



Queensland

Nature Conservation (Administration) Regulation 2006

Explanatory Notes for SL 2006 No. 203

made under the

Nature Conservation Act 1992

Policy Objectives of the Legislation

The primary objective of making the proposed nature conservation regulations is to provide for effective management of protected areas, and of wildlife, in order to achieve the object of the Act—the conservation of nature.

Reasons for the Subordinate Legislation

Under the *Statutory Instruments Act 1992* the *Nature Conservation Regulation 1994* (NCR) and *Nature Conservation (Wildlife) Regulation 1994* were scheduled to expire on 1 September 2005. The date of expiry for these Regulations has been extended to 1 September 2006. However, it is necessary that the proposed nature conservation regulations commence prior to this date to ensure the ongoing management of protected areas and wildlife in Queensland.

Alternatives to Regulation

Potential alternatives to the creation of new Regulations have been considered, including a ‘no-legislative intervention’ option (i.e. allow the Regulations to expire without replacement). The ‘no legislative intervention’ option and other potential alternatives to the proposed

regulations are unsatisfactory because they have a range of serious, highly undesirable environmental, economic and social consequences, including—

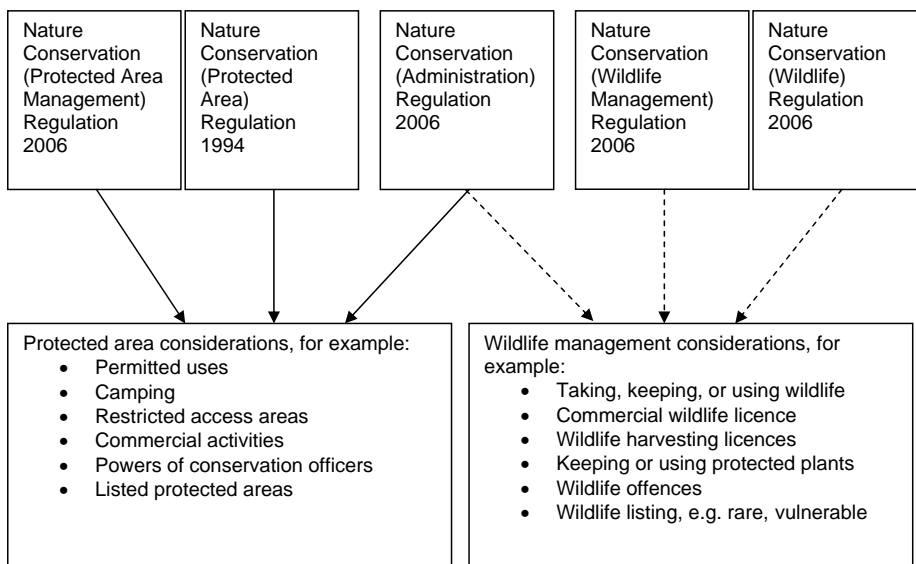
- protected areas and wildlife would not be conserved (due to lack of regulatory controls and loss of management revenue from fees);
- wildlife-based businesses would be constrained or could not lawfully operate (due to lack of regulatory means to allow activities otherwise restricted by the Act);
- obligations under the Act would not be fulfilled; and
- Queensland would be perceived as out of step with internationally and nationally recognised practices and standards.

The subject matter of the *Nature Conservation Regulation 1994* has been restructured into three proposed regulations—

- the *Nature Conservation (Administration) Regulation 2006* (the Regulation);
- the *Nature Conservation (Protected Areas Management) Regulation 2006* (Protected Areas Management Regulation); and
- the *Nature Conservation (Wildlife Management) Regulation 2006* (Wildlife Management Regulation).

The simultaneous framing of the three regulations provides a coherent regulatory package but also ensures that the separate and distinct elements of the legislation are available to staff and the public in statutes of a manageable size.

The *Nature Conservation (Wildlife) Regulation 1994* is being remade as the *Nature Conservation (Wildlife) Regulation 2006*, (the Wildlife Regulation)



Administrative costs

The Regulation will not impose further costs on either the EPA or other Government Departments. Implementation costs will be met from existing EPA allocations. The Regulation promotes a coordinated and integrated approach with other conservation legislation, thus encouraging the formulation of arrangements to maximise efficiencies in management.

Fundamental Legislative Principles

Appeal processes (merit review)

Clauses 99 to 108 of the Regulation introduce provisions allowing for internal Departmental review of permit decisions, with the option of further appeal to a Magistrate if the person is dissatisfied with the outcome of the Departmental review. These review and appeal opportunities apply to relevant authorities and certain decisions about commercial activity agreements.

Review and appeal provisions have not been included for camping permits in clause 32(3). Such provisions are considered unwarranted because—

- 120,000 camping permits are issued for protected areas each year, and applications for these permits are only refused if an area is fully booked;
- the requirement to provide an information notice and to provide advice on appeal rights in relation to every camping permit that has been made subject to a condition is unduly onerous; and
- if any conditions are imposed on camping permits, these are simple requirements relating to safety and environmental protection.

