applicant**

A person who applies for a permit or other authority or seeks a commercial activity agreement, must not state anything to the chief executive that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

#### **135 False or misleading documents given by applicant**

- (1) A person who applies for a permit or other authority or seeks a commercial activity agreement, must not give the chief

executive a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document—
  - (a) informs the chief executive, to the best of the person's ability, how it is false or misleading; and
  - (b) gives the correct information to the chief executive if the person has, or can reasonably obtain, the correct information.

### **136 Fraudulent claims for replacement permit**

A person must not fraudulently claim that a permit or other authority has been damaged, destroyed, lost or stolen.

Maximum penalty—20 penalty units.

### **137 Permit or corresponding authority must be available for inspection**

- (1) This section applies to a person while the person is conducting an activity in a recreation area under a group activity permit, a commercial activity permit or a corresponding authority.
- (2) If asked by an authorised officer, the person must, unless the person has a reasonable excuse, produce for inspection by the authorised officer—
  - (a) the permit or authority, or a copy of it, or a copy of the relevant details for the permit or authority; and
  - (b) a form of identification that shows a recent colour photograph of the person.

Maximum penalty—50 penalty units.

### **138 Written approval must be available for inspection**

- (1) This section applies to a person while the person is conducting an activity in a recreation area under a written approval.

- (2) If asked by an authorised officer, the person must, unless the person has a reasonable excuse, produce the approval, or a copy of it, for inspection by the authorised officer.

Maximum penalty—50 penalty units.

**139 Commercial activity agreement must be available for inspection**

- (1) This section applies to a person while the person is conducting an activity in a recreation area under a commercial activity agreement.
- (2) If asked by an authorised officer, the person must, unless the person has a reasonable excuse, produce for inspection by the authorised officer—
- (a) the agreement, a copy of the agreement, or a copy of the relevant details for the agreement; and
  - (b) a form of identification that shows a recent colour photograph of the person.

Maximum penalty—50 penalty units.

**140 Failing to comply with conditions of permit or authority**

A person acting under a permit or other authority must comply with the conditions of the permit or authority, unless the person has a reasonable excuse.

Maximum penalty—80 penalty units.

**141 Requirement to notify chief executive of particular changes**

- (1) This section applies to the holder of an authority if a change of any of the following happens—
- (a) the holder's name;
  - (b) the holder's postal, residential or business address;
  - (c) if the holder is a corporation—the person in charge of the activity carried out under the authority.

- (2) The holder must before, or immediately after, the change happens—
- (a) give the chief executive a written notice stating the nature of the change; and
  - (b) if the change relates to a matter stated on the authority—apply to the chief executive for an amendment of the authority to reflect the change.

Maximum penalty—10 penalty units.

- (3) In this section—

**authority** means a permit, commercial activity agreement or other authority.

**holder**, of an authority that is a commercial activity agreement, means the other party to the agreement.

## **Division 6                      Demerit points for offences**

### **142      Demerit points**

- (1) This section applies to a person who is given an infringement notice under the *State Penalties Enforcement Act 1999* for an offence against this Act and pays the infringement notice penalty for the offence.
- (2) The person accumulates demerit points under this Act for the offence.
- (3) The number of demerit points the person accumulates is—
- (a) if the maximum penalty specified for the offence is no more than 20 penalty units—1 demerit point; or
  - (b) if the maximum penalty specified for the offence is more than 20 penalty units but not more than 50 penalty units—2 demerit points; or
  - (c) if the maximum penalty specified for the offence is more than 50 penalty units but not more than 80 penalty units—3 demerit points; or



- (d) if the maximum penalty specified for the offence is more than 80 penalty units but not more than 120 penalty units—4 demerit points; or
- (e) if the maximum penalty specified for the offence is more than 120 penalty units but not more than 165 penalty units—5 demerit points.

## **Part 8 Investigation and enforcement**

### **Division 1 Authorised officers**

#### **143 Appointment and qualifications**

- (1) The chief executive may appoint any of the following individuals as an authorised officer—
  - (a) a public service employee;
  - (b) with the individual's consent, another individual.
- (2) However, the chief executive may appoint a person as an authorised officer only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

#### **144 Appointment conditions and limit on powers**

- (1) An authorised officer holds office on any conditions stated in—
  - (a) the officer's instrument of appointment; or
  - (b) a signed notice given to the officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the officer or a regulation may limit the officer's powers under this Act.

- (3) In this section—

*signed notice* means a notice signed by the chief executive.

#### **145 Issue of identity card**

- (1) The chief executive must issue an identity card to each authorised officer.
- (2) The identity card must—
- (a) contain a recent photo of the officer; and
  - (b) contain a copy of the officer's signature; and
  - (c) identify the individual as an authorised officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to an individual for this Act and other purposes.

#### **146 Production or display of identity card**

- (1) In exercising a power under this Act in relation to a person, an authorised officer must—
- (a) produce the officer's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the officer must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the officer has entered a place as mentioned in section 150(1)(b) or (2).

#### **147 When authorised officer ceases to hold office**

- (1) An authorised officer ceases to hold office if any of the following happens—
- (a) the term of office stated in a condition of office ends;

- (b) under another condition of office, the officer ceases to hold office;
  - (c) the officer's resignation under section 148 takes effect.
- (2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.
- (3) In this section—

*condition of office* means a condition on which the authorised officer holds office.

## **148 Resignation**

An authorised officer may resign by signed notice given to the chief executive.

## **149 Return of identity card**

An individual who ceases to be an authorised officer must return the individual's identity card to the chief executive within 21 days after ceasing to be an authorised officer, unless the individual has a reasonable excuse.

Maximum penalty—50 penalty units.

# **Division 2 Powers of authorised officers**

## **Subdivision 1 Entry to places**

### **150 Power to enter places**

- (1) An authorised officer may enter a place if—
- (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the entry is authorised by a warrant; or

- (d) it is the place of business of a commercial activity permit holder or a party to a commercial activity agreement and is—
  - (i) open for carrying on the business; or
  - (ii) otherwise open for entry; or
  - (iii) required to be open for inspection under the permit or agreement.
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) For subsection (1)(d), a place of business does not include a part of the place where an individual resides.

## **Subdivision 2 Procedure for entry**

### **151 Entry with consent**

- (1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another authorised officer entering the place under section 150(1)(a).
- (2) Before asking for the consent, the officer must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and

- (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the officer consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgment, the officer must immediately give a copy to the occupier.
- (6) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgment complying with subsection (4) for the entry 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.

## **152 Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

## **153 Issue of warrant**

- (1) The magistrate may issue a warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
  - (b) the evidence is at the place, or, within the next 7 days, will be at the place.
- (2) The warrant must state—
- (a) the place to which the warrant applies; and
  - (b) that a stated authorised officer may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the officer's powers under this part; and
  - (c) particulars of the offence that the magistrate considers appropriate in the circumstances; and
  - (d) the name of the person suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and
  - (g) the extent of re-entry permitted; and
  - (h) the magistrate's name; and
  - (i) the date and time of the warrant's issue; and
  - (j) the date, within 14 days after the warrant's issue, the warrant ends.
- (3) A provision of this part applying to entry authorised under a warrant is taken also to apply to any re-entry authorised under the warrant.

**154 Application by electronic communication and duplicate warrant**

- (1) An application under section 152 may be made by phone, fax, email, radio, videoconferencing or another form of electronic

communication if the authorised officer considers it necessary because of—

- (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the officer's remote location.
- (2) The application—
- (a) may not be made before the officer prepares the written application under section 152(2); but
  - (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
- (a) it was necessary to make the application under subsection (1); and
  - (b) the way the application was made under subsection (1) was appropriate.
- (4) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the officer; or
  - (b) otherwise—
    - (i) the magistrate must tell the officer the date and time the warrant is issued and the other terms of the warrant; and
    - (ii) the officer must complete a form of warrant, including by writing on it—
      - (A) the magistrate's name; and
      - (B) the date and time the magistrate issued the warrant; and
      - (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the *duplicate warrant*) is a duplicate of, and as effectual as, the original warrant.

- (6) The officer must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 152(2) and (3); and
  - (b) if the officer completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (8) Despite subsection (5), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) 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.
- (9) This section does limit section 152.
- (10) In this section—
- relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

## 155 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in the warrant or in compliance with section 152, 153 or 154 unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
- warrant* includes a duplicate warrant mentioned in section 154(5).



**156 Warrants procedure before entry**

- (1) This section applies if an authorised officer named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the officer must do or make a reasonable attempt to do each of the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the officer's identity card, or having the identity card displayed, as mentioned in section 146(1);
  - (b) give the person a copy of the warrant;
  - (c) tell the person the officer is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the officer immediate entry to the place without using force.
- (3) However, the officer need not comply with subsection (2) if the officer believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- (4) In this section—

*warrant* includes a duplicate warrant mentioned in section 154(5).

