

Nature Conservation and Other Legislation Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 35

made under the

Environmental Protection Act 1994

Fisheries Act 1994

Forestry Act 1959

Marine Parks Act 2004

Nature Conservation Act 1992

Recreation Areas Management Act 2006

General Outline

Short title

Nature Conservation and Other Legislation Amendment Regulation (No. 1) 2014

Authorising law

Section 580 of the *Environmental Protection Act 1994*

Section 223 of the *Fisheries Act 1994*

Section 97 of the *Forestry Act 1959*

Section 150 of the *Marine Parks Act 2004*

Section 175 of the *Nature Conservation Act 1992*

Section 232 of the *Recreation Areas Management Act 2006*

Policy objectives and the reasons for them

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. A number of initiatives contributing towards these outcomes were included in the *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013* ('the NCOLA Act') which received assent on 7 November 2013.

Parts 1 and 2 and schedule 1, part 1 of the NCOLA Act commenced on assent.

Consequential amendments to subordinate legislation are required to reflect the abolishment of three classes of protected area that commenced on assent of the NCOLA Act.

Parts 3 and 4 and schedule 1, parts 2 and 3 of the NCOLA Act commence on a day to be fixed by proclamation.

A proclamation will fix 28 March 2014 as the day for the commencement of Part 3 and schedule 1, part 2 of the NCOLA Act. The amendments commencing at this time relate to:

- changes to the classes of protected area under the *Nature Conservation Act 1992* (NCA) (tenure structure);
- amending the existing protected area management principles to accommodate the new tenure structure;
- providing for the declaration of special management areas over national parks;
- providing for the declaration of resource use areas over regional parks; and
- providing transitional provisions to facilitate the commencement and implementation of the new tenure structure.

Consequential amendments are required to a range of subordinate legislation to reflect these changes that will commence by Proclamation. Minor amendments are also required to support the use of special management areas to provide for the continuation of existing uses on national parks.

A number of redundant provisions and errors were identified during the review of subordinate legislation to identify the necessary consequential amendments. Minor amendments have been prepared to remove these redundant references and correct errors in the *Nature Conservation (Protected Areas Management) Regulation 2006* and the *Nature Conservation (Administration) Regulation 2006*.

Additional amendments to subordinate legislation are also proposed in line with Government commitments to cut red tape and streamline permitting to improve access to national parks. Two initiatives that align with these commitments have been identified with the necessary amendments to implement the initiatives being included in this amendment regulation. These two initiatives include:

- removing daily fees for commercial tour operators when taking approved educational groups into protected areas and State forests; and
- deregulating small scale commercial filming and photography activities that involve 10 or less people and no structures on protected areas and State forests.

Achievement of policy objectives

The policy objectives will be achieved through the following amendments:

Consequential amendments

Consequential amendments will remove redundant references to the 'wilderness area', 'world heritage management area' and 'international agreement area' classes of protected area that were abolished on assent of the NCOLA Act.

Consequential amendments will also make the following changes to terminology to reflect the following changes to the classes of protected area commencing by Proclamation through clauses 114 and 153 of the NCOLA Act:

- national parks (scientific) will become 'national parks' with a special management area (scientific) declared over them;
- national parks (recovery) will become 'national parks' with a special management area (controlled action) declared over them;
- conservation park will become 'regional parks'; and
- resources reserves will become 'regional parks' with a resource use area declared over them.

Using special management areas to provide for the continuation of existing uses on national parks

Clauses 116 and 139 of the NCOLA Act amends the NCA to provide for the declaration of a special management area (controlled action) over a national park to allow for the continuation of an existing use where the use is consistent with maintaining the area's natural and cultural values.

The declaration of a special management area does not remove the need for a permit or other authority to authorise the continuation of an existing use. Therefore, to support the use of the special management area framework to provide for the continuation of existing activities involving the taking of permitted plant parts, beekeeping and stock grazing, amendments are required to sections 20, 29 and 56 of the *Nature Conservation (Protected Areas Management) Regulation 2006*. These amendments will allow the relevant permits to be granted for a national park when a special management area (controlled action) has been declared for the continuation of the activity.

