

Nature Conservation Legislation Amendment Regulation (No. 2) 2013

Explanatory notes for SL 2013 No. 188

made under the

Nature Conservation Act 1992

General Outline

Short title

This regulation may be cited as the *Nature Conservation Legislation Amendment Regulation (No. 2) 2013*.

Authorising law

Section 175(2)(k) of the *Nature Conservation Act 1992* ('the Act') provides that a regulation may be made with respect to the taking, keeping or use of wildlife, the moving of wildlife into, in and out of the State, the release of wildlife into the wild and other dealing with wildlife.

Section 175(2)(q) of the Act provides that a regulation may be made with respect to authorising the taking, keeping or use of a protected animal.

Policy objectives and the reasons for them

The objectives of the *Nature Conservation Legislation Amendment Regulation (No. 2) 2013* (Amendment Regulation) are to:

1. Reduce regulatory burden on clients and government by delivering streamlined, improved wildlife management practices.
2. Clarify the statutory intent of the regulations and correct existing errors to improve business and community understanding of legislative requirements and government's ability to enforce the law.

The amendments to the regulations under the *Nature Conservation Act 1992* support the Queensland Government's commitment to lessen the regulatory burden on business and the community and reduce red tape. The amendments also ensure processes administered by the Department of Environment and Heritage Protection are efficient and improve client service delivery.

Achievement of policy objectives

The Amendment Regulation will achieve the policy objectives by:

- streamlining administrative processes associated with damage mitigation permits;
- addressing health and safety issues associated with current regulatory restrictions on removing and relocating ‘near threatened’ and ‘threatened’ wildlife from premises;
- removing unnecessary legislative requirements that duplicate Commonwealth law; and
- correcting errors and omissions and clarifying the intent of previously ambiguous provisions.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objective of the *Nature Conservation Act 1992*, which is the conservation of nature, and is consistent with how the objective is to be achieved, specifically the protection of native wildlife and its habitat, and ensuring the use of protected wildlife is ecologically sustainable.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

Achieving the policy objectives of the Amendment Regulation will benefit business, community and relevant government authorities through the streamlining of administrative processes and reduction in regulatory burden resulting in cost savings, without imposing negative impacts on any of these sectors.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles under the *Legislative Standards Act 1992*. The provisions maintain the rights and liberties of individuals and the institution of Parliament.

Consultation

The Amendment Regulation did not undergo a formal public consultation process as the Department of Environment and Heritage Protection prepared the amendments in response to business, community and government requests to reduce unnecessary regulatory processes in the identified areas and to clarify regulatory intent. In addition, achieving the policy objectives does not impose any additional burden on business, community and government, and many of the changes are of an administrative nature.

Reasons for non-inclusion of information

The Amendment Regulation reforms and streamlines the existing nature conservation regulatory framework, including correcting errors and clarifying regulatory intent, and therefore alternative ways of achieving the policy objectives, other than regulatory reform, were not considered feasible.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

This clause states that the subordinate legislation may be cited as the *Nature Conservation Legislation Amendment Regulation (No. 2) 2013*.

Part 2 Amendment of Nature Conservation (Administration) Regulation 2006

Clause 2 Regulation amended

This clause states that this part amends the *Nature Conservation (Administration) Regulation 2006*.

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

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 4 Amendment of section 21 (Maximum term for permits for wildlife)

This clause increases the maximum term of a damage mitigation permit granted for non-lethal wildlife removal and relocation services, as well as for activities involving culling and dispersal of wildlife that is causing or may cause damage or loss, or represents a threat to human health or wellbeing.

The maximum term of a damage mitigation permit granted for non-lethal purposes increases from six months to three years, and for all other purposes (including lethal take) increases from six months to twelve months unless part of an approved property management plan when the maximum term remains three years.

This clause also inserts a definition of a ‘damage mitigation permit (removal and relocation of wildlife)’, clearly indicating that under this permit an animal must be taken and released alive.

This amendment delivers the identified government red tape reduction initiative to extend the maximum term of damage mitigation permits to remove the unnecessary administrative burden on clients and government and improve service delivery without diminishing conservation management standards.