**Subdivision 3 Powers after entry****157 General powers after entering places**

- (1) This section applies to an authorised officer who enters a place under section 150.
- (2) However, if an authorised officer enters a place to ask the occupier's consent to enter premises, this section applies to the officer only if the consent is given or the entry is otherwise authorised.
- (3) For investigating and enforcing compliance with this Act, the officer may do all or any of the following—

- (a) search any part of the place;
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
- (c) mark or seal a container or other thing at the place;
- (d) open a container if the officer considers it is necessary for exercising a power;
- (e) take a sample of, or from, anything at the place;
- (f) take an extract from, or copy, a document at the place;
- (g) take into, or onto, the place any person, equipment and materials the officer reasonably requires for exercising a power under this division.

### **158 Power to require reasonable help or information**

- (1) An authorised officer may require the occupier of the place, or a person at the place, to give the officer—
  - (a) reasonable help to exercise a power under section 157(3); or
  - (b) information, in a stated reasonable way, to help the officer ascertain whether this Act is being complied with.

*Example of reasonable way—*

by production of a permit or record entry

- (2) When making a requirement under subsection (1), the officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (3) A person required to give reasonable help under subsection (1)(a), or give information under subsection (1)(b), must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (4) If the person is an individual, it is a reasonable excuse for the individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.

## Subdivision 4 Other powers

### 159 Power to give direction to leave camping site for protection, safety or minimising disturbance

- (1) An authorised officer may give a person camping in part of a recreation area (the *camping site*) an oral or written direction requiring the person, and each other person camping with the person, to immediately—
  - (a) leave the camping site; and
  - (b) remove all of the person's possessions and the equipment or other things being used for camping from the site.
- (2) However, the officer may give the direction only if the officer reasonably believes it is necessary for the person, and the other persons camping with the person, to leave the site to—
  - (a) protect cultural or natural resources in the recreation area; or
  - (b) secure the safety of a person or a person's property; or
  - (c) minimise disturbance to persons in the recreation area.
- (3) In giving the direction the authorised officer must advise the reason why the direction has been given.
- (4) A person to whom the direction is given, and each other person camping with the person, must, unless the person has a reasonable excuse, comply with the direction.

Maximum penalty for subsection (4)—50 penalty units.

### 160 Power to give direction to leave camping site for person camping at same site for long periods

- (1) An authorised officer may give a person camping in part of a recreation area (the *camping site*) a written direction stating the person, and each person camping with the person, must—
  - (a) leave the camping site; and
  - (b) remove all of the person's possessions and the equipment or other things being used for camping from the site; and

- (c) not return to the site for a stated period.
- (2) However, the officer may give the direction only if—
  - (a) the officer reasonably believes—
    - (i) the same, or predominantly the same, equipment or other things used for camping have occupied the site for 30 days or more and it is necessary or desirable to allow the site to be used by another person who is authorised under this Act to camp at the site; or
    - (ii) the natural condition of the site has been, or is being, degraded by the presence of the equipment or other things being used for camping at the site; or
    - (iii) it is necessary for the person to leave the site for health or safety reasons; and
  - (b) another part of the recreation area is available for the person to use for camping.
- (3) The direction must state the reason why the direction has been given.
- (4) A person to whom the direction is given, and each person camping with the person, must comply with the direction.

Maximum penalty for subsection (4)—50 penalty units.

## **161 Power to give direction about fires**

- (1) If an authorised officer reasonably believes a fire in a recreation area is, or may become, a hazard to the area, a person or property, the authorised officer may—
  - (a) give the person apparently in charge of the fire an oral or written direction to put the fire out or lower its intensity to a reasonable level; or
  - (b) put out the fire.

*Example of basis for reasonable belief—*

a prevailing strong wind appears likely to carry wind-borne embers away from the fire

- (2) The person must comply with the direction.  
Maximum penalty—165 penalty units.

### **162 Power to give direction about dogs**

- (1) An authorised officer may give a person in control of a dog in a recreation area an oral or written direction to remove the dog from the area if the officer reasonably believes that the dog—
- (a) is unlawfully in the area; or
  - (b) has been causing a nuisance or disturbance; or
  - (c) is a danger to persons, other dogs or wildlife in the area.
- (2) The person must—
- (a) remove the dog from the area; and
  - (b) ensure the dog is not returned to the area within 24 hours after its removal.

Maximum penalty—40 penalty units.

### **163 Power to stop persons**

- (1) An authorised officer may require a person to stop, and not to move on until permitted by the officer, if the officer—
- (a) finds the person committing an offence against this Act; or
  - (b) finds the person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person has committed an offence against this Act.
- (2) The officer may require the person not to move on only for as long as is reasonably necessary for the officer to exercise the officer's powers under this Act in relation to the person.
- (3) A person must comply with a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—100 penalty units.

**164 Power to require name and address**

- (1) An authorised officer may require a person to state the person's name and residential or business address if the officer—
  - (a) finds the person committing, or about to commit, an offence against this Act; or
  - (b) finds the person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person has committed an offence against this Act.
- (2) When making the requirement, the officer must warn the person it is an offence to fail to state the person's name or address unless the person has a reasonable excuse.
- (3) The officer may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
  - (a) be in possession of evidence of the correctness of the stated name and address; or
  - (b) otherwise be able to give the evidence.

**165 Failure to give name or address**

- (1) A person of whom a requirement is made under section 164(1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
  - (a) the requirement was given because the officer suspected the person had committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence.

**166 Power to require information about contravention**

- (1) This section applies if an authorised officer reasonably believes—

- (a) this Act has been contravened; and
  - (b) a person may be able to give information about the contravention.
- (2) The officer may require the person to give information in the person's knowledge about the contravention within a stated reasonable time and in a stated reasonable way.

*Example of reasonable way—*

by production of a permit, corresponding authority or record book entry

- (3) When making a requirement under subsection (2), the officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (4) A person of whom a requirement is made under subsection (2) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (5) If the person is an individual, it is a reasonable excuse for the individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.
- (6) The officer may—
- (a) copy a document given to the officer under this section; and
  - (b) keep the document only for as long as is reasonably necessary to make the copy.

## **167 Power to give direction to leave recreation area**

- (1) Subsection (2) applies if, in a recreation area, an authorised officer—
- (a) finds a person committing, or about to commit, an offence against this Act; or
  - (b) finds a person in circumstances that lead the officer to reasonably suspect the person has committed an offence against this Act; or
  - (c) has information that leads the officer to reasonably suspect a person has committed an offence against this Act.

- (2) The authorised officer may direct the person to immediately leave the recreation area or a stated part of it if the officer reasonably believes it is necessary to do—
  - (a) to prevent continuation of the offence; or
  - (b) to secure evidence of the offence; or
  - (c) to prevent another offence from being committed.
- (3) The person must comply with the direction and not re-enter the area or part within 24 hours after leaving.

Maximum penalty—80 penalty units.

- (4) If an authorised officer reasonably believes circumstances exist that are a danger to a person, or the person's property, in a recreation area, the officer may direct the person to leave the area, or the part of the area, where the danger exists.
- (5) If an authorised officer reasonably believes the presence of a person in a recreation area may interfere with an emergency or rescue activity, the officer may direct the person to leave the area, or the part of the area, where the emergency or activity is taking place.
- (6) A person must comply with a direction given under subsection (4) or (5).

Maximum penalty—80 penalty units.

- (7) If a person fails to comply with a direction given under this section, an authorised officer may take the steps that appear to the officer to be reasonable and necessary to secure compliance with the direction, including, for example—
  - (a) using reasonable force; and
  - (b) removing the person's property to a place inside or outside the recreation area.

## **168 Power to stop and search vehicle, vessel, aircraft or recreational craft**

- (1) This section applies if an authorised officer suspects on reasonable grounds that—



- (a) a vehicle, vessel, aircraft or recreational craft is being, or has been, used in the commission of an offence against this Act; or
  - (b) a vehicle, vessel, aircraft or recreational craft, or anything on or in it may provide evidence of the commission of an offence against this Act.
- (2) The officer may, with necessary and reasonable help and force, and without consent or a warrant—
- (a) enter or board the vehicle, vessel, aircraft or recreational craft; and
  - (b) exercise the powers set out in section 157(3).
- (3) If the vehicle, vessel, aircraft or recreational craft is moving, or is about to move, the officer may signal the person controlling it, to stop or not to move it.
- (4) The person must obey the signal given under subsection (3), unless the person has a reasonable excuse.
- Maximum penalty—165 penalty units.
- (5) It is a reasonable excuse for the person to fail to stop or to move the vehicle, vessel, aircraft or recreational craft if—
- (a) to immediately obey the signal would endanger the person or someone else; and
  - (b) the person obeys the signal as soon as it is practicable to obey the signal.

**169 Power to require driver or person in control of vehicle, vessel, aircraft or recreational craft to give reasonable help**

- (1) An authorised officer may require the driver or the person in control of a vehicle, vessel, aircraft or recreational craft—
- (a) to give the officer reasonable help to enable the vehicle, vessel, aircraft or recreational craft to be boarded or entered under section 168(2); or
  - (b) to bring the vehicle, vessel, aircraft or recreational craft to a specified place and remain in control of it at the place for a reasonable time to enable the officer to exercise the officer's powers in relation to it.