In relation to Commercial Activity Agreements, appeals can be initiated in relation to amendment, suspension, cancellation, and refusal of single applications. However, no appeal provisions have been included in relation to decisions arising out of an Expression of Interest (EOI) tendering process. This is because it would not be appropriate for an appeal decision to be made on an applicant's EOI in isolation from other applications and from the competitive decision making context. An aggrieved applicant to an EOI process could seek Judicial Review of the process.

By including the additional provision allowing for internal review (as well as retaining appeal to a magistrate) the provisions are intended to bring the Regulation into enhanced compliance with fundamental legislative principles in relation to the requirement to make rights, liberties and obligations dependent on administrative power only if the power is subject to appropriate review.

Amendment and suspension of relevant authorities and agreements

The Regulation provides for the immediate amendment or suspension of relevant authorities and agreements under specific urgent circumstances without providing an opportunity for the holder to show cause as to why the amendment or suspension should not occur. This may be seen as being inconsistent with the principles of natural justice.

Clauses 50 and 90 state that the chief executive may immediately amend or suspend a relevant authority or a commercial activity agreement, without providing an opportunity to show cause. However the circumstances under which an immediate amendment or suspension can be made are limited. Examples of when an immediate amendment or suspension might need to be applied could include a bushfire, if a lookout used by a tour operator

becomes unstable and dangerous to use or if a new species requiring protection is discovered in an area.

Clause 51 states that the chief executive may immediately suspend a wildlife authority without the requirement to provide a show cause period, if the suspension is necessary for the immediate protection of life or property.

Owing to the serious nature of the situations in which an immediate amendment or suspension would be necessary it is not considered appropriate to delay the amendment or suspension of the authority for a period of 20 days or more to allow for the show cause process. However, the holder of the authority or agreement has the right to appeal these decisions.

There are no provisions in the regulation that would authorise the chief executive to cancel a relevant authority or agreement with out providing the holder initially with a show cause notice. If it is subsequently decided to cancel the authority or agreement, the Chief Executive must provide an information notice of appeal rights in relation to the decision.

Granting an exemption or refund

Clauses 154 to 158 make provision for the chief executive to grant exemption for a protected area authority fee. The chief executive may only grant the exemption if satisfied of the matters outlined in clause 155(2).

Clause 159 makes provision for the chief executive to refund all or part of the fee for a relevant authority that has been amended, suspended, cancelled or surrendered under specific circumstances.

The regulation makes no right of appeal against a decision by the chief executive in relation to the grant of an exemption or refund. The previous NCR made no provision for the grant of a fee exemption in these circumstances or for a refund, these provisions have been included to allow the chief executive to provide a concession based on equity in the circumstances outlined.

The concession can only be granted in certain circumstances and the amounts involved would generally be minor (for example, exempting members of a conservation group assisting with weed control on a park from paying camping fees).

Consultation

A Regulatory Impact Statement (RIS), which detailed the proposed review and remake of the nature conservation regulations was released on 2 December 2004. Public submissions on the RIS were accepted over a period of 10 weeks.

Submissions from all stakeholders expressed general support for the remaking of the nature conservation regulations and the majority of the proposed amendments.

Additional consultation with Queensland Government Departments has occurred in preparing the Regulation.

Notes on Provisions

Part 1 Preliminary

Division 1 General provisions

Division 1 specifies the Regulation may be cited as the *Nature Conservation (Administration) Regulation 2006* and that the Regulation (other than part 15), commences 21 August 2006. The part also describes the relationship that the Regulation has with the Protected Areas Management Regulation and the Wildlife Management Regulation. An overview of these regulations is contained in schedule 1.

Division 2 Dictionary and aids to interpretation

Division 2 provides for the interpretation of the Regulation. This includes specifying the Dictionary is in schedule 7 and clarifies the interpretation of references to licence, permit or other authority. This division also clarifies that references to classes of wildlife in this regulation are taken to be references to wildlife under the Wildlife Regulation.

A meaning of the term 'character of an area' is also included. The character of a protected area is a matter the chief executive must have regard to when deciding an application for a protected area authority or an agreement.

Part 2 Relevant authorities

Division 1 Types of relevant authorities that may be granted

Division 1 restates provisions from the previous NCR that allow the chief executive to—

- Issue a permit to take, use, keep or interfere with cultural or natural resources, apiary permit, and an Aboriginal tradition authority or Island custom authority.
- Grant a permit for conducting specific activities in a protected area, this includes, camping, entering a restricted access area, stock grazing, stock mustering, travelling stock, entering a national park (scientific), conducting a commercial activity, soliciting donations or information, conducting a group activity, use of recreational craft and a special activities.
- Grant a licence for an animal other than in a protected area, licences include commercial wildlife licences, recreational wildlife licences, wildlife harvesting licences, wildlife demonstrator licence, wildlife exhibitor licences, wildlife farming licences, and museum licences.
- Grant a permit for an animal other than in a protected area, including permits for damage mitigation, educational purposes, keeping protected wildlife, rehabilitation, scientific purposes, and commercial whale watching.
- Grant authorities for an animal other than in a protected area, including authorities for Aboriginal tradition, Island custom, and collection authorities.
- Grant licences for protected plants other than in a protected area, including licences for commercial wildlife, recreational wildlife,

commercial wildlife harvesting, recreational wildlife harvesting, and herbariums.

