

Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2014

Explanatory notes for SL 2014 No. 223

made under the

Forestry Act 1959

Nature Conservation Act 1992

Recreation Areas Management Act 2006

General Outline

Short title

Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2014

Authorising law

Section 97 of the *Forestry Act 1959*

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 policy objectives are to:

- (a) streamline approvals for commercial activities undertaken across State and/or Commonwealth marine parks and adjoining protected areas;
- (b) provide for relevant authorities, regulatory notices and restricted access areas to be managed in accordance with the comment and consent requirements in indigenous management agreements for national parks (Cape York Peninsula Aboriginal land) and indigenous joint management areas, and in accordance with indigenous land use agreements for other protected areas on Cape York Peninsula;
- (c) reduce camping fees payable by commercial tour operators when taking approved educational groups in protected areas, recreation areas and State forests; and
- (d) make consequential amendments to update the names and descriptions of several protected areas and remove redundant provisions.

Streamlining approvals for commercial activities undertaken across State and/or Commonwealth marine parks and adjoining protected areas

The Queensland Government has committed to streamlining the permit system for tourism and recreation on Queensland Parks and Wildlife Service (QPWS) managed areas.

In June 2013, the Great Barrier Reef (GBR) Strategy Group, consisting of senior executive of the Great Barrier Reef Marine Park Authority (GBRMPA), the Department of the Premier and Cabinet and QPWS, endorsed for the agencies to work together to scope the consolidation of permitting to create a single joint GBR tourism permit. In February 2014, the Strategy Group approved the development of the administrative details (application form, permit document, policies and procedures) and supported the preparation of a submission to identify the legislative amendments required to give effect to the proposal.

Currently, the *Marine Parks Regulation 2006* (Qld) allows State and Commonwealth marine park permissions to be combined into one instrument. These joint Commonwealth/Queensland marine parks permissions for the Great Barrier Reef World Heritage Area (GBRWHA) have operated successfully for more than 30 years.

Roughly one quarter of the 600 vessel-based commercial tourism operations within the GBRWHA include activities on some of the 400 national park islands. In addition to their marine parks permission, these operators are also required to hold a separate commercial activity permit (CAP) under Queensland's Nature Conservation legislation. Currently this CAP cannot be combined with the joint marine parks permission.

The inability to combine CAPs and marine park permissions results in separate administrative transactions and uncertainty for tourism operators, duplicate administrative systems within the GBRMPA and QPWS and disjointed governance of the GBRWHA.

Amendments to the *Nature Conservation (Administration) Regulation 2006* are intended to reflect similar provisions in the *Marine Parks Regulation 2006* by allowing tourism businesses to have a single document containing their State and/or Commonwealth marine park permission and CAPs for any activities in protected areas adjoining marine parks. Complementary amendments will allow the term of a CAP to be the same as the related marine park permission and also allow the transfer of a CAP with the marine park permission/s if a business is sold.

This regulatory proposal will contribute towards red tape reduction, streamline the regulatory processes and enhance management of the GBRWHA and other Queensland Marine Parks.

Amendments for parks on Cape York Peninsula and indigenous joint management areas

The *Nature Conservation Act 1992* provides for the dedication of national parks (Cape York Peninsula Aboriginal land) and indigenous joint management areas.

The Queensland Government has made a commitment to convert existing national parks on Cape York Peninsula to national parks (Cape York Peninsula Aboriginal land). The Government has also committed to resolve tenure of identified properties on Cape York Peninsula, providing for the transfer of land to Aboriginal ownership and the dedication of protected areas over parts of those properties.

National parks (Cape York Peninsula Aboriginal land) and indigenous joint management areas are managed in accordance with indigenous management agreements. These agreements set out procedures for the chief executive to seek comments or consent from indigenous landholders on relevant authorities. Since 2008, section 25 of the *Nature Conservation (Administration) Regulation 2006* has provided for these agreements to be taken into account in considering applications for relevant authorities in national parks (Cape York Peninsula Aboriginal land). Amendments are required to provide in detail for relevant authorities, regulatory notices and restricted access areas to be managed in accordance with the comment and consent provisions in all existing and future indigenous management agreements for national parks (Cape York Peninsula Aboriginal land) and indigenous joint management areas.