- (2) A person must not contravene a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty—165 penalty units.

**170 Power to give direction about vehicle, vessel, aircraft or recreational craft**

- (1) If an authorised officer believes it is reasonably necessary, the officer may give the person in control of a vehicle, vessel, aircraft or recreational craft in a recreation area an oral or written direction regulating or prohibiting the driving, riding, parking, mooring or use of it in the area.
- (2) The direction may also be given in a way that sufficiently shows the officer's intention.

*Example—*

by use of a sign or signal

- (3) The directions the officer may give include directions for all or any of the following—
- (a) preventing or remedying any harm to, or loss or destruction of, the area's cultural or natural resources;
  - (b) securing the safety of a person or a person's property;
  - (c) minimising disturbance to persons in the area.
- (4) Without limiting subsection (3), a direction may require the person in control of a vehicle, vessel, aircraft or recreational craft to remove it from the area.
- (5) A person must comply with a direction given under this section, unless the person has a reasonable excuse.
- Maximum penalty—50 penalty units.
- (6) It is not a reasonable excuse that the person holds an authority that is inconsistent with the direction.

## **Subdivision 5 Power to seize evidence**

### **171 Seizing evidence at a place entered under s 150**

- (1) An authorised officer who enters a place with the consent of the occupier under section 150(1)(a) may seize a thing at the place if—
  - (a) the officer believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (2) An authorised officer who enters a public place under section 150(1)(b) may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against this Act.
- (3) An authorised officer who enters a place under a warrant under section 150(1)(c) may seize the evidence for which the warrant was issued.
- (4) An authorised officer who enters a place of business under section 150(1)(d), may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against this Act.
- (5) The officer may also seize anything else at a place entered under section 150(1) if the officer believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

### **172 Seizing evidence on or in vehicle, vessel, aircraft or recreational craft entered or boarded under s 168**

An authorised officer who enters or boards a vehicle, vessel, aircraft or recreational craft under section 168(2) may seize a thing on or in the vehicle, vessel, aircraft or recreational craft if the officer reasonably believes the thing is evidence of an offence against this Act.

**173 Powers in support of seizure**

- (1) To enable a thing to be seized, an authorised officer may, by written notice given to the person in control of the thing, direct the person—
  - (a) to take it to a specified reasonable place by a specified reasonable time; and
  - (b) if necessary, to remain in control of it at the place for a reasonable time.
- (2) If, for any reason, it is not practicable to give the direction by a written notice, the direction may be given orally and confirmed by written notice as soon as practicable.
- (3) A person must comply with a direction given under this section, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (4) Nothing in this section prevents an authorised officer making a further direction under this section of the same person or of someone else in relation to the same thing, if it is necessary and reasonable to make the further direction.

**174 Securing seized things**

- (1) Having seized a thing, an authorised officer may—
  - (a) move the thing from the place where it was seized (the *place of seizure*); or
  - (b) leave the thing at the place of seizure but—
    - (i) take reasonable action to restrict access, or prevent or mitigate damage, to it; or

*Example of restricting access—*

- marking, sealing, tagging or otherwise identifying the thing to show access to it is restricted
  - sealing the entrance to a room where the thing is situated and marking the entrance to show access to the thing is restricted
- (ii) direct the person the officer reasonably believes is in control of the thing to take reasonable action to restrict access, or prevent or mitigate damage, to it; or

- (c) for equipment—make it inoperable, or direct the person the officer reasonably believes is in control of the thing to make it inoperable.

*Example of making equipment inoperable—*

dismantling equipment or removing a component of equipment without which the equipment is not capable of being used

- (2) A person to whom a direction is given under subsection (1)(b)(ii) or (c) must comply with the direction.

Maximum penalty—100 penalty units.

## **175 Tampering with seized things**

- (1) If an authorised officer restricts access to a seized thing, a person must not tamper or attempt to tamper with it, or something restricting access to it, without an authorised officer's approval.

Maximum penalty—100 penalty units.

- (2) If an authorised officer or a person acting at the officer's direction makes seized equipment inoperable, a person must not tamper or attempt to tamper with the equipment, without an authorised officer's approval.

Maximum penalty—100 penalty units.

## **176 Receipt for seized things**

- (1) After an authorised officer seizes a thing, the officer must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

**177 Authorised officer may dispose of natural resources unlawfully taken**

- (1) This section applies if a natural resource is seized under this Act and an authorised officer reasonably believes the resource has been taken unlawfully.
- (2) Despite any other provision of this Act, the officer may deal with or dispose of the resource in the way the officer considers appropriate if the officer is satisfied that it is necessary to do so—
  - (a) in the interests of the welfare of the resource; or
  - (b) to conserve the resource or environment.
- (3) Subsection (2) applies even though a proceeding has not been started for, or a person convicted of, an offence.
- (4) In this section—

*take*, a natural resource, includes remove, gather, catch, capture, kill, destroy, dredge for, raise, carry away, bring ashore, land from a vessel or otherwise remove the resource.

**178 Forfeiture of seized things**

- (1) A thing that has been seized under this subdivision and not dealt with or disposed of under section 177 is forfeited to the State if the authorised officer who seized the thing—
  - (a) can not find its owner after making reasonable inquiries; or
  - (b) can not return it to its owner after making reasonable efforts.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the officer to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for subsection (2)(b)—*

the owner of the thing has migrated to another country

- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.
- (4) In this section—

*owner*, of property, includes the person in possession or control of it.

### **179 Dealing with forfeited things**

- (1) On the forfeiture of a thing to the State, it becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.
- (2) Without limiting subsection (1), the chief executive may destroy or otherwise dispose of the thing.

### **180 Return of seized things**

- (1) If a seized thing is not disposed of under section 177 or forfeited under section 178, the authorised officer must return it to the person from whom it was seized—
  - (a) at the end of 6 months after its seizure; or
  - (b) if proceedings involving the thing are started within the 6 months, at the end of the proceedings and any appeal from the proceedings.
- (2) Despite subsection (1), unless a thing that has been seized as evidence is disposed of or forfeited as mentioned in the subsection, the officer must immediately return it to the person from whom it was seized if the officer stops being satisfied its continued retention as evidence is necessary.

### **181 Access to seized things**

- (1) Until a seized thing is disposed of, forfeited or returned, an authorised officer must allow the person from whom it was seized to inspect it and, if it is a document, to copy it.

- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

### **Division 3                      Dealing with abandoned property and unauthorised structures and works**

#### **182      Abandoned property**

- (1) This section applies if an authorised officer reasonably believes property, other than a structure or works mentioned in section 183, has been abandoned in a recreation area and needs to be removed from the area.
- (2) The authorised officer may—
- (a) seize the property and take the steps that are reasonable and necessary to remove it; or
  - (b) if the name of a person responsible for the property is known—give the person a written notice; or
  - (c) if the name of a person responsible for the property is not known—
    - (i) if practicable, display a notice in a prominent position on the property; and
    - (ii) if the authorised officer believes the property has a market value of more than \$500—publish the notice in a newspaper circulating in the locality in which the recreation area is located.
- (3) A notice under this section requires a person responsible for the property, within a stated period, to take reasonable action to—
- (a) remove the property; and
  - (b) restore the place from which it is removed, as nearly as practicable, to its former state.
- (4) The stated period must be reasonable in the circumstances and at least 20 business days after the notice is given or displayed.



- (5) A person given a notice under subsection (2)(b) must ensure the notice is complied with, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (6) If the property is not removed within the time stated in the notice, the officer may seize the property and take the steps that are reasonable and necessary to remove it.

- (7) In this section—

*person responsible*, for abandoned property, includes the person in control of the property immediately before it was abandoned.

### **183 Removal of unauthorised structures and works**

- (1) This section applies if an authorised officer reasonably believes a structure has been unlawfully erected or works have been unlawfully carried out in a recreation area and need to be removed from the area.

- (2) The authorised officer may—

(a) seize the structure or works, and anything in the structure, and take the steps that are reasonable and necessary to remove it, or if the works can not be removed, stabilise or rehabilitate the works; or

(b) if the name of a person responsible for the structure or works is known—give the person a written notice; or

(c) if the name of a person responsible for the structure or works is not known—

(i) if practicable, display a notice in a prominent position on the structure or works; and

(ii) if the authorised officer believes the structure or works, and anything in the structure, has a total market value of more than \$500—publish the notice in a newspaper circulating in the locality in which the recreation area is located.

- (3) A notice under this section requires a person responsible for the structure or works, within a stated period, to take reasonable action to—

- (a) remove the structure or works, and anything in the structure, and restore the place from which it is removed, as nearly as practicable to its former state; or
- (b) if the works can not be removed—stabilise or rehabilitate the works.

