

# Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2013

Explanatory notes for SL 2013 No. 237

made under the

*Forestry Act 1959*

*Nature Conservation Act 1992*

## General Outline

### Short title

*Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2013*

### Authorising law

Section 175 of the *Nature Conservation Act 1992* and section 97 of the *Forestry Act 1959*.

### Policy objectives and the reasons for them

#### Horse riding in protected areas

The Government has committed to improving access to the protected area estate, including national parks, while ensuring that these areas are managed in a manner appropriate to the values that they contain.

In line with these commitments, a review of government policy and legislation applying to horse riding in protected areas under the *Nature Conservation Act 1992* (NCA) was undertaken. The following circumstances currently apply to horse riding in the various classes of protected area, as prescribed under the NCA and the *Nature Conservation (Protected Areas Management) Regulation 2006*:

- Horse riding is permitted on designated trails in conservation parks and resources reserves when authorised through a regulatory notice;
- Horse riding is permitted on designated trails in three national park (recovery) areas through a regulatory notice until 23 November 2013, when provisions allowing horse riding in these areas expire; and

- Horse riding is restricted in national parks unless the chief executive has provided written approval to allow this on a case by case basis. Under current policy, this written approval has been limited to circumstances such as where Bicentennial National Trail traverses a national park.

Consistent with government commitments, amendments will be made to allow horse riding in national parks and to continue horse riding in national parks (recovery) beyond 23 November 2013. The amendments will provide that horse riding will only be permitted in these classes of protected area when a regulatory notice is in place that identifies the specific tracks and management roads for the activity.

#### Renewal of commercial activity permits

The Government has committed to a range of actions relating to the management of permits on Queensland Parks and Wildlife Service (QPWS) managed land. This includes reducing red tape for ecotourism operators; reducing permits for tourism and recreation by 50 per cent; improving access to national parks; and developing a state-wide streamlined permit system for sustainable tourism and recreational enjoyment of Queensland's public land.

Commercial activity permits for protected areas under the *Nature Conservation (Administration) Regulation 2006* currently have a maximum term of three years and cannot be renewed. Instead, an application must be made for a new permit if the holder wants to continue undertaking the activity after their existing permit expires. The new application goes through the same full assessment process as that for the original permit, even if the original assessment remains valid and there are no changes proposed to the conditions or activities authorised by the permit.

Providing the ability to renew commercial activity permits will cut red tape and provide administrative savings to permit holders and QPWS. Consistent with government commitments, amendments will be made to provide that the chief executive may renew a commercial activity permit, without any application being made, if satisfied that:

- there will be no material change to the activities authorised under the permit; and
- nothing in considering or deciding the application for the original permit has changed; and
- any returns or fees payable in relation to the expiring permit have been received, or a payment plan has been entered into for fees payable under the permit.

The amendments will also provide that the current fees, including reduced fees, associated with an application for a new commercial activity permit will also apply to the renewal of a permit under the *Nature Conservation (Administration) Regulation 2006*.

The *Forestry Act 1959* already provides that commercial activity permits can be extended; however, the *Forestry Regulation 1998* does not prescribe a fee for such an extension. Amendments will provide that the current fees, including reduced fees, associated with an application for a new commercial activity permit will also apply to the extension of a permit under the *Forestry Regulation 1998*. This will provide consistency of fees across the legislation and allow for the renewal of commercial activity permits on State forest areas.

### Increased allowable term of stock mustering permits

The objective of this amendment is to increase the maximum allowable term for a stock mustering permit on a protected area from 60 days to one year.

Stock mustering cannot always be completed within the current 60 day limit due to a range of physical constraints including varying topography, limited access options and weather conditions. Where a permit holder is unable to complete the mustering operation in 60 days or a mustering program will require more than 60 days, permit holders must reapply for the same permit in order to complete the mustering operation. This is burdensome on both the department and the applicant. Increasing the maximum allowable term for a stock mustering permit will enable longer, more appropriate permit terms to be granted where it is clear at initial assessment that more than 60 days will be required to complete the stock muster.

## **Achievement of policy objectives**

The policy objectives will be achieved through the following amendments:

### Horse riding in protected areas

Section 124 of the *Nature Conservation (Protected Areas Management) Regulation 2006* is being amended to allow horse riding on specified tracks and management roads in national park (recovery) and national park classes of protected area when authorised by a regulatory notice.