The Queensland Government is negotiating for two regional parks to be dedicated on Cape York Peninsula as an interim measure until mining exploration and gravel extraction have ended, after which the areas are proposed to be added to an adjacent national park (Cape York Peninsula Aboriginal land). Regulatory amendments are required to provide for relevant authorities, regulatory notices and restricted access areas in the regional parks to be managed in accordance with an indigenous land use agreement. In effect, this will enable the regional parks and adjacent national park (Cape York Peninsula Aboriginal land) to be managed consistently.

Reducing camping fees for educational groups travelling with commercial tour operators

Minor amendments are proposed to reduce the camping fee payable by commercial tour operators when taking an approved educational tour or a camp into protected areas, recreation areas and State forests.

A reduced camping fee is already available to approved educational groups when they make their own bookings and travel independently, however, the full camping fee applies if the group chooses to travel with a commercial tour operator.

The proposed amendment will provide consistent camping fees for approved educational groups in protected areas, recreation areas and State forests irrespective of whether the group is travelling independently or with a commercial tour operator. This supports Government commitments to streamline permitting and improve access to protected areas.

Consequential amendments

Consequential amendments are required to update the names of some protected areas to reflect the changes to the classes of protected area that occurred on commencement of Part 3 and schedule 1, Part 2 of the *Nature Conservation and Other Legislation Amendment Act (No.2) 2013* on 28 March 2014.

Consequential amendments are required to reflect changes to the names of some protected areas resulting from existing national parks being re-dedicated as national parks (Cape York Peninsula Aboriginal land).

Consequential amendments are also required to the *Nature Conservation (Protected Areas Management) Regulation 2006* to remove redundant references. This includes a reference to

the redundant conservation park tenure and two former resources reserves (now listed as regional parks), that were revoked prior to the tenure changes commencing on 28 March 2014.

Achievement of policy objectives

Streamlining approvals for commercial activities undertaken across State and/or Commonwealth marine parks and adjoining protected areas

The *Nature Conservation (Administration) Regulation 2006* will be amended to complement certain provisions in the *Marine Parks Regulation 2006* that allow separate permissions to be combined into a single instrument.

The amendments will allow CAPs for tourism operations in terrestrial protected areas to be combined into a single instrument with any related State and/or Commonwealth marine park permission required for the tourism operation.

In order to achieve this, a sub-category of CAPs is defined to which the amendments will apply without affecting all other CAPs. The Dictionary of the Regulation has been amended to include the following key terms:

- **joint marine park authority (JMPA)** - the instrument itself;
- **joint marine park authority permit (JMPAP)** - the sub-category of commercial activity permit that can be included as part of the joint instrument; and
- **related permission** - State or Commonwealth marine park permission/s that forms part of the joint marine park authority of which the JMPAP also forms a part.

The following complementary amendments are also being made to align provisions associated with CAPs with those in the *Marine Parks Regulation 2006* to support the issuing of a JMPA.

Section 19 is being amended to exempt a JMPAP from the maximum term of 3 years that currently applies to all CAPs. This has the effect of removing a maximum term for a JMPAP allowing the term to be the same as the term of the related permission that forms part of the JMPA. Terms for marine parks permissions are set in policy. Currently, joint GBRWHA marine parks permissions have a 1 year term initially for new operators, followed by a 6 year term and a maximum term of 15 years for accredited operators.

Section 26 is being amended to remove the timeframe within which the chief executive may require further information in relation to an application for a JMPAP. Section 29 is being amended to remove the timeframe within which the chief executive must decide an application for a JMPAP. These changes are being made in order to align with the timeframes and allow coordination of the processes that apply to the related permissions that will form part of the JMPA. Without these changes, there would be disjointed management of the CAP component of the JMPA.

Section 34 is being amended to provide for the use of an instrument (a JMPA) to include both a CAP (JMPAP) and a marine park permission.

Sections 48 and 53 are being amended to allow the chief executive to consider, in addition to the existing matters, other matters relating to the other permissions that form part of the joint

permission (a related permission) when deciding whether to amend, suspend or cancel a JMPAP. This includes whether a related permission has been or is about to be amended to an extent that it is no longer consistent, or replaced with another permission that is no longer consistent with the permit, or suspended or cancelled.

Existing Division 7 is being restructured into Divisions 7 and 8 to provide specific provisions for the transfer of a JMPAP.