*Example of subsection (3)(b)—*

A person who has unlawfully constructed a walking track in a recreation area may be given a notice to rehabilitate the part of the area in which the track is constructed.

- (4) The stated period must be reasonable in the circumstances and at least 20 business days after the notice is given or displayed.
- (5) A person given a notice under subsection (2)(b) must ensure the notice is complied with, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (6) If the notice is not complied with, the officer may seize the structure or works, and anything in the structure, and take the steps that are reasonable and necessary to remove it, or if the work can not be removed, stabilise or rehabilitate the works.
- (7) In this section—

*person responsible*, for the erection of an unlawful structure or carrying out an unlawful works, includes the person in possession of the structure or works.

#### **184 Application of ss 174 to 176 to seized property, structures or works**

- (1) This section applies to property, structures or works seized under sections 182 or 183.
- (2) Sections 174 to 176 apply to the property, structures or works seized as if they were things seized under division 2, subdivision 5.

#### **185 Notice of seizure for property, structures, works or things with market value of more than \$500**

- (1) This section applies to—

- (a) property seized under section 182; and
  - (b) structures, works or things seized and removed under section 183.
- (2) If an authorised officer reasonably believes the total market value of everything seized is more than \$500, the authorised officer must give the owner of the things seized written notice of the seizure.
- (3) If the owner's name is not known, the notice—
- (a) must be given in a newspaper circulating throughout the State; and
  - (b) may, in addition, be given by displaying it in a prominent position on a permanent feature as close as possible to where the property, structure, works or thing was found.
- (4) The notice must state that—
- (a) the owner may claim the property, structure, works or thing within 2 months after the notice mentioned in subsection (2) or (3)(a) is given; and
  - (b) the property, structure, works or thing may be disposed of if not claimed within the 2 months.

## **186 Release of seized property, structures, works or things**

If a person claims seized property, a structure, works or thing, the chief executive may release it to the person only if the person—

- (a) satisfies the chief executive the person has a right to the property, structure, works or thing; and
- (b) pays the chief executive's reasonable costs of—
  - (i) seizing, removing and holding the property, structure, works or thing; and
  - (ii) giving notice of the seizure; and
  - (iii) if notice is given of the sale of the property, structure, works or thing—giving the notice; and

- (iv) restoring the place from which the property, structure, works or thing was removed as nearly as practicable, to its former state.

**187 Procedure if seized property, structures, works or things are not claimed or are of little value**

- (1) If the owner of seized property, a structure, works or thing does not claim it within 2 months after the notice mentioned in section 185(2) or (3)(a) is given, the chief executive may sell it in the way the chief executive considers will best realise its market value.
- (2) Before selling the property, structure, works or thing, the chief executive must publish a notice in a newspaper circulating generally in the State—
  - (a) identifying the property, structure, works or thing; and
  - (b) stating how and when it is to be sold.
- (3) The time when the property, structure, works or thing may be sold must not be less than 20 business days after the notice is published.
- (4) If the property, structure, works or thing is not sold, the chief executive may dispose of it in the way the chief executive considers appropriate.
- (5) Also, if the chief executive reasonably believes the property, structure, works or thing has a market value of not more than \$500, the chief executive may—
  - (a) sell it in the way the chief executive considers will best realise its market value; or
  - (b) if the chief executive considers the cost of selling it would exceed its market value—otherwise dispose of it.
- (6) Compensation is not payable in relation to a sale or disposal under this section.

**188 Application of proceeds of sale**

If the chief executive sells seized property, a structure, works or thing, the proceeds of the sale must be applied in the following order—

- (a) in payment of the reasonable expenses of the chief executive incurred in the sale;
- (b) in payment of the reasonable cost of—
  - (i) seizing, removing and holding the property, structure, works or thing; and
  - (ii) giving notice of the seizure;
- (c) in payment of the reasonable cost of work necessary to restore the site from which the property, structure, works or thing is removed as nearly as practicable, to its former state;
- (d) in payment of any balance to the owner of the property, structure, works or thing.

## **Division 4                    General enforcement matters**

### **189    Authorised officer's obligation not to cause unnecessary damage**

An authorised officer must take all reasonable steps to ensure the officer does not cause any unnecessary damage to property, a structure, works or thing in exercising a power under division 2 or 3.

### **190    Notice of damage**

- (1) This section applies if—
  - (a) an authorised officer damages property, a structure, works or thing when exercising or purporting to exercise a power under this part; or
  - (b) a person (the *other person*) acting under the direction of an authorised officer damages property, a structure, works or thing.
- (2) The officer must immediately give notice of particulars of the damage to the person who appears to the officer to be the owner of the property, structure, works or thing.
- (3) If the officer believes the damage was caused by a latent defect in the property, structure, works or thing or

circumstances beyond the officer's or other person's control, the officer may state the belief in the notice.

- (4) If, for any reason, it is impracticable to comply with subsection (2), the officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the officer reasonably believes is trivial.
- (6) In subsection (2)—  
*owner*, of property, structure, works or thing, includes the person in possession or control of it.

## **191 Compensation**

- (1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under division 2, subdivision 1, 3 or 5.
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.
- (3) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (4) A court may order compensation to be paid only if it is satisfied it is fair to make the order in the particular circumstances.

## **192 False or misleading information given to authorised officer**

A person must not state anything to an authorised officer the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

**193 False or misleading documents given to authorised officer**

- (1) A person must not give an authorised officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the officer, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

**194 Obstructing an authorised officer**

- (1) A person must not obstruct an authorised officer in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—165 penalty units.

- (2) If a person has obstructed an authorised officer and the officer decides to proceed with the exercise of the power, the officer must warn the person that—
- (a) it is an offence to obstruct the officer, unless the person has a reasonable excuse; and
  - (b) the officer considers the person's conduct is an obstruction.

- (3) In this section—

*obstruct* includes assault, hinder, intimidate, resist and attempt or threaten to obstruct.

**195 Impersonating an authorised officer**

A person must not pretend to be an authorised officer.

Maximum penalty—50 penalty units.

## **Part 9                      Legal proceedings**

### **Division 1                Evidence**

#### **196      Application of div 1**

This division applies to a proceeding under this Act.

#### **197      Appointments and authority**

It is not necessary to prove the appointment of the Minister, the chief executive or an authorised officer, or the authority of the Minister, the chief executive or an authorised officer to do anything under this Act, unless a party, by reasonable notice, requires proof of the appointment or authority.

#### **198      Signatures**

A signature purporting to be the signature of the Minister, the chief executive or an authorised officer is evidence of the signature it purports to be.

#### **199      Evidentiary matters**

- (1) A certificate purporting to be signed by the chief executive or an authorised officer and stating any of the following matters is evidence of the matter—
  - (a) a stated document is 1 of the following things made, given, issued or kept under this Act—
    - (i) an appointment, approval or decision;
    - (ii) a direction, notice or requirement;
    - (iii) a permit or other authority;
    - (iv) a record or other document;
  - (b) a stated document is of a stated type mentioned in paragraph (a) and made, given, issued or kept under another Act;



- (c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);
  - (d) on a stated day, or during a stated period, a stated person was, or was not, the holder of a stated permit or other authority;
  - (e) a stated permit or other authority—
    - (i) was, or was not, issued for a stated term; or
    - (ii) was, or was not, in force on a stated day or during a stated period; or
    - (iii) was, or was not, subject to a stated condition;
  - (f) on a stated day, or during a stated period, a stated permit or other authority was suspended for a stated period or was cancelled;
  - (g) on a stated day, or during a stated period, an appointment as an authorised officer was, or was not, in force for a stated person;
  - (h) on a stated day, a stated person was given a stated direction, notice or requirement under this Act;
  - (i) a stated amount is payable under this Act by a stated person and has not been paid.
- (2) Evidence that a regulatory notice or a restricted access area notice was erected or displayed at a place is evidence the notice was erected or displayed at the place by the chief executive.
- (3) A statement in a complaint starting the proceeding of any of the following matters is evidence of the matters—
- (a) that the matter of the complaint came to the knowledge of the complainant on a stated day;
  - (b) that the place where the offence was committed was in a stated recreation area or in a restricted access area in a stated recreation area.

## **Division 2                      Offence proceedings**

### **200      Summary proceedings for offences**

- (1) Proceedings for an offence against this Act are to be taken in a summary way under the *Justices Act 1886*.
- (2) The proceeding must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **201      Allegations of false or misleading information or documents**

It is enough for a complaint for an offence against this Act involving false or misleading information, or a false or misleading document, to state the statement made, or document given, was 'false or misleading' to the person's knowledge, without specifying which.

### **202      Responsibility for acts or omissions of representatives**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

*representative* means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

*state of mind* of a person includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

**203 Executive officers responsible for ensuring corporation complies with Act**

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

**204 Holder of authority responsible for ensuring Act complied with**

- (1) The holder of an authority must ensure that everyone acting under the authority complies with the authority and the requirements of this Act relating to the authority.
- (2) If another person acting under the authority does not comply with the authority or the requirements of this Act relating to the authority, the holder commits an offence, namely, the offence of failing to ensure the other person complied with the authority or the requirements of this Act relating to the authority.