- Grant permits for protected plants other than in a protected area, including permits for clearing, damage mitigation, educational purposes, scientific purposes and wildlife movement.
- Grant authorities for protected plants other than in a protected area, authorities include Aboriginal tradition and Island custom.

A definition of the ‘relevant authority’ is provided in the schedule 7 dictionary.

Division 2 Terms for relevant authority

Division 2 states the maximum terms for relevant authorities. A relevant authority may not be granted for a term longer than the maximum term specified for the authority in this division. Maximum terms are specified for—

- permits and authorities to take, use, keep or interfere with cultural or natural resources on a protected area;
- permits for conducting other activities in a protected area. The maximum term for a camping permit has been extended to 30 days and the maximum term for a group activity permit has been extended to 1 year;
- licences for wildlife;
- permits for wildlife, the maximum term for a rehabilitation permit granted to an individual has been extended to 3 years; and
- authorities for wildlife.

Division 3 Obtaining relevant authority generally

Subdivision 1 Application for relevant authority

Subdivision 1 restates provisions from the previous NCR and provides for electronic records by detailing requirements for—

- granting a relevant authority, including that the application must be in the approved form and accompanied by the relevant fee; and
- requesting a record book and seeking approval for electronic record system.

Subdivision 2 Considering and deciding application for relevant authority

Subdivision 2 updates the provisions from the previous NCR in relation to how the Chief Executive considers and decides an application, including—

- what the chief executive must have regard to when considering an application for a relevant authority;
- allowing the chief executive to request further information and details of the written notice required for requesting further information;
- allowing the applicant, with the chief executives approval, to amend the application;
- allowing the chief executive to require the applicant to give public notice of the application and providing detail of what should be included in the public notice;
- enabling the chief executive to either grant or refuse an application and the timeframes associated with this process;
- enabling the chief executive to refuse an application for an authority other than a camping permit, if the applicant is not a suitable person to hold the authority. The criteria for determining a suitable person is outlined in schedule 2 of the Regulation;
- prohibiting an authority being granted if the Protected Area Management Regulation, Wildlife Management Regulation, or a conservation plan states the chief executive cannot grant the authority;
- detailing the steps to be taken by the chief executive once an application has been decided; and
- allowing the chief executive to impose a condition on an authority (in relation to the movement of a live protected animal

out of the State) that imposes an obligation on the holder of the authority which continues after the authority expires.

Subdivision 3 Form of relevant authority

Subdivision 3 restates provisions from the previous NCR for—

- specifying a relevant authority granted under this division must be in writing;
- the details that should be stated on a relevant authority, including the date of commencement, its expiry date, personal details of the authority holder, and any relevant conditions;
- additional details that should be stated on a protected area relevant authority, this includes the protected area, the purpose of entry, and if any cultural or natural resources may be taken; and
- additional details that should be stated on a wildlife relevant authority, this includes the place for the authority, the place where the wildlife may be taken, the registration details for a mobile operator, and the wildlife to be taken under the authority.

Subdivision 4 Camping tags

Subdivision 4 provides that if the chief executive issues a camping permit under this division that a camping tag must be issued for use with the permit when the permit is granted.

Division 4 Obtaining camping permit for e-permit camping area or self-registration camping area

Subdivision 1 Camping notices and tags

Subdivision 1 restates provisions from the previous NCR relating to e-permit and self-registration camping areas and making camping tags available.

Subdivision 2 When and extent to which permits granted

Subdivision 2 restates provisions from the previous NCR relating to—

- when camping permits for e-permit camping are taken to have been granted;
- the extent to which e-camping permits are granted;
- when a self-registered camping permit for a self-registration camping area is taken to have been granted; and
- the extent to which self-registered camping permits are granted.

Division 5 Amendment, suspension or cancellation of relevant authority

Division 5 updates and clarifies the provisions of the previous NCR for amending, suspending or cancelling a licence, permit or other authority. This division includes details of—

- making minor amendments to a relevant authority;
- amendments to a relevant authority on application;
- circumstances when the chief executive may amend a relevant authority other than immediately, for example, if incorrect or misleading information was provided or the holder has contravened a condition of the authority;
- the procedure for amending a relevant authority other than immediately;
- immediate amendment or suspension of a protected area relevant authority by the chief executive for safety reasons (for example, for control of a natural disaster) or conservation reasons (for example, protection of native wildlife), where practical the chief executive will endeavour to contact authority holders verbally to inform them of an amendment or suspension;
- immediate amendment or suspension of a wildlife relevant authority by the chief executive for safety or conservation reasons;

- immediate amendment or suspension for failure to pay a fee or royalty or give a return;
- the grounds for suspending a relevant authority other than immediately or cancelling a relevant authority;
- the procedure for suspending a relevant authority other than immediately or cancelling a relevant authority;
- when a holder of an amended relevant authority must return the authority for amendment;
- when the holder of a suspended relevant authority must return the authority; and
- when the holder of a cancelled relevant authority must return authority.