This clause also amends references to a ‘permit to keep protected wildlife’ to read ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 5 Amendment of section 47 (Amendments by application)

This clause clarifies that if a holder of a current relevant authority wishes to amend any details on the authority, other than a change of address, the instructions must be in writing and an amendment fee is payable.

Clause 6 Amendment of section 63 (Requirement to notify chief executive of particular changes and ask for amendment)

This clause clarifies that a holder of a relevant wildlife authority is to notify the chief executive of changes to the ‘place of keeping’ of wildlife relevant to that authority.

Clause 7 Amendment of section 138 (Additional fee for recreational wildlife licence or permit to keep protected wildlife—no sample taken)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 8 Amendment of section 139 (Additional fee for recreational wildlife licence or permit to keep protected wildlife—no implant inserted)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 9 Amendment of section 149 (Exemption for particular permits to keep protected wildlife)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 10 Amendment of schedule 3 (Fees)

This clause amends references to a ‘permit to keep protected wildlife’ to read ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 11 Insertion of new part 12, division 1, heading

This clause establishes a new division 1 and heading before existing section 167 (Definitions for part 12). This is required to clarify that existing sections 167-173 provide for transitional arrangements arising from the previous repeal of the *Nature Conservation Regulation 1994*.

Clause 12 Amendment of section 167 (Definitions for part 12)

This clause amends references to part 12 in existing section 167 to instead refer to the new division 1.

Clause 13 Insertion of new part 12, division 2

This clause establishes a new division 2 after existing section 173 to provide for new section 174 (Change of name of permit to keep protected wildlife). This is required to provide for transitional arrangements arising from the amendments made by the *Nature Conservation Legislation Amendment Regulation (No. 2) 2013*.

Section 174 will give continuing effect to those existing wildlife authorities issued as a ‘permit to keep protected wildlife’ until their regular expiry. This is an administrative requirement resulting

from amending the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 14 Amendment of schedule 7 (Dictionary)

This clause amends the definition of ‘prescribed period’ to amend the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Part 3 Amendment of Nature Conservation (Koala) Conservation Plan 2006

Clause 15 Plan amended

This clause states that this part amends the Nature Conservation (Koala) Conservation Plan 2006.

Clause 16 Amendment of section 18 (General restriction on grant)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Part 4 Amendment of Nature Conservation (Wildlife Management) Regulation 2006

Clause 17 Regulation amended

This clause states that this part amends the *Nature Conservation (Wildlife Management) Regulation 2006*.

Clause 18 Amendment of section 30 (Persons to whom holders may sell or give wildlife)

This clause omits section 30(3), which makes reference to export agreements in accordance with clause 52, which removes the requirement to obtain an export agreement when moving protected animals from Queensland to another country.

Clause 19 Amendment of section 34 (Dealing with animals after death—other animals)

This clause omits section 34(2)(d) (which allowed the holder of a recreational wildlife harvesting licence, or a relevant person for the holder, to process an animal that was held under the licence after it dies) to remove legislative duplication as a holder of a recreational wildlife harvesting licence already has the authority to process a dead animal under section 122(1)(c) of the *Nature Conservation (Wildlife Management) Regulation 2006*.

Clause 19 also removes ‘rehabilitation permit’ from the definition of a wildlife authority in section 34 to clarify that a holder of a rehabilitation permit is not permitted to sell animals that die in their care.

Clause 20 Insertion of new section 44A

This clause clarifies that breeding mutations of exempt birds is permitted under the Act, consistent

with the existing ability to breed mutations of protected birds provided under sections 87 and 106 of the *Nature Conservation (Wildlife Management) Regulation 2006*.

Clause 21 Insertion of new section 46A

This clause clarifies that breeding mutations of controlled birds is permitted under the Act, consistent with the existing ability to breed mutations of protected birds provided under sections 87 and 106 of the *Nature Conservation (Wildlife Management) Regulation 2006*.

Clause 22 Amendment of section 47 (Moving controlled animals from seller to exempt person)

This clause clarifies that a licensed person who sells or gives away a controlled animal to an exempt person (a person who buys or accepts the animal) must complete a movement advice for the movement of the animal prior to the movement taking place.