Maximum penalty—the penalty prescribed for contravention of the authority or the requirements of this Act relating to the authority.

- (3) Evidence that the other person has been convicted of an offence against this Act while acting under the authority is evidence that the holder committed the offence of failing to ensure the other person complied with the authority and the requirements of this Act relating to the authority.
- (4) However, it is a defence for the holder to prove—
  - (a) the holder issued appropriate instructions and used all reasonable precautions to ensure compliance with the authority and the requirements of this Act relating to the authority; and
  - (b) the offence was committed without the holder's knowledge; and
  - (c) the holder could not by the exercise of reasonable diligence have stopped the commission of the offence.
- (5) In this section—

**authority** means a permit or commercial activity agreement or other authority under this Act.

**holder**, of an authority, means, in relation to a commercial activity agreement, the other party to the agreement.

**205 Responsibility for offences committed with use of vehicle, vessel, aircraft or recreational craft**

- (1) Each responsible person for a vehicle, vessel, aircraft or recreational craft must ensure it is not used to commit an offence against this Act.
- (2) If another person uses the vehicle, vessel, aircraft or recreational craft in committing an offence against a provision of this Act, each responsible person for the vehicle, vessel, aircraft or recreational craft also commits an offence, namely, the offence of failing to ensure the other person complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the other person has been convicted of an offence against a provision of this Act is evidence that each responsible person for the vehicle, vessel, aircraft or recreational craft committed the offence of failing to ensure the other person complies with the provision.
- (4) However, it is a defence for a responsible person for the vehicle, vessel, aircraft or recreational craft to prove—
  - (a) if the responsible person was in a position to influence the conduct of the other person in relation to the offence—the responsible person exercised reasonable diligence to ensure the other person complied with the provision; or
  - (b) the responsible person was not in a position to influence the conduct of the other person in relation to the offence.
- (5) In this section—

***responsible person***, for a vehicle, vessel, aircraft or recreational craft, in relation to an offence, means—

- (a) an owner of the vehicle, vessel, aircraft or recreational craft when the offence was committed; or
- (b) a person in control of the vehicle, vessel, aircraft or recreational craft at the time the offence was committed; or
- (c) a person (the ***operator***) who, at the time the offence was committed, was a party to an agreement with a person

mentioned in paragraph (a) or (b) under which the operator, or the operator and the other party to the agreement, were authorised to decide the activities for the vehicle, vessel, aircraft or recreational craft.

## **Division 3                      Internal reviews**

### **206      Appeal process starts with internal review**

Every appeal against an appellable decision must be, in the first instance, by way of an application for internal review.

### **207      Applying for an internal review**

- (1) An application for internal review must be in the approved form and must be—
  - (a) made to the chief executive within 28 days after the day the person is given the information notice; and
  - (b) supported by enough information to enable the chief executive to decide the application.
- (2) The chief executive may extend the time for applying for the internal review.
- (3) The application does not stay the appellable decision.
- (4) The application must not be dealt with by—
  - (a) the person who made the appellable decision; or
  - (b) a person in a less senior office than the person who made the appellable decision.
- (5) Subsection (4)—
  - (a) applies despite the *Acts Interpretation Act 1954*, section 27A;<sup>4</sup> and
  - (b) does not apply to an appellable decision made by the chief executive.

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<sup>4</sup> *Acts Interpretation Act 1954*, section 27A (Delegation of functions or powers)

**208 Review decision**

- (1) If the chief executive is satisfied the applicant has complied with section 207, the chief executive must, within 28 days after receiving the application—
  - (a) review the appellable decision; and
  - (b) make a decision (the *review decision*) to—
    - (i) confirm the appellable decision; or
    - (ii) amend the appellable decision; or
    - (iii) substitute another decision for the appellable decision.
- (2) Within 14 days after making the review decision, the chief executive must give the applicant notice (the *review notice*) of the review decision.
- (3) The review notice must also state—
  - (a) the reasons for the review decision; and
  - (b) that the applicant may, within 28 days after the day the applicant is given the notice, appeal against the review decision to a Magistrates Court; and
  - (c) how to appeal.
- (4) If the chief executive does not comply with subsection (1) or (2), the chief executive is taken to have made a decision confirming the appellable decision.
- (5) For the purpose of an appeal to a Magistrates Court—
  - (a) if the review decision confirms the appellable decision, the appellable decision is taken to be the review decision; or
  - (b) if the review decision amends the appellable decision, the appellable decision, as amended, is taken to be the review decision.

**209 Stay of operation of appellable decision**

- (1) If an application is made for an internal review of an appellable decision, the applicant may immediately apply for a stay of the appellable decision to a Magistrates Court.

- (2) The court may stay the appellable decision to secure the effectiveness of the review and any later appeal to the court.
- (3) The stay—
  - (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be revoked or amended by the court.
- (4) The period of the stay must not extend past the time when the chief executive makes a review decision about the appellable decision and any later period the court allows the applicant to enable the applicant to appeal against the review decision.
- (5) The application affects the appellable decision, or carrying out of the decision, only if the decision is stayed.

## **Division 4                      Appeals**

### **210      Who may appeal**

A person who has applied for the review of an appellable decision under division 3 and is dissatisfied with the review decision may appeal to the Magistrates Court against the review decision.

### **211      How to start an appeal**

- (1) An appeal may be started by—
  - (a) filing a notice of appeal with the registrar of—
    - (i) the Magistrates Court at the place where the appellant resides or carries on business; or
    - (ii) the Magistrates Court at Brisbane; and
  - (b) complying with the rules of court applicable to the appeal.
- (2) Subsection (1) does not limit a provision of another law providing for where a proceeding may be started in a Magistrates Court.



- (3) The notice of appeal must be filed within 28 days after—
  - (a) the day the person is given a review notice for the review decision; or
  - (b) if paragraph (a) does not apply, the day the person otherwise becomes aware of the review decision.
- (4) Within 7 days after filing the notice of appeal, the appellant must serve notice of the appeal on the chief executive.
- (5) The court may, at any time, extend the period for filing the notice of appeal.

## **212 Hearing procedures**

- (1) In deciding the appeal, the court—
  - (a) has the same powers as the entity that made the review decision; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) The appeal is by way of rehearing, unaffected by the review decision, on the material before the entity that made the decision and any further evidence allowed by the court.

## **213 Stay of operation of decision**

- (1) The court may grant a stay of the operation of the decision appealed against to secure the effectiveness of the appeal.
- (2) The stay—
  - (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be revoked or amended by the court.
- (3) The period of the stay must not extend past the time when the court decides the appeal.
- (4) The appeal affects the decision, or carrying out of the decision, only if the decision is stayed.

**214 Powers of court on appeal**

- (1) In deciding the appeal, the Magistrates Court may—
  - (a) confirm the review decision appealed against; or
  - (b) set aside the review decision appealed against and substitute another decision; or
  - (c) set aside the review decision appealed against and return the matter to the chief executive with the directions the court considers appropriate.
- (2) If the court substitutes another decision, the substituted decision is, for this Act, other than this division, taken to be the decision of the chief executive.
- (3) The court may make an order for costs it considers appropriate.

**215 Appeals from Magistrate Court's decision**

An appeal to the District Court against a decision of the Magistrates Court may be made only on a question of law.

**Part 10 Miscellaneous****Division 1 Camping notices and tags****216 E-permit camping areas**

- (1) The chief executive may erect or display in, at or near the entrance to, a recreation area, a notice (an *e-permit camping notice*) stating that, in a stated period, the area, or a stated part of the area, is an e-permit camping area.
- (2) An e-permit camping notice for an e-permit camping area must state the following—
  - (a) in general terms, the procedures to be followed by persons intending to camp in the area;
  - (b) the conditions applying to a person camping in the area;

- (c) the penalty for camping in the area without a camping permit.
- (3) The chief executive may also erect or display an additional conditions notice.

### **217 Camping tag must be available**

- (1) The chief executive must make camping tags available in an accessible and conspicuous position in or near each e-permit camping area.
- (2) Each tag must include a space for the person to write the details prescribed under a regulation.
- (3) The chief executive must ensure a person who has applied, or intends to apply, for a camping permit for an e-permit camping area is given notice of the locations where camping tags are available for the area.
- (4) Without limiting subsection (3), the chief executive must—
  - (a) publish on the department's web site the locations where camping tags are available for the area; and
  - (b) for a camping permit granted under section 37(2)—ensure the written notice given under that section includes the locations where camping tags are available for the e-permit camping area to which the permit relates; and
  - (c) for a camping permit granted under section 37(3)—ensure the person to whom the permit is granted is advised of the locations where camping tags are available for the e-permit camping area to which the permit relates.