Division 6 Carrying out activities under relevant authority

Division 6 restates provisions from the previous NCR requirements by—

- specifying that it is an offence to fail to comply with the conditions of a relevant authority;
- specifying the holder of a relevant authority must have it available or a copy of it available for inspection while carrying out an activity under a relevant authority. It is an offence to fail to produce the authority for inspection; and
- specifying the holder of a wildlife relevant authority for displaying an animal must display the authority or a copy of the authority at the place where the animal is being displayed. It is an offence to fail to display the authority.

Division 7 Other provisions about relevant authorities

Division 7 restates provisions from the previous NCR for—

- specifying a relevant authority other than an apiary permit is not transferable;

- the transfer of apiary permits;
- the holder of a relevant authority to notify the chief executive of any changes to their details, for example, change of address, and request an amendment;
- the replacement of a damaged, destroyed, lost or stolen relevant authority;
- the surrender of a relevant authority by the holder of the authority; and
- the circumstances when an existing relevant authority is taken to be in force while a new application is being considered.

Part 3 Commercial activity agreements

Part 3 introduces provisions regarding the Tourism in Protected Areas (TIPA) commercial activities management framework. The TIPA framework implements more flexible arrangements for the management of commercial activities, such as, the ability to enter into individually negotiated agreements with individual operators.

Division 1 Preliminary

Division 1 specifies—

- the ways the chief executive may enter into a commercial activity agreement, these include through an expression of interest process, an application process, or by agreement with a holder of a commercial activity permit;
- restrictions on entering into an agreement for the conservation of a protected area, this includes the chief executive being satisfied that the activities authorised under the agreement are consistent with the management principles for the protected area and the management intent or management plan for the protected area;
- restriction on entering into an agreement based on the suitability of the party; the chief executive may only enter into a

commercial activity agreement with a person if satisfied that person is suitable for the agreement;

- restrictions on entering into an agreement regarding insurance, the chief executive may only enter into a commercial activity agreement if the chief executive is satisfied that there is adequate insurance cover for the activities under the agreement;
- the content of an agreement, a commercial activity agreement must include the name of the protected area, the date the agreement is entered into, its term, the name of the person and the person's business details, the activities authorised under the agreement, any conditions of the agreement and the amount payable to the State under the agreement. The parties to the agreement (i.e. the chief executive and the other party to the agreement) may amend the agreement at any time; and
- mandatory conditions of an agreement; if the chief executive reasonably believes that a commercial activity agreement should be subject to a condition to assist in achieving the purpose of the Act, the chief executive must not enter into an agreement unless it is subject to the condition and the agreement states that a breach of the condition is an offence against the Regulation.

Division 2 Expression of interest process

Division 2 provides the framework to be applied if the chief executive decides to use an expression of interest process for entering into commercial activity agreements. Provisions on the invitation for submissions, requirements for submissions, requirements for processes and for providing notice to unsuccessful submitters are contained in this division.

Invitation for expression of interest

This process allows the chief executive to limit the expression of interest process to only the holders of a commercial activity permit for the activity for the area, or to invite members of the public who the chief executive reasonably believes would be interested to submit an expression of interest. It is intended that the expression of interest process will only be limited to the holders of commercial activity permits for the activity for the area when

there is a need to reduce the capacity levels of commercial activity at an area for conservation reasons. In situations where it may be necessary to reduce capacity, limiting the expression of interest process to the holders of commercial activity permits for an area means that operators with established business in the area will not be required to compete with prospective new operators for the reduced capacity available.

Requirements for expression of interest

This clause requires that a submission must be in writing, accompanied by the required fee, and submitted in accordance with the invitation for expression of interest.

Requirements for process

The chief executive may, subject to the requirements for expression of interest, determine the process used to decide which expressions of interest should be further negotiated. In considering an expression of interest the chief executive must have regard to the matters relevant to consideration of an application for a commercial activity permit and any other matter the chief executive reasonably considers relevant.

Chief executive may request further information

This clause allows the chief executive to ask the submitter, by written notice, to provide further information by a stated date (at least 20 business days after the notice is received). The expression of interest is taken to be withdrawn if the submitter does not (without reasonable excuse), provide the information by the stated date. However, the chief executive may extend the time for the information to be provided.

Amending expression of interest

This clause allows the applicant of an expression of interest (if the chief executive agrees) to amend the submission before the chief executive has finished considering it.

Notice to unsuccessful submitters

This clause requires the chief executive, within 14 business days after making a decision under clause 76, to give each unsuccessful applicant a written notice for the decision.