Clause 23 Amendment of section 78 (Restriction about animals for which licence may be granted)

This clause clarifies that a holder of a commercial wildlife licence is permitted to keep and use a live farm animal. This ensures that a holder of a wildlife farming licence has the ability to dispose of live farm animals lawfully.

Clause 24 Amendment of section 80 (Additional restriction for licence for live birds or reptiles)

This clause amends section 80 to include omitted references to recreational reptile societies. The amendment clarifies that a commercial wildlife licence can be granted to recreational bird and reptile societies for a term of not more than two days.

Clause 25 Amendment of section 85 (Moving protected animals to display authorised with approval)

This clause amends section 85 to correct the title of the authority 'wildlife permit' to 'wildlife movement permit'.

Clause 26 Amendment of section 100 (Restriction on grant of licence for restricted birds)

This clause amends section 100 to include omitted references to reptiles and amphibians. The amendment clarifies that a recreational wildlife licence for a restricted bird, reptile or amphibian cannot be granted to a person unless the chief executive is satisfied the person has the knowledge, experience and facilities necessary to keep the bird, reptile or amphibian in the way required under the relevant code.

Clause 27 Amendment of section 104 (Moving protected animals to display authorised with approval)

This clause amends section 104 to correct the title of the authority 'wildlife permit' to 'wildlife movement permit'.

Clause 28 Amendment of section 133 (Handling dangerous animals)

This clause clarifies that the licence holder, or a relevant person for the holder, may conduct training under a wildlife demonstrator licence.

Clause 29 Amendment of section 142 (Moving animals to or from other licensed premises authorised)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 30 Amendment of section 146 (Handling dangerous animals)

This clause clarifies that the licence holder, or a relevant person for the holder, may conduct training under a wildlife exhibitor licence.

Clause 31 Amendment of section 152 (Purpose of licence and div 9)

This clause clarifies that only an animal defined as a ‘farm animal’ can be farmed under a wildlife farming licence.

Clause 32 Amendment of section 156 (Moving animals to or from other licensed premises authorised)

This clause clarifies that only an animal defined as a ‘farm’ animal can be farmed under a wildlife farming licence, and allows the movement of animals from one farm to another which are owned by the same licence holder.

Clause 33 Amendment of section 163 (Handling dangerous animals)

This clause clarifies that the licence holder, or a relevant person for the holder, may conduct training under a wildlife farming licence.

Clause 34 Amendment of section 171 (Moving animals to or from other licensed premises authorised)

This clause clarifies that the movement of animals between premises that are owned by the same holder of a museum licence is permitted.

Clause 35 Amendment of section 181 (Purpose of permit and div 2)

This clause clarifies one of the purposes of a damage mitigation permit for animals, which is to allow a person to do an authorised act affecting a protected animal if the animal is causing, or may cause, damage or loss, to provide consistent wording with subsequent sections 184 and 185, which refer to ‘damage or loss’ in a similar context.

Clause 36 Amendment of section 182 (General restriction about animals for which permit may be granted)

This clause ensures that non-lethal damage mitigation permits can be granted for wildlife removal and relocation activities involving endangered, vulnerable and near threatened animals, in addition to least concern animals, without the requirement for a conservation plan. As animals will be released

into prescribed natural habitat for the species involved, there is no anticipated conservation implication.

This clause also inserts a definition of a ‘damage mitigation permit (removal and relocation of wildlife)’, clearly indicating that under this permit an animal must be taken and released alive.

Clause 37 Amendment of chapter 3, part 4, division 4 heading

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 38 Amendment of section 194 (Purpose of permit)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife, and ensures international or prohibited wildlife may also be kept temporarily under this authority.

Clause 39 Amendment of section 195 (Restriction about purposes for which permit may be granted)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife, and clarifies the circumstances for keeping protected, international or prohibited wildlife under this authority.

Clause 40 Amendment of section 196 (Restriction on grant of permit for animal taken under rehabilitation permit)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife, and clarifies the circumstances for keeping protected wildlife under this authority that were taken under a rehabilitation permit.

Clause 41 Amendment of section 197 (Restriction on grant of permit for animal from another State)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife, and clarifies the circumstances for keeping protected wildlife under this authority that were kept in another State.