### **218 Self-registration camping areas**

- (1) The chief executive may erect or display in, at or near the entrance to, a recreation area, a notice (a *self-registration camping notice*) stating that, in a stated period, the area, or a stated part of the area, is a self-registration camping area.
- (2) A self-registration camping notice, for a self-registration camping area, must state the following—

- (a) in general terms, the procedures to be followed by persons intending to camp in the area;
  - (b) the conditions applying to a person camping in the area;
  - (c) the camping fee payable for camping in the area;
  - (d) the penalty for camping in the area without a camping permit.
- (3) The chief executive must make forms (*camping forms*) and a sealed, secure container (a *camping fee container*) available for use for camping in the area.
- (4) The camping forms and camping fee container must be in an easily accessible and conspicuous position in the area.
- (5) The camping form must—
- (a) state the procedures a person using the form must follow; and
  - (b) include a detachable envelope (a *camping fee envelope*) and a camping tag; and
  - (c) include, on the camping fee envelope, a section for use for credit card payment of camping fees.

## **Division 2                      Records and information**

### **219      Records and other information to be kept**

The holder of a commercial activity or group activity permit must, in relation to activities authorised and conducted under the permit—

- (a) keep and store records about the activities, in the way prescribed under a regulation; and
- (b) include in the records the information prescribed under a regulation; and
- (c) give to the chief executive information about the activities in the way, at the times and accompanied by the fees, relating to the activities, prescribed under a regulation.

Maximum penalty—120 penalty units.

**220 Interfering with record**

- (1) A person must not, without reasonable excuse—
  - (a) deface, erase or obliterate an entry in a record mentioned in section 219; or
  - (b) otherwise remove an entry from the record.

Maximum penalty—120 penalty units.

- (2) However, subsection (1) does not apply to a person who removes a record or a copy of a record and gives it to the chief executive.

**221 Notice of damage to, or loss or destruction of, record**

If the holder of a commercial activity or group activity permit becomes aware of damage to, or loss or destruction of, a record kept by the holder under section 219, the holder must immediately give written notice of the fact to the chief executive.

Maximum penalty—120 penalty units.

**222 Requirement to produce or surrender record**

- (1) This section applies to a person required to keep a record under this Act.
- (2) The person must—
  - (a) if asked by an authorised officer, produce the record for inspection by the officer; and
  - (b) if asked, in writing, by the chief executive, surrender the record to the chief executive.

Maximum penalty—120 penalty units.

**223 Confidentiality of information**

- (1) The chief executive may declare information acquired in the administration of this Act to be confidential information if the chief executive is of the opinion that disclosure of the information may result in an unreasonable level of risk to the wellbeing of a cultural or natural resource of a recreation area.

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- (2) Subsection (3) applies to a person who, while performing duties under, or in relation to, this Act or the repealed Act, acquires or acquired—
- (a) information about another person's affairs; or
  - (b) information declared by the chief executive to be confidential under subsection (1).
- (3) The person must not disclose the information to anyone else, unless the disclosure is permitted under subsection (4).

Maximum penalty—165 penalty units.

- (4) The person may disclose the information to someone else—
- (a) to the extent necessary to perform the person's functions under this Act; or
  - (b) if the disclosure is authorised under this Act or another Act; or
  - (c) if the disclosure is otherwise required or permitted by law; or
  - (d) if the person to whom the information relates consents to the disclosure; or
  - (e) if the disclosure is in a form that does not disclose the identity of the person to whom the information relates; or
  - (f) if the information is, or has been, accessible to the public, including, for example, because it is or was recorded in the publicly available part of a register; or
  - (g) if the disclosure is to the Minister to allow the Minister to act under paragraph (h); or
  - (h) if the Minister considers the disclosure is in the public interest and authorises the person to disclose the information.

## Division 3                      Other miscellaneous provisions

### 224      **Advisory committees**

The Minister may establish advisory committees to obtain the views of government entities, individuals, community entities and other non-government entities about recreation area issues.

### 225      **Delegation by Minister**

- (1) The Minister may delegate the Minister's powers under this Act to an appropriately qualified public service officer.
- (2) A delegation of a power may permit the subdelegation of the power to an appropriately qualified public service officer.
- (3) In this section—

*appropriately qualified* includes having qualifications, experience or standing appropriate to exercise the power.

*Example—*

a person's classification level in the public service

### 226      **Chief executive's power to carry out works**

Subject to section 4, the chief executive may carry out, in a recreation area, the works the chief executive considers necessary or desirable to achieve the purpose of this Act.

### 227      **Liability of State**

- (1) The State is not legally liable for an act or omission in relation to private land merely because the land is part of a recreation area.
- (2) In this section—

*private land* means land other than State land.

**228 Protecting officials from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means—
  - (a) the Minister; or
  - (b) the chief executive; or
  - (c) an authorised officer; or
  - (d) a person acting under the direction or authority of the Minister, chief executive or an authorised officer; or
  - (e) an officer or other employee of the department.

**229 Immunity from prosecution**

- (1) An authorised person is not liable to be prosecuted for an offence against this Act for anything done or omitted to be done in the exercise of a power or performance of a function conferred or imposed on the authorised person under this Act.
- (2) A person acting under the direction of the Minister, chief executive or an authorised officer is not liable to be prosecuted for an offence against this Act for anything done or omitted to be done under the direction.
- (3) In this section—  
*authorised person* means—
  - (a) the chief executive; or
  - (b) an authorised officer; or
  - (c) an officer or other employee of the department acting under the chief executive's authority.



**230 Recreation areas management fund**

- (1) The Queensland Recreation Areas Management Board Fund established under the repealed Act is continued in existence as the Recreation Areas Management Fund (the *fund*).
- (2) The *Financial Administration and Audit Act 1977* applies to the fund.
- (3) Accounts for the fund must be kept as part of the departmental accounts of the department.
- (4) Amounts received for the fund must be deposited in a departmental financial-institution account of the department but may be deposited in an account used for depositing other amounts of the department.
- (5) Amounts received for the fund include—
  - (a) amounts paid to the department as part of its vote under the *Financial Administration and Audit Act 1977* and made available by the department for use under this Act; and
  - (b) penalties, costs, fees and charges received by the department under this Act; and
  - (c) other amounts received by the department under this Act.
- (6) An amount is payable from the fund for the purpose of this Act.

*Example of an amount payable from the fund—*

costs of administering this Act

- (7) In this section—

*departmental accounts*, of the department, means the accounts of the department under the *Financial Administration and Audit Act 1977*, section 12.

*departmental financial-institution account*, of the department, means an account of the department kept under the *Financial Administration and Audit Act 1977*, section 18.

*other amounts*, of the department, means amounts received by the department other than amounts received for the fund.

**231 Approved forms**

The chief executive may approve forms for use under this Act.

**232 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about any of the following—
  - (a) the entry to, or use of (including the conduct of persons in), a recreation area;
  - (b) implementing, and enforcing compliance with, approved management plans;
  - (c) the records and information required to be kept by persons entering or using a recreation area;
  - (d) the fees and charges payable under this Act;  
*Example—*

fees and charges for conducting activities, or using services and facilities provided by the chief executive, in a recreation area
  - (e) the refunding of fees and charges payable under this Act and the circumstances in which a refund may be made;
  - (f) the waiver of fees.
- (3) A regulation may prescribe a penalty of not more than 20 penalty units for a contravention of a regulation.
- (4) Without limiting subsection (2)(d), a regulation may prescribe amounts as fees having regard to the costs of administering this Act for the management of recreation areas.

## **Part 11**                      **Transitional provisions**

### **233**      **Dissolution of Queensland Recreation Areas Management Authority**

On the commencement of this section, the Queensland Recreation Areas Management Authority established under the repealed Act is dissolved and its members go out of office.

### **234**      **Dissolution of Queensland Recreation Areas Management Board**

On the commencement of this section—

- (a) the Queensland Recreation Areas Management Board established under the repealed Act is dissolved and its members go out of office; and
- (b) the assets, rights and liabilities of the board vest in the State; and
- (c) the State is substituted for the board in all agreements to which the board is a party.

### **235**      **Existing recreation areas continue**

A recreation area established under the repealed Act and in existence immediately before the commencement of this section continues in existence as a recreation area under this Act and may be amalgamated, divided or revoked under this Act.

### **236**      **Existing consents and agreements about the inclusion of land in recreation areas continue**

- (1) This section applies to a consent given, or agreement entered into, under the repealed Act about the inclusion of land in a recreation area if the consent or agreement is in force immediately before the commencement of this section.
- (2) The consent or agreement continues in existence, subject to this Act, and is taken to have been given or entered into under this Act.

**237 Existing management plans continue**

- (1) This section applies to a management plan for a recreation area in force under the repealed Act immediately before the commencement of this section.
- (2) The plan continues in force and is taken to be an approved management plan for the area.
- (3) The plan—
  - (a) must be read with the changes necessary to make it consistent with, and adapt its operation to, this Act; and
  - (b) may be amended or repealed under this Act.