Division 3 Application Process

Division 3 provides the framework to be used if the chief executive decides to use an application process for entering into commercial activity agreements. The division provides—

- The required form for applying for an agreement, that is, in writing and accompanied by the prescribed fee.
- Matters the chief executive must consider in regards to an application, including all matters that the chief executive must have regard to in considering an application for a commercial activity agreement.
- That the chief executive may request further information from the applicant, to be provided by a stated date (no less than 20 business days after receiving the notice).

If the applicant does not, without reasonable excuse, provide the further information on time, then the application is taken to have been withdrawn, in which case the chief executive must give the applicant written notice to this effect and advise that a new application may be made. The chief executive may extend the time for the information to be provided.

- That if the chief executive agrees, the applicant may amend the application before the chief executive has finished considering it.
- That the chief executive may request public notice of an application if the chief executive considers entering into a commercial activity agreement may restrict the reasonable use of a protected area by other people. The chief executive may give the applicant a written notice detailing the advertising required.
- The process for negotiating an application for agreement, including that the chief executive must consider each application for a commercial activity agreement and decide to either negotiate the signing of a commercial activity agreement or refuse the application. The chief executive must give the

applicant written notice of the decision within 10 business days of making the decision. If the decision is to refuse the application, the notice must be an information notice (which then allows the applicant to apply for review of the decision).

- The steps to be taken after an application is decided, including that if the chief executive decides, after negotiations, to enter into a commercial activity agreement then this must be done as soon as practicable. If the chief executive decides to refuse to enter into a commercial activity agreement, then the chief executive must give the applicant an information notice for the decision within 10 business days (which then allows the applicant to apply for review of the decision).

Division 4 Requirements applying to and nature of agreements

Division 4 specifies the maximum term of a commercial activity agreement to be 10 years and provides that an agreement may also provide for rolling extensions and review processes.

Division 4 also outlines the nature of a commercial activity agreement, stating that subject to the conditions of the agreement, a commercial activity agreement authorises the holder to conduct the stated activity in the stated protected area (or part). A commercial activity agreement may also be transferred as provided in division 6.

Division 5 Amendment, suspension and cancellation of agreement by chief executive

Division 5 provides for—

Immediate amendment or suspension for safety or conservation

This clause provides for immediate amendment or suspension of a commercial activity agreement in order to secure the safety of a person or a person's property, because of a fire or other natural disaster, or to conserve

or protect the cultural or natural resources of the protected area. Advice of amendment or suspension may be given verbally (where practical) or by signs, and takes effect immediately after the other party to the agreement is advised, and continues until the chief executive advises otherwise.

This provision allows immediate action in urgent and serious circumstances, which do not allow time for advance notice to be given or for representations to be made by the other party to the agreement.

The effect of the amendment does not depend on the amendment being noted on the agreement. The chief executive must as soon as practicable advise the other party or put a notice on the Department's web site advising when the amendment or suspension no longer applies.

Amending agreement other than immediately

The grounds for amending a commercial activity agreement other than immediately include but are not limited to, when an agreement was obtained because of incorrect or misleading information, the other party has contravened a condition of the agreement or the other party to the agreement is no longer a suitable person to be a party to the agreement under clause 69.

Process for amending agreement other than immediately

The process that the chief executive may follow for amending an agreement other than immediately This process specifies that the chief executive may give the other party to the agreement written notice of any proposed amendment, stating the ground for the proposed amendment, an outline of the facts and circumstances forming the basis for the ground, and inviting the other party to the agreement to make representations, within a stated period of not less than 20 business days.

The chief executive may, after considering representations, amend the agreement in the way stated in the notice, or in another way having regard to the representations. If the chief executive makes the amendment, the other party to the agreement must be advised of the amendment by information notice (which then allows the holder to apply for review of the decision). The other party to the agreement must also be advised in writing if the chief executive decides not to make the proposed amendment.

Cancelling agreement or suspending authorisation under agreement other than immediately

The grounds under which the chief executive may cancel an agreement or suspend authorisation under the agreement other than immediately; include but are not limited to, if the chief executive reasonably believes that the activities being conducted under the agreement are having an unacceptable impact on the character or amenity of the protected area or are threatening public health and safety.

Process for cancelling agreement or suspending authorisation under agreement (other than immediately)

The process for cancelling an agreement or suspending authorisation under the agreement other than immediately; provides that the chief executive must give the other party to the agreement a written notice stating the proposed action, including any proposed suspension period, grounds for the proposed action and circumstances surrounding the decision, and an invitation to make written representations within a stated period (not less than 20 business days after the notice is given).

After considering any representations made, the chief executive may decide, to either suspend the authorisation (for no longer than the proposed suspension period) or cancel the agreement in line with the proposed action. The chief executive must give the other party to the agreement an information notice about the decision if the agreement is cancelled or authorisation suspended.

If the chief executive decides not to take action, the chief executive must give the other party to the agreement written notice of the decision, as soon as practicable.

If the authorisation under a commercial activity agreement is cancelled or suspended because of the conviction of a person and the conviction is quashed, the cancellation or suspension period ends on the day the conviction is quashed.