Division 7 will have the following three subdivisions:

- Subdivision 1 – This includes section 61 which lists the particular types of permits that are transferrable. Section 61 is being amended to provide that in addition to apiary permits (the only existing authority type that can be transferred), a JMPAP is also transferrable;
- Subdivision 2 – This includes section 62, which is an existing section that deals specifically with apiary permits and is unchanged; and
- Subdivision 3 – This includes new sections 62A to 62E that provide for the transfer of JMPAPs and mirrors the transfer provisions in the *Marine Parks Regulation 2006*.

Division 8 includes the existing sections 63 to 66 relating to all relevant authorities. Section 66(2)(d) is being amended to provide that if the holder of an existing JMPAP makes an application for a new permit, the existing permit does not expire automatically after three months after its otherwise expiration date. The amendment provides that the JMPAP can continue in force until the chief executive either grants a new permit, refuses the application or the applicant withdraws the application. This change is being made in order to complement the existing marine parks joint permitting provisions for continuing permits.

Section 101 is being amended to allow the chief executive to extend the period for making an internal review decision of a JMPAP if a decision about a related permission is being reviewed and the outcome of that review is reasonably likely to affect the chief executive's internal review decision.

Section 103 is being amended to refer to the new section 104. Section 104 is being added to allow the Queensland Civil and Administrative Tribunal (QCAT) to extend the time for applying for external review of a JMPAP if a decision about a relevant permission is being or has been reviewed and is the subject of an appeal, and the outcome of the review or appeal is reasonably likely to affect the applicant's decision about whether or not to pursue, or the chief executive's decision about whether or not to defend, an application for external review.

Section 159 is being amended to reflect changes in numbering in section 53.

Schedule 3 (fees), item 10(c) is being amended to:

- recognise that a JMPAP no longer has a maximum term set in legislation; and therefore:
 - item 10(c)(iv) is being amended so that the existing fee of \$683 continues to apply to a CAP with a term of between two and three years; and

- item 10(c)(v) is being added to set a fee of \$227.70 for each additional year after the third year. The new fee is intended to be approximately one third of a three-year permit.
- recognise the changes to Division 7, subdivision 1 that allow a JMPAP to be transferred; and therefore
 - Item 10(ca) is being added to set a transfer fee of \$150.40, which is equivalent to the existing relevant application fee and renewal fee.

Amendments for parks on Cape York Peninsula and indigenous joint management areas

A new term “Aboriginal land protected area” will be defined, to include both national parks (Cape York Peninsula Aboriginal land) and indigenous joint management areas. This term will be used in section 25(1)(i) of the *Nature Conservation (Administration) Regulation 2006* so that it applies to both these types of protected area.

Section 31A of the *Nature Conservation (Administration) Regulation 2006* will be amended to provide for the chief executive to seek comments or consent from indigenous landholders on relevant authorities in an “Aboriginal land protected area” in accordance with indigenous management agreements. Section 31B will be inserted to provide for the chief executive to seek comments or consent on relevant authorities in accordance with indigenous land use agreements for other protected areas on Cape York Peninsula.

Section 70 of the *Nature Conservation (Administration) Regulation 2006* will be amended and section 70A inserted to provide for the chief executive to seek comments or consent from indigenous landholders on regulatory notices in an “Aboriginal land protected area” in accordance with indigenous management agreements. Section 70B will be inserted to provide for the chief executive to seek comments or consent on regulatory notices in accordance with indigenous land use agreements for other protected areas on Cape York Peninsula.

Section 75A of the *Nature Conservation (Administration) Regulation 2006* will be inserted to provide for the chief executive to seek comments or consent from indigenous landholders on the declaration of restricted access areas in an “Aboriginal land protected area” in accordance with indigenous management agreements. Section 75B will be inserted to provide for the chief executive to seek comments or consent on declaration of restricted access areas in accordance with indigenous land use agreements for other protected areas on Cape York Peninsula.

Reducing camping fees for educational groups travelling with commercial tour operators

Commercial tour operators undertaking commercial activities in protected areas, recreation areas and State forests are required to hold commercial activity permits. The fees associated with these permits are prescribed in fee schedules contained in the *Forestry Regulation 1998*, the *Nature Conservation (Administration) Regulation 2006* and the *Recreation Areas Management Regulation 2007*. These regulations currently prescribe a nightly camping fee of \$5.75 for each person five years or older.