The provisions will commence on 24 November 2013 to align with the expiry of section 184A of the NCA, which currently provides for horse riding on designated national park (recovery) trails until 23 November 2013. Where a regulatory notice is in place to allow horse riding in national park (recovery) areas prior to commencement, horse riding in these areas can continue after commencement without being impacted by the expiry of section 184A of the NCA.

A regulatory notice is enforceable and must be in place before horse riding can be carried out in national park and national park (recovery) areas. Specific tracks and management roads for horse riding will be identified on the regulatory notice as well as any other requirements that will apply with respect to horse riding in the particular protected area. It is an offence to contravene a regulatory notice.

Consequential amendments are also made to remove section 147 and schedule 8 of the Regulation which become redundant following the expiry of section 184A of the NCA on 23 November 2013.

### Renewal of commercial activity permits

A new subdivision 2A is being inserted into Part 2, Division 3 of the *Nature Conservation (Administration) Regulation 2006* to provide for the renewal of commercial activity permits. New sections are being inserted to provide a process to support the renewal of these permits.

An existing commercial activity permit holder will be able to submit a renewal request to the chief executive before their permit expires. The renewal request must be provided in the approved form and be accompanied by the relevant fees payable as prescribed in schedule 3.

A number of provisions are provided that outline the circumstances when the chief executive may renew a permit, including when:

- the proposed activities are *substantially the same* as the activities that may be carried out under the existing permit;
- there are no restrictions that prevent the chief executive from granting a permit, namely under sections 30, 31 or 31A of the *Nature Conservation (Administration) Regulation 2006* or section 50 of the *Nature Conservation (Protected Areas Management) Regulation 2006*;
- the chief executive is not aware of any information that is likely to have changed the chief executive's consideration of the existing permit, namely a matter mentioned under section 25 of the *Nature Conservation (Administration) Regulation 2006*;
- each return of operations required to be given under section 65(1) of the *Nature Conservation (Protected Areas Management) Regulation 2006* has been provided with respect to the existing permit; and
- all fees payable under section 65(4) of the *Nature Conservation (Protected Areas Management) Regulation 2006* have been paid, or a payment plan has been entered into for outstanding fees, with respect to the existing permit.

Proposed activities can be considered *substantially the same* if—

- a) all of the activities may be carried out under the existing permit; and
- b) the activities relate only to a location where activities may be carried out under the existing permit; and
- c) the scale of the activities is not greater than the scale of the activities that may be carried out under the existing permit.

If the chief executive is not satisfied of the above matters, the permit may not be renewed. In this case, the permit holder will be notified of any decision not to renew the permit, including the reasons for the decision; however, an information notice is not required to be given about the decision. Instead, the permit holder would need to make a new application to allow for a full assessment of activities proposed in deciding whether to grant a new permit.

Schedule 3 is being amended to provide that the fees, including reduced fees, associated with an application for a commercial activity permit will also apply to the renewal of a permit.

A transitional provision is being inserted to provide that the provisions for renewing a commercial activity permit do not apply to a permit that expires before 1 April 2014. This transitional period is provided to ensure that the administrative arrangements to support the renewal of commercial activity permits are developed and put in place before the processing of renewals commences.

Schedule 6 of the *Forestry Regulation 1998* is being amended to provide that the fees, including reduced fees, associated with an application for a commercial activity permit will also apply to the extension of a permit. This will provide consistency with fees relating to the renewal of commercial activity permits under the *Nature Conservation (Administration) Regulation 2006*.

#### Increased allowable term of stock mustering permits

Section 19 of the *Nature Conservation (Administration) Regulation 2006* is being amended to increase the maximum allowable term of a stock mustering permit from 60 days to one year.

## Consistency with policy objectives of authorising law

**Section 175(2) (a) and (b) of the *Nature Conservation Act 1992*** provides that the Governor in Council may make a regulation regarding “*access to protected areas by persons or animals*” and “*the use of land, and activities, in protected areas*”. Amendments to sections 19(d) of the *Nature Conservation (Administration) Regulation 2006* relating to stock mustering permits; and section 124 of the *Nature Conservation (Protected Area Management) Regulation 2006* relating to horse riding on protected areas are directly related to access to protected areas by animals. These amendments are consistent with the authorising law. In addition, amendments to the *Nature Conservation (Administration) Regulation 2006* relating to the renewal of commercial activity permits are directly related to access and use of protected areas. These amendments are consistent with the authorising law.