Division 6 Transfer of authorisation under agreement

Division 6 makes provision for the transfer of an agreement, for the chief executive to approve or refuse the transfer and requirements for giving effect to the transfer.

Application to transfer authorisation

The authorisation under a commercial activity agreement may be transferred. Both the seller (the original party to the agreement) and the buyer (the party to whom the authority is being transferred) must apply to the chief executive to approve the transfer.

Approval or non-approval to transfer

The chief executive may approve the transfer of a commercial activity agreement only if the chief executive is satisfied that the buyer is a suitable person for the commercial activity agreement. The chief executive must give the seller and the buyer an information notice for the decision if the decision is to refuse the transfer.

Giving effect to a transfer

This clause provides that the transfer can only be affected if the chief executive has approved the transfer, and all relevant fees have been paid.

If the seller transfers all of the authorisations under the agreement, the chief executive must cancel the seller's agreement and, if the buyer has a commercial activity agreement, amend the buyer's agreement to reflect the transfer. If the buyer does not have a commercial activity agreement, the chief executive must enter into an agreement with the buyer for conducting the commercial activity.

If the seller transfers only part of the authorisation under the agreement, the chief executive must amend the seller's commercial activity agreement to reflect the transfer, and if the buyer has a commercial activity agreement amend the buyer's agreement to reflect the transfer. If the buyer does not have a commercial activity agreement, the chief executive must enter into an agreement with the buyer for conducting the commercial activity.

Division 7 Requirement to have agreement or copy available for inspection

Division 7 requires that a commercial activity agreement, copy or relevant details of the agreement must be available for inspection.

Part 4 Review and appeal provisions

Division 1 Preliminary

Division 1 provides that every appeal against an appellable decision must commence with an internal review.

Division 2 Internal review

Division 2 makes provision for applying for an internal review and the action the chief executive must undertake once receiving a review application. This division also continues a previous NCR provision that an applicant may apply for a stay of the appellable decision to a Magistrates Court. However, it is not possible to apply for a stay of a decision in relation to an authority to take or interfere with the cultural or natural resources of a protected area or take protected wildlife. As in cases where such an authority has been cancelled or suspended it is not considered appropriate to allow the continued taking of animals or plants throughout the period of the internal review. Appellable decisions are defined in the schedule 7 dictionary.

Division 3 Appeals

Division 3 updates previous NCR requirements for—

- providing that a person who has applied for a review of an appellable decision under division 2, and is dissatisfied with the decision, may appeal to the Magistrates Court;

- detailing the process for starting an appeal, including that the appellant must give notice of appeal;
- hearing procedures, including that in deciding an appeal the Court has powers equal to the entity that made the decision being appealed. The Court is not bound by the rules of evidence but must comply with natural justice. If the appeal is by a rehearing, the Court will make a decision based on the material provided to the entity that made the decision being appealed against and any additional evidence permitted by the Court;
- providing that the Magistrates Court may grant a stay of operation of a review decisions other than for authorities to take or interfere with a cultural or natural resource of a protected area or to take protected wildlife;
- detailing the powers of the Magistrates Court on appeals; and
- providing appeals to the District Court against a decision of the Magistrates Court may only be made on a question of law.

Part 5 Provisions about dealing with seized things

Part 5 applies if a thing is seized under section 145 or chapter 8 of the Protected Areas Management Regulation or under section 346 of the Wildlife Management Regulation. The Part generally continues previous NCR requirements for dealing with seized property through—

- specifying the general powers for handling seized property;
- providing that it is an offence to tamper with seized property;
- specifying that certain seized property must be destroyed, this includes, explosives, a trap, a decoy or poison;
- specifying that seized property must be kept in a reasonably secure way until returned or otherwise dealt with under this part;
- providing seized property will only be released if the person has a right to the property and pays all reasonable costs;
- detailing the procedure if seized property is not claimed or has a market value of less than \$500;

- detailing how the proceeds of sale of seized property must be applied;
- detailing the application of proceeds of sale; and
- specifying compensation is not payable for sale or disposal or seized property.

In addition, this part now specifies the requirements for giving notice for seized property with a market value of more than \$500.

Part 6 Provisions about records

Part 6 updates provisions from the previous NCR relating to record books including the implementation of electronic record keeping by—

- detailing how records must be kept for a commercial activity permit or wildlife relevant authority;
- specifying the requirements for keeping a record or a copy of the record in a secure way and that offences apply for not meeting these requirements;
- specifying how long records are required to be kept (as specified in section 157 of the Act) and the offences that apply for failure to produce or surrender a record;
- specifying the general information that must be included in the record and the offences that apply for failure to include the required information;
- specifying that a person required to include a relevant record particular must include the particular on the prescribed day for the particular and the offences that apply for failure to meet this requirement;
- detailing the additional information that is to be included in the record for wildlife exhibitor licences and the offences that apply for failure to include this information in the record;
- specifying that information included in a record must be complete, accurate and legible and the offences that apply for failure to meet these requirements;

- specifying the holder of a record must give the chief executive written notice of any damage to, or theft, loss or destruction of, the record and the offences that apply for failure to meet these requirements; and
- specifying it is an offence to tamper with a record.