In circumstances where the camping fee of \$5.75 is prescribed for the holder of a commercial activity permit, a reduced fee of \$3.20 will also be prescribed for where the activity conducted under the permit is an educational tour or a camp of a type approved by the chief executive. This

will be achieved through amendments to schedule 6, item 4 of the *Forestry Regulation 1998*; Schedule 3, item 10 of the *Nature Conservation (Administration) Regulation 2006* and Schedule 3, items 11, 12 and 13 of the *Recreation Areas Management Regulation 2007*.

The fee exemption applying to children under five years of age will continue to apply and the full camping fee of \$5.75 will continue to apply to all other clients.

Consequential amendments

Schedule 1 of the *Nature Conservation (Protected Areas Management) Regulation 2006* will be amended as follows:

- The entry for 'Lake Broadwater Regional Park' will be amended to read 'Lake Broadwater Regional Park 1'. The number '1' after the name indicates that this park was formerly a conservation park and reflects the current name of the park as it appears in Schedule 3, Part 1 of the *Nature Conservation (Protected Areas) Regulation 1994*.
- The entry for Lake Broadwater Regional Park, Column 3, paragraph (c)(i) also contains a redundant reference to the former 'conservation park' tenure which will be updated to reflect that this is now a 'regional park'.

Schedule 2 of the *Nature Conservation (Protected Areas Management) Regulation 2006* will be amended as follows:

- The entries for 'Bouldercombe Gorge Regional Park' and 'Homevale Regional Park' will be amended to read 'Bouldercombe Gorge Regional Park 2' and 'Homevale Regional Park 2'. The number '2' after the name indicates that these were formerly resources reserves and reflects the current names of the parks as they appear in Schedule 3, Part 2 of the *Nature Conservation (Protected Areas) Regulation 1994*.
- Redundant references to 'Iron Range Regional Park' and 'Munburra Regional Park' which were formerly resources reserves and had already been revoked prior to the tenure changes commencing in March 2014 will be removed.

Schedule 3 of the *Nature Conservation (Protected Areas Management) Regulation 2006* will be amended as follows:

- The entry for Flinders Group National Park will be removed because the marine navigation use (i.e. lighthouse) has been decommissioned.
- The name of Howick Group National Park will be updated to reflect that this has now been dedicated as national park (Cape York Peninsula Aboriginal land).
- The name and description of Restoration Island National Park will be updated to reflect that it has been re-surveyed and renamed to 'Ma'alpiku Island Nation Park (Cape York Peninsula Aboriginal land)' following its dedication as national park (Cape York Peninsula Aboriginal land).

Consistency with policy objectives of 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* to reduce camping fees for educational groups travelling with commercial tour operators 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.

Amendments to the *Nature Conservation (Administration) Regulation 2006* relating to camping fees; the streamlining of approvals for commercial activities undertaken across State and/or Commonwealth marine parks and adjoining protected areas, and management of relevant authorities in national parks (Cape York Peninsula Aboriginal land), indigenous joint management areas and protected areas on Cape York Peninsula subject to indigenous land use agreements, are consistent with the object of the *Nature Conservation Act 1992*.

Amendments to the *Nature Conservation (Protected Areas Management) Regulation 2006* include amendments relating to parks on Cape York Peninsula and indigenous joint management areas and consequential amendments to update the names of some protected areas and remove redundant references, are also 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* to reduce camping fees for educational groups travelling with commercial tour operators 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.

Amendments to streamline approvals for commercial activities undertaken across State and/or Commonwealth marine parks and adjoining protected areas are consistent with provisions of the *Marine Parks Regulation 2006* which allows a single combined permission to be issued for Queensland and Commonwealth Marine Parks.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives of the amendments to streamline approvals for commercial activities undertaken across State and/or Commonwealth marine parks and adjoining protected areas, or to reduce camping fees for educational groups travelling with commercial tour operators.

There are no alternatives to making regulatory amendments to provide for relevant authorities, regulatory notices and restricted access areas to be managed in accordance with existing and future indigenous management agreements for national parks (Cape York Peninsula Aboriginal land) and indigenous joint management areas, and in accordance with indigenous land use agreements for other protected areas on Cape York Peninsula.