**238 Management plans being prepared**

- (1) This section applies to a management plan for a recreation area being prepared under the repealed Act.
- (2) To the extent the process of preparing the plan has been completed under the repealed Act, that part of the preparation is taken to have been completed under this Act.
- (3) The remaining processes required to make the plan an approved management plan may be completed under this Act.

**239 Existing permits, approvals and agreements continue**

- (1) A permit in force under the repealed Act immediately before the commencement of this section is taken to be a permit of the following type under this Act—
  - (a) if the permit was a camping permit—a camping permit;
  - (b) if the permit was a commercial activity permit—a commercial activity permit;
  - (c) if the permit was a commercial tour operator permit—a commercial activity permit;
  - (d) if the permit was a temporary commercial tour operator permit—a commercial activity permit;
  - (e) if the permit was a group activity permit—a group activity permit;

- (f) if the permit was a service permit—a vehicle access permit.
- (2) An approval given under the repealed Act is, if its effect is not exhausted at the commencement of this section, taken to be an approval given under this Act.
- (3) An agreement under the repealed Act authorising commercial activities and in force immediately before the commencement of this section is taken to be a commercial activity agreement under this Act.

**240 Existing applications for permits, approvals and agreements continue**

- (1) An application for a permit made, but not decided, under the repealed Act before the commencement of this section is taken to be an application for a permit of the following type made under this Act—
  - (a) if the application was for a camping permit—a camping permit;
  - (b) if the application was for a commercial activity permit—a commercial activity permit;
  - (c) if the application was for a commercial tour operator permit—a commercial activity permit;
  - (d) if the application was for a temporary commercial tour operator permit—a commercial activity permit;
  - (e) if the application was for a group activity permit—a group activity permit;
  - (f) if the application was for a service permit—a vehicle access permit.
- (2) An application for an approval made, but not decided, under the repealed Act before the commencement of this section is taken to be an application for an approval of the same thing made under this Act.
- (3) Subsection (4) applies if—
  - (a) an application was made under the repealed Act for an agreement to carry out a commercial activity in a recreation area; and

- (b) the agreement was not entered into before the commencement of this section; and
  - (c) the application was still the subject of consideration under the repealed Act immediately before the commencement.
- (4) The application is taken to be an application under this Act for a commercial activity agreement.

**241 Existing directions, requirements, notices and decisions continue**

A direction, requirement, notice or decision (the *authorisation*) given or made under the repealed Act is, if its effect is not exhausted at the commencement of this section, taken to have been given or made under this Act by—

- (a) if the authorisation was given or made by the Minister—the Minister; or
- (b) if the authorisation was given or made by the authority or the board—the chief executive; or
- (c) if the authorisation was given or made by an authorised officer—an authorised officer.

**242 Existing authorised officers continue**

- (1) A person who held appointment as an authorised officer under the repealed Act immediately before the commencement of this section is taken to be an authorised officer under this Act.
- (2) A person taken to be an authorised officer under section 22(3)(a) of the repealed Act before the commencement of this section is taken to be an authorised officer under this Act for a term of 1 year starting on the commencement of this section.
- (3) For part 8, an identity card issued under the *Nature Conservation Act 1992* to a person taken, under subsection (2), to be an authorised officer under this Act is, for the period mentioned in subsection (2), taken to be an identity card for the person under this Act.

**243 Existing legal proceedings continue**

A legal proceeding that could have been started or continued under the repealed Act by or against the Queensland Recreation Areas Management Authority or the Queensland Recreation Areas Management Board before the commencement of this section may be started or continued by or against the State under this Act.

**244 Existing advisory committee continues**

An advisory committee established under the repealed Act and in existence at the commencement of this section continues as if the advisory committee were established under this Act.

**245 References to Recreation Areas Management Act 1988**

A reference in an Act or document to the repealed Act is, if the context permits, taken to be a reference to this Act.

**246 References to Queensland Recreation Areas Management Authority**

A reference in an Act or document to the Queensland Recreation Areas Management Authority established under the repealed Act is, if the context permits, taken to be a reference to the State.

**247 References to Queensland Recreation Areas Management Board**

A reference in an Act or document to the Queensland Recreation Areas Management Board established under the repealed Act is, if the context permits, taken to be a reference to the chief executive.

**248 References to Queensland Recreation Areas Management Board Fund**

A reference in an Act or document to the Queensland Recreation Areas Management Board Fund established under

the repealed Act is, if the context permits, taken to be a reference to the fund established under section 230.

## **249 Application of particular sections**

- (1) Section 182 applies to property whether the property was abandoned before or after—
  - (a) the commencement of this section; or
  - (b) the area where the property was abandoned was declared to be a recreation area.
- (2) Section 183 applies to structures and works whether the structures were erected or the works carried out before or after—
  - (a) the commencement of this section; or
  - (b) the area where the structures were erected or the works carried out was declared to be a recreation area.

## **250 Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—
  - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act to the operation of this Act; and
  - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expires 12 months after the day this section commences.



## **Part 12**                      **Repeal and consequential amendments**

### **251 Act repealed**

The Recreation Areas Management Act 1988 No. 110 is repealed.

### **252 Amendment of Mineral Resources Act 1989**

*The Mineral Resources Act 1989, section 396, '1988'—  
omit, insert—  
'2005'.*

### **253 Amendment of Police Powers and Responsibilities Act 2000**

*The Police Powers and Responsibilities Act 2000, section 61(e), '1988'  
omit, insert—  
'2005'.<sup>5</sup>*

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<sup>5</sup> Sections 252 and 253 had not commenced on or before the reprint date.

## Schedule                      Dictionary

### section 3

***additional conditions notice***, for an e-permit camping area, means a notice erected or displayed near an e-permit camping notice stating conditions, applying to a person camping in the area, additional to the conditions stated in the e-permit camping notice.

***aircraft*** includes a helicopter.

***appellable decision*** means a decision of the chief executive for which an information notice must be given.

***approved management plan*** means a final management plan approved under section 22.

***area land-holder*** means any of the following for land in a recreation area—

- (a) for freehold land—the registered owner of the land;
- (b) for land subject to a lease or licence under the *Land Act 1994*—the holder of the lease or licence;
- (c) for a reserve under the *Land Act 1994* placed under the control of a trustee—the trustee;
- (d) for land subject to a mining interest—the holder of the interest;
- (e) for land subject to an exclusive possession determination—the holder of the native title rights and interests under the determination;
- (f) for State land—the chief executive of the department administering the land.

***authorisation***, in relation to a commercial activity agreement, means—

- (a) the commercial activity authorised to be conducted under the agreement; and
- (b) the obligations under the agreement for, and the conditions relating to, the conduct of the activity.

## Schedule (continued)

**authorised officer** means a person appointed as an authorised officer under this Act.

**buyer**, for part 5, division 6, see section 94(1).

**camp** includes each of the following—

- (a) to pitch, place or erect a tent, caravan or another structure that may be used for camping for the purpose of staying overnight by using the tent, caravan or structure;
- (b) to place other equipment that may be used for camping, or a vehicle or vessel, in position for the purpose of staying overnight by using the equipment, vehicle or vessel;
- (c) to keep a tent, caravan, another structure or other equipment that may be used for camping in position overnight, whether or not the tent, caravan, structure or equipment is unattended;
- (d) to stay overnight, other than as part of an activity that—
  - (i) does not involve the use of any camping equipment; and
  - (ii) is generally not considered to be camping.

**camping fee** means the fee prescribed under a regulation for camping in a recreation area.

**camping fee container** see section 218(3)

**camping fee envelope** see section 218(5)(b).

**camping form** see section 218(3).

**camping permit** includes a camping permit taken to have been granted under—

- (a) section 37(2) or (3) for an e-permit camping area; and
- (b) section 37(4) for a self-registration camping area.

**camping tag** means a tag made available by the chief executive for display at a person's camp site to show the person has a camping permit for the site.

## Schedule (continued)

**commercial activity**—

1 A *commercial activity* is an activity conducted for gain.

*Examples of activities conducted for gain*—

- the hire or sale of goods or services
- commercial photography
- a guided tour, safari, scenic flight, cruise or excursion
- advertising or promoting the use of a recreation area as part of a tour, safari, scenic flight, cruise or excursion
- advertising or promoting the use of a recreation area as a feature associated with a resort or tourist facility on land adjoining the area

2 A *commercial activity* does not include—

- (a) an exempt activity; or
- (b) an exempt media activity.

**commercial activity agreement** means an agreement entered into under section 69.

**corresponding authority** means a permit, licence or other authority issued under another law of the State, authorising entry to, the use of, or the doing of a thing in, an area within a recreation area for an activity or purpose for which a permit or other authority may be issued under this Act.

**cultural resources**, of a recreation area, means places or objects having an anthropological, archaeological, historical, scientific, spiritual or sociological significance or value, including a significance or value of that kind under Aboriginal tradition or Island custom.

