



Queensland

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

## Explanatory Notes for SL 2013 No. 250

made under the

*Nature Conservation Act 1992*

*State Penalties Enforcement Act 1999*

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## General outline

### Short title

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

### Authorising law

Section 175 of the *Nature Conservation Act 1992* (the Act)

### Policy objectives and the reasons for them

Under the *Nature Conservation Act 1992* ('the Act'), a Damage Mitigation Permit (DMP) is currently the primary instrument to authorise acts that affect flying-fox roosts, specifically:

- destroying a flying-fox roost;
- driving a flying-fox away from a roost; or

- disturbing a flying-fox in a roost.

DMPs are issued under the Act's subordinate legislation, specifically the *Nature Conservation (Wildlife Management) Regulation 2006*.

However, DMPs are typically issued for the purposes of either 'take' 'keep' or 'use'. Roost management activities do not fit within this definition as they typically do not involve 'take' (i.e. either death or harm) of animals.

Achieving red tape reduction and the streamlining of regulatory and legislative processes have been identified as a priority in key government action plans. The Queensland Government gave an election commitment to reviewing and streamlining the DMP process for flying-fox management.

The permitting system was reviewed to deliver on these commitments by identifying key areas for legislative reform and simplification.

## **Achievement of policy objectives**

The Amendment Regulation authorises, as-of-right, local governments to undertake roost management activities (ie activities outlined in s88C of the Act) in specified urban areas without the requirement for a permit.

The Amendment Regulation also creates a new authority/permit that is not a DMP for the authorisation of roost management activities as outlined in s88C of the Act by a person acting outside the as-of-right authority mentioned above – e.g. a local government acting outside the designated urban area or any person acting on any given property.

The Amendment Regulation also specifies that the non-DMP permit operates in such a way that it could authorise a local government to undertake roost management activities across a broader area (i.e. outside the designated urban area) up to and including across its entire local government area, subject to approval by the Department of Environment and Heritage Protection.

The as-of-right authority and the new permitting arrangements are expressed in the *Nature Conservation (Wildlife Management) Regulation 2006* and further detail as to how actions may be undertaken under the new as-of-right authorities are provided in the two associated statutory codes of practice. The codes restrict actions at flying-fox roosts to minimise the likelihood of harm to flying-foxes. Actions that are not compliant with the codes are not authorised actions under the Act.

With the approval of the Department of Justice and Attorney General, this amendment regulation amends the *State Penalties Enforcement Regulation 2000* in regard to infringement notice offences and associated fines for the requirement of a permit holder to give a return of operations for the permit. The prescribed penalty units have been endorsed by the Department of Justice and Attorney-General.

### **Consistency with policy objectives of authorising law**

The object of the Act, as stated in section 4, is to provide for the conservation of nature.

The Amendment Regulation is consistent with the conservation of nature. The Amendment Regulation clarifies that the council as-of-right authority is limited to the area defined in the urban flying-fox management area map. This map is displayed on the department's website.

Ongoing conservation of flying-foxes is therefore addressed through limiting the areas to which the as-of-right authority to manage flying-fox roosts applies and limiting the parties authorised to local governments only; additionally only low-impact activities are authorised as-of-right for all persons; and eligibility criteria for the flying-fox roost management permits will include the requirement for the Chief Executive to consider whether action under the permit is likely to affect the sustainability in the wild of flying-foxes.

Flying-fox roost management permits provide a structured and controlled way of allowing flying-fox roosts to be managed by parties other than local government, or in areas outside of the defined urban areas. All actions under the codes of practice are required to be non-lethal, and the chief executive is required to consider the sustainability of flying-fox species before issuing any permit.

### **Inconsistency with policy objectives of other legislation**

The regulation is consistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The introduction of the council as-of-right authority removes green tape for councils, and emphasises their opportunity to play a lead role in ensuring community wellbeing in relation to flying-fox roosts in urban areas.

A primary benefit to local governments is a reduction of the instances in which flying-fox roost management will require a permit. Local government are provided as-of-right authority to undertake a range of actions to manage flying-fox roosts within urban areas. Additionally, all persons are provided with the as-of right authority to undertake low impact activities at all flying-fox roosts.

The costs associated with the new legal framework are no different to those for the current legal framework. Historically, costs of management for any individual flying-fox roost have been met by the party/parties who wish to, and have been authorised to, undertake the roost management. This remains the case. The new approach merely removes the need for council to have a permit in urban areas, rather than requiring them to act.

There is potential negative environmental impact on four species of flying-fox found in Queensland and the environmental values these species contribute to as forest pollinators. These species, the spectacled, grey-headed, little red and black flying-foxes, are protected under the Act. Both the grey-headed and the spectacled flying-fox are also listed as Vulnerable under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This negative environmental impact will be limited by the fact that the as-of-right authority for local governments applies to defined urban areas only, and all management actions are limited to non-lethal methods only, as prescribed in the relevant code of practice.

## **Consistency with fundamental legislative principles**

The regulation is consistent with fundamental legislative principles.

## **Consultation**

Public consultation was undertaken for a period of 4 weeks. A total of 99 submissions were received, from:

- Local governments

- the Local Government Association of Queensland
- Conservation and animal welfare interest groups
- Private citizens

Local governments and the Local Government Association of Queensland (LGAQ) were provided an additional week to ensure full consideration.

In general, comments from the LGAQ and local governments were supportive of the new authority, though not necessarily of the detail of the approach. A number of specific concerns were raised that either addressed questions posed in the discussion paper or 'out of scope' issues. In general, comments from animal welfare and conservation interest groups as well as members of the public were not supportive of the new approach. Where appropriate, comments from the consultation process have been addressed within the codes of practice.

The Department of Justice and Attorney General was also consulted regarding infringement notices and associated fines under the *State Penalties Enforcement Regulation 2000*.

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#### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Environment and Heritage Protection.

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