Minor amendments to remove redundant provisions and correct errors

The *Nature Conservation (Protected Areas Management) Regulation 2006* will be amended to remove redundant references to the Iron Range and Munburra Resources Reserves from Schedule 2 which have been revoked; and correct an error in section 88 of the Regulation. The permit type mentioned in the definition of prescribed authority in section 88(2)(g) does not exist. This will be amended to reflect the correct permit type on commencement of the changes to the classes of protected area. The permit will be known as a permit to enter a special management area (scientific).

The *Nature Conservation (Administration) Regulation 2006* will be amended to correct an error in the renewal fees prescribed for a commercial activity permit in Schedule 3, item 9(c)(ii). The *Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2013* included amendments to this fee schedule; however, the renewal fee in this item was inserted incorrectly. The renewal fee was intended to be the same amount as the application fee under item 9(c)(i) and will be amended to reflect the correct amount of \$1526.00.

Removing daily fees for educational groups travelling with commercial tour operators

Daily fees (\$1.74 per person for visits lasting less than 3 hours and \$3.15 per person for visits lasting more than 3 hours) are currently payable by commercial tour operators when taking clients into protected areas, state forests and recreation areas. However, there is currently an exemption from paying this fee under schedule 3 of the *Recreation Areas Management Regulation 2007* when commercial tour operators take an approved educational tour or camp into recreation areas.

Amendments to schedule 3 of the *Nature Conservation (Administration) Regulation 2006* and schedule 6 of the *Forestry Regulation 1998* will provide the same exemption as that currently provided in the *Recreation Areas Management Regulation 2007* when commercial tour operators take approved educational groups or camps into protected areas and state forests.

The amendments will provide consistency in the way daily fees are applied to commercial tour operators across the *Nature Conservation Act 1992*, the *Forestry Act 1959* and the *Recreation Areas Management Act 2006*.

Deregulating small scale commercial filming and photography activities

The *Nature Conservation (Administration) Regulation 2006* and the *Forestry Regulation 1998* currently exempt people from obtaining a Commercial Activity Permit if they are undertaking commercial filming and photography activities that involve '2 or less people' and no structures on protected areas and State forests.

It is proposed to amend the definition of 'commercial activity' in both of these regulations to extend the current exemption from '2 or less people' to '10 or less people' (where no structures are involved) to align with the majority of small scale permits granted and reflect the low level of risk associated with this scale of activity.

The fees prescribed in schedule 3 of the *Nature Conservation (Administration) Regulation 2006* and schedule 6 of the *Forestry Regulation 1998* will be amended to reflect that application and permit fees for commercial filming or photography (no structures involved) will only apply to 11 or more people.

Consistency with policy objectives of authorising law

Section 580 of the *Environmental Protection Act 1994* provides that the Governor in Council may make regulations under this Act. The amendments to the

Environmental Protection Regulation 2008 are consequential amendments and are consistent with the authorising law.

Section 223 of the *Fisheries Act 1994* provides that the Governor in Council may make regulations under this Act. The amendments to the *Fisheries Regulation 2008* are consequential amendments and are consistent with the authorising law.

Section 97 of the *Forestry Act 1959* provides that the Governor in Council may make regulations not inconsistent with this Act, including for the matters in schedule 2. Schedule 2, item 25 identifies fees as a subject matter for regulations. The amendments to the *Forestry Regulation 1998* are consistent with the authorising law.

Section 150 of the *Marine Parks Act 2004* provides that the Governor in Council may make regulations under this Act. The amendments to the *Marine Parks (Declaration) Regulation 2006*, the *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004* and the *Marine Parks Regulation 2006* are consequential amendments and are consistent with the authorising law.