**demerit point** means a demerit point accumulated under section 142.

**department's web site** means the department's web site on the Internet.<sup>6</sup>

**determination of native title** see the *Native Title Act 1993* (Cwlth), section 225.

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<sup>6</sup> At the commencement of this schedule, the department's website was—  
<[www.epa.qld.gov.au](http://www.epa.qld.gov.au)>.

## Schedule (continued)

***e-permit camping area*** means a recreation area, or part of a recreation area, stated to be an e-permit camping area by an e-permit camping notice.

***e-permit camping notice*** see section 216.

***exclusive possession determination***, for land, means a determination of native title that includes a determination to the effect that native title rights and interests under the determination confer possession of the land on native title holders to the exclusion of all others.

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, its management, whether or not the person is a director or the person's position is given the name of executive officer.

***exempt activity*** means an activity for which the chief executive is reasonably satisfied the use of a recreation area is incidental to, and not integral to, the conducting of the activity.

*Examples of exempt activities—*

- a scheduled bus service through a recreation area that is not a part of a tour or safari in the area
- conducting an activity in a recreation area if the activity involves a trade and is conducted for the chief executive or an area land-holder
- providing a mechanical or vehicle towing service for a visitor in a recreation area
- commercial fishing under the *Fisheries Act 1994*, other than a commercial fishing tour

***exempt media activity*** means an activity that is—

- (a) the filming or photographing of, or in relation to, an event; and
- (b) conducted when, or as soon as practicable after, the event happens; and
- (c) conducted for publishing a report of the event—
  - (i) on television or in a newspaper, magazine or similar publication; and
  - (ii) to inform the public about the event; and

## Schedule (continued)

- (d) of a type the chief executive has declared as exempt media activity by publishing the declaration on the department's web site.

**group activity**—

- 1 A *group activity* is an activity involving the organised use of a part of a recreation area—
- (a) by a group of persons; and
  - (b) in a way that may restrict access to the part by the general public, or affect the enjoyment of the part by the general public, having regard to—
    - (i) the location of the part; and
    - (ii) the number of members of the public that are likely to be in the area at the time the activity is being carried out.

*Examples of activities that may be a group activity*—

a concert, rally, public meeting, religious activity, wedding or organised sporting activity

- 2 A *group activity* does not include an activity carried out in an area, by a relevant Aboriginal or Torres Strait Islander entity for the area, under Aboriginal tradition or Island custom.

**guide dog** see the *Guide Dogs Act 1972*, section 3.

**information notice**, about a decision, means a notice stating each of the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) how the person receiving the notice may appeal against the decision.

**insurance cover**, for activities to be conducted under a commercial activity or group activity permit, means a policy of insurance that insures the applicant for the permit against a claim for damage, injury or loss to a person, and damage to property, arising from the activities to be conducted under the permit.

## Schedule (continued)

**lake** includes lagoon, swamp, marsh and any other natural collection of water.

**land** includes—

- (a) land that is, or is at any time, covered by water; and
- (b) Queensland waters.

**management intent**, for a recreation area, includes an outline of each of the following—

- (a) the goals intended to be achieved by managing the area;
- (b) the policies to be implemented to achieve the goals.

**mining interest** means—

- (a) a mining claim, mineral development licence or mining lease under the *Mineral Resources Act 1989*; or
- (b) a petroleum lease under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*; or
- (c) a potential commercial area declared under the *Petroleum and Gas (Production and Safety) Act 2004*.

**motor vehicle**—

- 1 *Motor vehicle* includes a bus, car, motor bike, quad, tractor, trike or truck.
- 2 *Motor vehicle* does not include an aircraft, a bicycle, a hovercraft or motorised wheelchair.

**native title party**, for an area, means—

- (a) a registered native title body corporate under the *Native Title Act 1993* (Cwlth), section 253 for the area; or
- (b) an entity, other than a registered native title body corporate, that is the subject of a determination of native title under the *Native Title Act 1993* (Cwlth), and is registered on the National Native Title Register as holding native title rights and interests for the area; or
- (c) a registered native title claimant under the *Native Title Act 1993* (Cwlth), section 253 for the area; or

## Schedule (continued)

- (d) if there is no registered native title claim for the area and an entity has filed a native title determination application in the Federal Court for the area—the entity.

**natural resources**, of a recreation area, means the natural and physical features and processes of the area, including living organisms, soil, water, minerals and air.

**other party**, for a commercial activity agreement, see section 89.

**permit** means a permit issued under this Act.

**permit fee** means the fee prescribed under a regulation for a permit issued under this Act.

**personal water craft** means a power driven device that—

- (a) has a fully enclosed hull designed not to take on water if capsized; and
- (b) is designed to be operated by a person standing, crouching or kneeling on it or sitting astride it.

**place** includes vacant land or premises.

**prescribed commercial activity** means a commercial activity declared under section 97 to be a prescribed commercial activity.

**public health and safety act** means an act, the regulation or prohibition of which, the chief executive believes is necessary or desirable to diminish the risk of death, injury or illness to users of a recreation area or adjoining areas.

**public notice** means a notice published in—

- (a) a newspaper circulating generally in the area in which the recreation area the subject of the notice is located; and
- (b) a newspaper circulating throughout the State.

**reasonably believes** means believes on grounds that are reasonable in the circumstances.

**reasonably considers** means considers on grounds that are reasonable in the circumstances.



## Schedule (continued)

**recreational craft** means a hot air balloon, hang-glider, hovercraft, parachute, paraglider, ultralight aircraft or other craft or device prescribed under a regulation.

**recreation area** means an area declared under section 7 to be a recreation area.

**recreation area agreement** see section 6(2).

**recreation management condition** see section 72(1).

**registrar of titles** means the registrar of titles under the *Land Title Act 1994*.

**regulatory notice** see section 99.

**relevant Aboriginal or Torres Strait Islander entity**, for a recreation area or proposed recreation area, means—

- (a) a native title party for the area; or
- (b) an Aboriginal party for the area under the *Aboriginal Cultural Heritage Act 2003*; or
- (c) a Torres Strait Islander party for the area under the *Torres Strait Islander Cultural Heritage Act 2003*; or
- (d) a person entitled, under the *Aboriginal Communities (Justice and Land Matters) Act 1984*, section 174(1) or the *Community Services (Torres Strait) Act 1984*, section 184(1), to take marine products or fauna in the area.

**relevant details**, for a group activity permit, a commercial activity permit, a commercial activity agreement or a corresponding authority, means the details needed to identify the following matters—

- (a) the name of the person to whom the permit or authority has been issued or the name of the other party to the agreement;
- (b) the date on which the permit, agreement or authority was issued or entered into;
- (c) the recreation area, or the part of a recreation area, to which the permit, agreement or authority applies;

## Schedule (continued)

- (d) the activity authorised under the permit, agreement or authority.

**repealed Act** means the repealed *Recreation Areas Management Act 1988*.

**restricted access area** means an area declared to be a restricted access area under section 101 or 102.

**restricted access area notice** see section 101(1).

**review decision** see section 208(1).

**review notice** see section 208(2).

**self-registration camping area**, see section 218.

**self-registration camping notice**, see section 218(1).

**seller**, for part 5, division 6, see section 94(1).

**specified cooking or heating appliance** means a portable cooking or heating appliance that is self-contained and uses manufactured fuel, including, for example, refined oil or gas.

**State land** means all land in Queensland that is not—

- (a) freehold land (other than freehold land for which the State is the registered proprietor); or
- (b) land contracted to be granted in fee-simple by the State; or
- (c) a reserve under the *Land Act 1994* under the control of a trustee who does not represent the State; or
- (d) subject to a lease or licence under the *Land Act 1994*; or
- (e) subject to a mining interest; or
- (f) subject to an exclusive possession determination.

**under control**, for a dog, means—

- (a) a person who is physically able to control the dog is holding the dog by a leash; or
- (b) the dog is securely tethered to a fixed object and is under the supervision of a person who is physically able to control the dog; or

**Schedule (continued)**

- (c) the dog is being transported in an enclosed vehicle, carry cage or other suitable closed container; or
- (d) the dog is being transported on the tray of a vehicle and is securely tethered so as to be confined to the vehicle tray.

***vehicle*** includes a bicycle, hovercraft, motor vehicle and any other form of transport designed for movement over land.

***vessel*** includes a barge, boat, ferry, hovercraft, personal water craft, pontoon, water taxi or other thing capable of carrying people or goods through water.

***watercourse*** means a river, creek or stream in which water flows permanently or intermittently.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Recreation Areas Management Act 2006 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
0A	none	27 August 2007	

## 5 List of legislation

### **Recreation Areas Management Act 2006 No. 20**

date of assent 2 May 2006

ss 1–2 commenced on date of assent

ss 252–253 not yet proclaimed into force (automatic commencement under AIA s 15DA(2) deferred to 3 May 2008 (2007 SL No. 56 s 2))

remaining provisions commenced 27 August 2007 (2007 SL No. 203)

## 6 List of annotations

### **Transitional regulation-making power**

s 250 exp 27 August 2008 (see s 250(4))