Clause 42 Amendment of section 198 (Restriction on grant of permit for animal kept under expired authority)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife, and clarifies the circumstances for keeping protected or prohibited wildlife under this authority that were previously kept under another wildlife authority (other than a rehabilitation permit) that has ended or is about to end.

Clause 43 Amendment of section 199 (Restriction on grant of permit to holders of particular authorities)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife, and clarifies the circumstances for keeping protected, international or prohibited wildlife under this authority that are kept under a wildlife exhibitor licence, wildlife farming licence or museum licence.

Clause 44 Amendment of section 200 (Keeping particular animals authorised)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 45 Amendment of section 201 (Moving animal to another holder authorised in particular circumstances)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 46 Amendment of section 202 (Moving animal to an institution authorised in particular circumstances)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 47 Amendment of section 203 (Moving particular birds authorised)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 48 Amendment of section 204 (Breeding animals)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 49 Amendment of section 205 (Keeping record)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 50 Amendment of section 206 (Giving return of operations)

This clause amends the name of the wildlife authority ‘permit to keep protected wildlife’ to ‘permit to keep wildlife’ to accurately reflect the intent of the authority to permit the keeping of protected, international and prohibited wildlife.

Clause 51 Amendment of section 215 (Way animal must be kept)

This clause amends the definition of ‘rehabilitation code’ in section 215(4) to ‘Code of Practice—Care of Sick, Injured or Orphaned Protected Animals in Queensland’ in accordance with the renaming of the code following its revision in 2013.

Clause 52 Omission of chapter 5, part 1, division 2 (Export agreements)

This clause removes the requirement to obtain an export agreement when moving protected animals from Queensland to another country, as these movements are already regulated by other approvals required under State and Commonwealth law. Removing duplicate regulatory processes is consistent with the government’s red tape reduction reforms.

Clause 53 Amendment of chapter 5, part 1, division 3 (Conditions of permit)

This clause renumbers ‘division 3’ to ‘division 2’ as a result of omitting chapter 5, part 1, division 2 (Export agreements).

Clause 54 Amendment of section 313 (Additional restriction for movement of prescribed protected animal to another State)

This clause omits the reference to export agreements in accordance with clause 52, which removes the requirement to obtain an export agreement when moving protected animals from Queensland to another country.

Clause 55 Amendment of section 314 (Additional restriction for movement of prescribed protected animal within the State for export)

This clause omits the reference to export agreements in accordance with clause 52, which removes the requirement to obtain an export agreement when moving protected animals from Queensland to another country.

Clause 56 Amendment of schedule 4 (Relevant protected animals)

This clause corrects the scientific name of the eastern rosella (*Platycercus eximius*). The clause also clarifies that a holder of a recreational wildlife licence is not permitted to keep a freshwater crocodile (*Crocodylus johnstoni*).

Clause 57 Amendment of schedule 5 (Dictionary)

This clause omits the reference to export agreements in accordance with clause 52, which removes the requirement to obtain an export agreement when moving protected animals from Queensland to another country.

Part 5 Amendment of Nature Conservation (Wildlife) Regulation 2006

Clause 58 Regulation amended

This clause states that this part amends the *Nature Conservation (Wildlife) Regulation 2006*.

Clause 59 Amendment of section 15 (Principles for the taking, keeping or use of endangered wildlife)

This clause clarifies the intent of section 15, which is to permit the taking, keeping or use of endangered wildlife taken in the wild for display purposes only if it is for an approved captive breeding program for the wildlife to be conducted under an approved recovery plan for the wildlife, or if it is authorised under a conservation plan for the wildlife.

The display of captive-bred endangered wildlife does not require authorisation under an approved recovery plan or conservation plan for the wildlife.

Clause 60 Amendment of section 20 (Principles for the taking, keeping or use of vulnerable wildlife)

This clause clarifies the intent of section 20, which is to permit the taking, keeping or use of vulnerable wildlife taken in the wild for display purposes only if it is for an approved captive breeding program for the wildlife to be conducted under an approved recovery plan for the wildlife, or if it is authorised under a conservation plan for the wildlife.

The display of captive-bred vulnerable wildlife does not require authorisation under an approved recovery plan or conservation plan for the wildlife.