Part 7 Provisions about returns of operations

Part 7 applies to a return of operations, required under the Act, to be given to the chief executive for a relevant authority. The part continues previous NCR requirements about return of operations to the chief executive including the implementation of electronic returns by—

- detailing the form and nature of returns of operations, this includes the return must be in the approved form and the approved form may be an electronic form;
- specifying when the return of operations must be given and the period for which they must be given and the offences that apply for failure to meet these requirements;
- specifying information to be given in a return of operations is to be complete, accurate and legible and the offences that apply for failure to meet these requirements;
- specifying the way and period for which return of operations must be kept and the offences that apply for failure to meet these requirements;
- specifying the requirement to produce a return of operations for inspection and the offences that apply for failure to meet these requirements;
- specifying the person who keeps the return of operations must give the chief executive written notice of the theft, loss, destruction or damage to the return and the offences that apply for failure to meet these requirements; and
- specifying that it is an offence to tamper with a return of operations.

Part 8 Fees payable under the Act

Division 1 Fees payable

Division 1 includes a provision relating to fees generally, the provision outlines—

- that the fees payable under the Act are stated in schedule 3 of the regulation;
- that a fee payable under the Act is a debt due to the State and may be recovered in a court which has jurisdiction for the recovery of debts up to the amount concerned; and
- the interpretation of the term least concern plant and plant species.

Division 1 restates or updates provisions from the previous NCR relating to fees by—

- specifying that an additional fee may apply for a recreational wildlife licence or permit to keep specified protected wildlife, dependant upon whether the holder has met requirements for taking a biological tissue sample or implanting an electromagnetic implant into the animal;
- specifying that a reduced fee may apply for particular land-holders, in relation to some licences for macropods and protected plants; and
- specifying a reduced fee applies to a commercial wildlife harvesting licence for protected plants if the licence is granted to a person for taking a protected plant for which a royalty is payable under a permit under the *Forestry Act 1959*.

Division 1 also includes provisions which allow the application and permit fee for a commercial activity agreement or commercial activity permit to be adjusted if a fee has been paid for a similar permit under another Act, including the *Forestry Act 1959* and *Recreation Areas Management Act 1988*. A similar provision allows a daily fee to be adjusted if a fee has been paid for a similar permit under another Act.

Additionally the division specifies when particular fees for stock grazing permits, commercial activity permits and group activity permits for which special access is allowed are payable.

Division 2 Exemptions generally

Division 2 restates provisions from the previous NCR for situations where exemptions for fee payment would apply, these include, fee exemptions for—

- camping permits for particular persons;
- recreational wildlife harvesting licence for lizards for particular people;
- particular wildlife farming licences;
- particular permits to keep protected wildlife;
- particular collection authorities;
- recreational wildlife harvesting licences for protected plants that would be destroyed;
- recreational wildlife harvesting licences for whole protected plants that will be propagated and replanted; and
- recreational wildlife harvesting licences for protected plant parts that will be propagated and replanted.

Division 3 Exemptions for particular activities directed at conservation

Division 3 provides a framework which allows the chief executive to exempt a person from the requirement to pay fees associated with activities in a protected area that are predominantly directed toward the conservation of nature, the conservation of cultural resources or the management of a protected area. Provisions include—

- details on applying for exemption of fee;
- what the chief executive must consider in deciding a fee exemption application;

- the process to be followed by the chief executive when granting an exemption under a fee exemption application;
- the requirements of a refusal of an exemption under a fee exemption application, including that the chief executive must provide written notice of the refusal to the applicant; and
- details of the effect of a grant of exemption, i.e. a grant of exemption provides the applicant is not required to pay the fee to which the exemption relates.

Division 4 Refund of fees

Division 4 provides a mechanism for the chief executive to refund fees for a relevant authority and details the process for these refunds.

Part 10 General provisions

Part 10 restates provisions from the previous NCR requirements for—

- specifying that a person who is given an infringement notice for an offence against the Act accumulate demerit points for the offence. The number of demerit points that apply is also specified.
- the period for which record books and documents must be kept;
- particular approvals that are not transferable;
- defining an officer of a prescribed class under section 130 of the Act. This section of the Act enables the Minister to issue an identity card to an officer of a prescribed class; and
- enabling the chief executive to approve forms for use under the Act.

Part 11 **Repeal provision**

Part 11 provides for the repealing of the *Nature Conservation Regulation 1994*.

Part 12 **Transitional provisions**

Part 12 provides transitional provisions that—

- Enable a licence, permit or other authority issued under the previous NCR to remain in force for the term of the licence, permit or authority.
- Provide an application for a licence, permit or other authority that is not decided before the commencement of this regulation will be considered under this regulation.
- Requires that appeals commenced under the previous NCR will be determined under the repealed legislation.
- Provide that existing declarations of restricted access areas continue under this regulation;
- Provide that existing declarations of special activities continue under this regulation.
- Provide that a reference to the previous NCR is taken to be a reference to this regulation, the Protected Area Management Regulation, or Wildlife Management Regulation.