Benefits and costs of implementation

Streamlining approvals for commercial activities undertaken across State and/or Commonwealth marine parks and adjoining protected areas

Allowing commercial activity permits for terrestrial protected areas adjoining marine parks to be combined into a single instrument with a State and/or Commonwealth marine park permission will contribute towards red tape reduction, streamline the regulatory processes and enhance management of the GBRWHA and other State Marine Parks.

Applicants for commercial activities undertaken across terrestrial protected areas and adjacent marine parks (both State and Commonwealth) will be able to:

- lodge a single application form;
- pay a single application fee (existing separate fees bundled together);
- have a single point of contact during assessment;
- receive a single permit document with consistent access provisions across tenures and common terms and conditions; and
- engage single processes to vary, amend, continue and transfer their permissions.

Tourism businesses with a single joint permission will have:

- access to longer terms for their commercial activity permits (a 1 year term initially for new operators, followed by a 6 year term and a maximum term of 15 years for accredited operators - compared to the existing maximum term of 3 years);
- the ability to transfer the commercial activity permit as a single, joint permission, along with the marine parks permissions which are currently transferrable.

Amendments for parks on Cape York Peninsula and indigenous joint management areas

Implementing these amendments clarifies the regulatory basis for provisions in agreements relating to these protected areas and will not increase costs. Existing provisions of the *Nature Conservation Act 1992* will ensure continuing public use and access to national parks (Cape York Peninsula Aboriginal land, indigenous joint management areas and regional parks on Cape York Peninsula).

Reducing camping fees for educational groups travelling with commercial tour operators

Reducing the camping fees that commercial tour operators pay when taking approved educational groups into protected areas, recreation areas and State forests will have a positive impact for commercial tour operators, increasing commercial viability and opportunities to encourage the promotion of educational tourism in protected areas, recreation areas and State forests.

Consistency with fundamental legislative principles

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

Consultation

No objections were raised by the parties consulted in relation to the proposed amendments and therefore, no changes were made to the proposed subordinate legislation.

The initiative to develop a single joint GBR tourism permit is supported by the GBR Strategy Group and has been developed in close cooperation with GBRMPA. For many years the tourism industry has been calling for further streamlining of permissions within the GBRWHA. Officers from QPWS met with the chief executive of the Queensland Tourism Industry Council and the executive officer of the Association of Marine Park Tourism Operators to consult on the proposed reforms.

Officers from QPWS and the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (DATSIMA) met with staff from Balkanu Cape York Development Corporation (Balkanu) to consult on the proposal to streamline approvals for commercial activities undertaken across State and/or Commonwealth marine parks and adjoining protected areas.

DATSIMA met with staff from Balkanu and Cape York Land Council to consult on the amendments relating to indigenous land use agreements for regional parks on Cape York Peninsula and the amendments that clarify the regulatory basis for provisions in indigenous management agreements for national parks (Cape York Peninsula Aboriginal land). No consultation was undertaken on amendments relating to indigenous joint management areas because they simply clarify the regulatory basis for provisions in indigenous management agreements.

The amendments associated with reducing the camping fees for educational groups resulted from recommendations in a submission to the Minister for National Parks, Recreation, Sport and Racing from Sunshine Coast Destination Limited in February 2013 titled '*Growing our Nature Based Tourism Industry*'. As these relate to changes to the *Forestry Regulation 1998*, QPWS met with officers from the Department of Agriculture, Fisheries and Forestry and provided a written outline of the proposal to staff from HQPlantations Pty Ltd. Commercial tour operators will be informed of the changes relating to the reduced fees and how they will be implemented prior to their commencement which is proposed for 1 October 2014.

No additional consultation on the camping fee amendments was undertaken because they will have no negative impacts. They are of an administrative nature that will reduce the camping fees for educational groups travelling with commercial tour operators to align them with the reduced camping fee that already applies to education groups when travelling independently. The amendments streamline the legislation by providing consistent fees under the *Nature Conservation (Administration) Regulation 2006*, the *Recreation Areas Management Regulation 2007* and the *Forestry Regulation 1998*.

No consultation occurred in relation to the consequential amendments because, as detailed above, they simply update the names and descriptions of several protected areas and remove redundant provisions.