Section 175 of the *Nature Conservation Act 1992* provides that the Governor in Council may make regulations under the Act. The amendments to the *Nature Conservation (Protected Areas) Regulation 1994* are consequential amendments. Amendments to the *Nature Conservation (Protected Areas Management) Regulation 2006* include both consequential amendments and minor amendments to remove redundant references to previously revoked Resources Reserves from Schedule 2; correct errors and to allow the relevant permits under sections 20, 29 and 56 to be granted on a national park if a special management area (controlled action) is in place for the continuation of the activity. Amendments to the *Nature Conservation (Administration) Regulation 2006* include both consequential amendments and minor amendments to remove daily fees for an approved educational tour or camp travelling with commercial tour operators and deregulate small scale commercial filming and photography activities involving 10 or less people and no structures. All of these amendments are consistent with the authorising law.

Section 232 of the Recreation Areas Management Act 2006 provides that the Governor in Council may make regulations under the Act. The amendments to the *Recreation Areas Management Regulation 2007* include both consequential amendments and minor amendments to provide that application and permit fees for commercial filming or photography (no structures involved) will only apply to 11 or more people and are consistent with the authorising law.

Inconsistency with policy objectives of other legislation

This amendment regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The benefits and costs of implementing the consequential tenure related changes are identified in the Explanatory Notes for the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 ('the NCOLA Bill').

A special management area (controlled action) will provide the opportunity for the continuation of existing lawful uses on national parks beyond the currently permitted term. This approach provides recognition of existing use rights and is therefore not considered to have any competition impacts. There is not anticipated to be any detrimental environmental impacts as a special management area (controlled action) can only be declared to provide for the continuation of an existing use that is consistent with maintaining the natural and cultural values of the area. Any relevant permits or other authorities must also be applied for. Any conditions on the authority are enforceable and compliance action can continue to be taken where problems arise.

There will be some initial resource impacts on the Government associated with the declaration of special management areas (controlled action) and the granting of new authorities as the previous ones expire. This is anticipated to be managed within existing resources.

Removing the daily fees for commercial tour operators will have a positive impact for operators taking education groups, increasing commercial viability and opportunities to encourage the promotion of educational tourism in protected areas and State forests.

A review of the records held by the Department of National Parks, Recreation, Sport and Racing indicates that 51 Commercial Activity Permits for commercial filming and photography (not involving structures) have been granted since August 2013. All but two of these permits were for small scale activities that involve 10 people or less. The other 2 permits involve more than 25 people.

Extending the current exemption from obtaining a Commercial Activity Permit from '2 or less people' to '10 or less people' (where no structures are involved) will align with the majority of small scale permits granted and reflect the low level of risk associated with this scale of activity. The larger scale filming and photography activities, including those involving structures, will continue to be regulated.

Although small scale activities will be deregulated, individuals taking part in the activity will be treated in the same way as independent visitors. Existing provisions within the legislation allow any problems that arise to be addressed in the same way that it would be for independent visitors.

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

Consultation occurred with relevant stakeholders during the development of the NCOLA Bill.

The Bill was also referred to the Health and Community Services Parliamentary Committee for consideration. The Committee called for submissions and held a public hearing. Over 200 submissions were received and 12 witnesses were called to provide information to the Committee. The Committee recommended that the Bill be passed. In section 5.3 of its report on the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 (Report No. 31, October 2013), the Committee noted that a large number of submissions opposed the amendments to tenures and that other submissions supported the reduction in tenures.

Preliminary consultation has occurred with beekeeping industry representatives regarding the use of special management areas to provide for the continuation of apiary activities as an existing use on national park lands. It is intended that consultation with other existing permit or authority holders existing uses will be undertaken to outline any opportunities for the continuation of their existing activity under the special management area framework.

The amendments relating to the removal of daily fees and the deregulation of small scale commercial filming and photography activities are largely administrative matters aimed at reducing red tape. As a result, no formal external consultation has occurred. The Department of Agriculture, Fisheries and Forestry and HQPlantations Pty Ltd were consulted in relation to these amendments as they will also apply to areas they are responsible for managing under the *Forestry Act 1959*. Commercial tour operators (with commercial activity permits) will be informed of the changes relating to daily fees and how they will be implemented.

The Department of Environment and Heritage Protection has been consulted in relation to the *Environmental Protection Regulation 2008* amendments.