Part 13 **Amendment of Forestry Regulation 1998**

Part 13 amends the *Forestry Regulation 1998* to ensure consistency with the provisions under Part 8 (Fees) of this regulation, which allow the application fee for a commercial activity agreement or commercial activity permit to be adjusted if a fee has been paid for a similar permit under another Act. Relevant Acts include the *Nature Conservation Act 1992* and

Recreation Areas Management Act 1988. A similar provision has been inserted that allows a daily fee to be adjusted if a fee has been paid for a similar permit under another Act.

Part 14 **Amendment of Nature Conservation (Protected Areas) Regulation 1994**

Part 14 amends the *Nature Conservation (Protected Areas) Regulation 1994* removing schedule 3A, which lists the trustees of conservation parks and the sections of schedule 4 which relate to the trustees of resource reserves. Previously schedules listing trustees and schedules allocating powers to trustees were split between the *Nature Conservation (Protected Areas) Regulation 1994* and the *Nature Conservation Regulation 1994*, meaning both regulations would need to be amended in the case of a change in trustees for an area. As these schedules relate to the management of protected areas rather than the designation of protected areas the schedules will be included in the *Nature Conservation (Protected Areas Management) Regulation 2006*.

Part 15 **Amendment of Nature Conservation Regulation 1994**

Part 15 amends the *Nature Conservation Regulation 1994* to include a requirement for an export agreement to be in place prior to the movement of any prescribed protected animal in certain circumstances. These provisions are continued unchanged in the *Nature Conservation (Wildlife Management) Regulation 2006*.

Part 16 **Amendment of Recreation Areas Management Regulation 1989**

Part 16 amends the *Recreation Areas Management Regulation 1989* to ensure consistency with the provisions under Part 8 (Fees) of this regulation which allow the application fee for a commercial activity agreement or commercial activity permit to be adjusted if a fee has been paid for a similar permit under another Act. Relevant Acts include the *Nature Conservation Act 1992* and *Forestry Act 1959*. A similar provision has been inserted that allows a daily fee to be adjusted if a fee has been paid for a similar permit under another Act.

Part 17 **Amendment of State Penalties Enforcement Regulation 2000**

Part 17 amends the *State Penalties Enforcement Regulation 2000* to ensure accuracy of referencing to the provisions of the reworked Nature Conservation Regulations.

Schedule 1 **Overview of regulations and management instruments**

Relating to clause 3 Schedule 1 provides an overview of—

- the Protected Areas Management Regulation; and
- the Wildlife Management Regulation and conservation plans.
- this regulation and its relationship with the management instruments.

The schedule has been included to aid in the interpretation of the linkages between these pieces of legislation.

Schedule 2 Matters for deciding whether person is a suitable person for a relevant authority

Schedule 2 contains definitions of associated person and relevant day for the purposes of the schedule.

Section 2 also provides that the Chief Executive may have regard to any relevant matter in deciding whether a person can carry out activities in a competent and ethical way. The Schedule specifies what circumstances may make a person not a suitable person to hold wildlife and protected area authorities.

Schedule 3 Fees

Schedule 3 lists the fees applicable under the Nature Conservation Regulations. These fees are consistent with the previous NCR fee schedule. The following additions have been included in schedule 3—

- Part 1, Division 1—fees for the taking of a seed or other propagative material of a least concern plant, and a permit to take foliage, flowers or inflorescences of a least concern plant.
- Part 1, Division 2—an exemption for commercial tour operators having to pay daily fees and camping fees for clients under 5 years old age, this ensures consistency with other relevant fees in this schedule.
- Part 1, Division 3—fees for commercial activity agreements for protected areas.

Schedule 4 Categories of least concern plants for fees payable for seeds or other propagative material

Schedule 4 provides the category number for the specified least concern plants. The fees applicable for each category number are specified in Schedule 3, Part 1, Division 1.

Schedule 5 Categories of least concern plants for fees payable for foliage, flowers or inflorescences

Schedule 5 provides the category letter for the specified least concern plants. The fees applicable for each category letter are specified in Schedule 3, Part 1, Division 1.

Schedule 7 Dictionary

Schedule 7 provides the dictionary for this regulation. The definitions in this schedule are generally consistent with previous NCR definitions with some additional terms included to aid in the interpretation of the regulation. The following provides details of two of the key definition amendments.

- **Camp**—this definition has been expanded from the previous NCR definition to clarify that camping includes keeping a camping structure in position overnight even if it is unattended. The definition exempts persons from the need to obtain a permit where no camping equipment is set up and the person is undertaking an activity such as fishing, or nocturnal animal study throughout the night.

- Commercial activity—the definition of commercial activity excludes exempt activities and exempt media activities. These activities are not classified as commercial activities and thus do not require the person conducting the activity to obtain a commercial activity permit or commercial activity agreement. A definition of both exempt activities and exempt media activities is included in the dictionary.
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ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Environmental Protection Agency.