**Section 175(2) (n) of the *Nature Conservation Act 1992*** provides that the Governor in Council may make a regulation regarding “*the matters in respect of which fees, costs and charges are payable under this Act, the amounts of the fees, costs and charges, the persons who are liable to pay the fees, costs and charges, when the fees, costs and charges are payable, and the recovery of any amount of the fees, costs and charges not paid*”. Amendments to schedule 3 of the *Nature Conservation (Administration) Regulation 2006* relate to fees for the renewal of commercial activity permits. These amendments are consistent with the authorising law.

**Section 97 of the *Forestry Act 1959*** provides that “*The Governor in Council may from time to time make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, without limiting the generality of the foregoing provisions of this section, regulations may be made for or in respect of all or any of the purposes, matters, and things set forth in schedule 2*”. Schedule 2, item 25 identifies fees as a subject matter for regulations. Amendments to schedule 6 of the *Forestry Regulation 1998* relate to fees for the renewal of commercial activity permits. These amendments are consistent with the authorising law.

## Inconsistency with policy objectives of other legislation

This amendment regulation is not inconsistent with any State or Commonwealth legislation.

## Benefits and costs of implementation

### Horse riding in protected areas

There will be no change to impacts on the community, business or government in relation to the continuation of horse riding in the three national park (recovery) areas currently authorised for horse riding under a regulatory notice.

Impacts on the general community as a result of allowing for horse riding on specified trails and management roads in national parks and national parks (recovery) are not considered significant. The amendments will maintain existing access and also increase access to national parks for the horse riding community through the identification of appropriate and suitable new trails. Any new trails identified will be carefully planned and managed to minimise impacts, including risks associated with multiple use of trails.

Any business wanting to undertake a commercial horse riding activity in a protected area is currently required to obtain a commercial activity permit. This requirement will not change under these amendments. Allowing for horse riding on specified trails and management roads in national parks and national parks (recovery) may provide increased opportunities for commercial operations on protected areas. This is in line with the government commitment to increasing access to national parks for ecotourism.

While there will be impacts for government in establishing and managing new horse riding areas, a staged and planned approach will allow for implementation to be managed without a significant impact on resources. A policy framework will inform decision making about new horse riding trails, addressing issues around trail selection and assessment, management strategies, stakeholder consultation and managing visitor conflict / risk.

#### Renewal of commercial activity permits

The amendments will reduce the administrative burden on both the permit holder and government, providing a more streamlined process for the administration of commercial activity permits on protected areas and State forests. The amendments will result in permits being renewed / extended without any application being made, removing the need for an unnecessary and burdensome formal assessment process. A renewed permit will continue to be subject to the same conditions as the previous permit, unless amendments are made in accordance with the provisions of the *Nature Conservation (Administration) Regulation 2006*.

There will be no negative financial impact on the permit holder as the fees currently applying will continue to apply. Amendments will provide that the application fee for a new permit, including the reduced fee for those with an existing permit, will also apply when a permit is renewed or extended. There may be a benefit to short term permit holders as the term of the renewed permit may be extended, reducing the frequency of renewal / extension, therefore saving fees over time.

#### Increased allowable term of stock mustering permits

Increasing the maximum allowable term of a stock mustering permit from 60 days to one year will decrease the procedural burden on applicants and the department. There are no implementation costs for this action.

## **Consistency with fundamental legislative principles**

This amendment regulation is consistent with the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

## **Consultation**

Apart from some general consultation that occurred on the overall review of the NCA process in late 2012, no specific consultation has taken place with the public or conservation groups on the proposed horse riding reforms. The Minister raised the issue during his attendance at the Future of Horse Riding in Queensland Forum on 18 September 2013 which included representatives from the Queensland Outdoor Recreation Federation, the Australian Trail

Horse Riders Association, Queensland Horse Council and Equathon. Industry support was confirmed for the amendments to allow horse riding in national parks, noting the need for consultation in identifying appropriate areas into the future.

As the remaining amendments are largely administrative matters, no external consultation occurred in relation to the proposals to allow commercial activity permits to be renewed or the increased term for a stock mustering permit.

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