

Marine Parks Regulation 2017

Explanatory notes for SL 2017 No. 154

made under the

Environmental Offsets Act 2014

Fisheries Act 1994

Marine Parks Act 2004

Nature Conservation Act 1992

State Penalties Enforcement Act 1999

General Outline

Short title

Marine Parks Regulation 2017

Authorising law

Section 93 of the *Environmental Offsets Act 2014*

Section 223 of the *Fisheries Act 1994*

Section 150 of the *Marine Parks Act 2004*

Section 175 of the *Nature Conservation Act 1992*

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The key policy objective of the *Marine Parks Regulation 2017* is to remake the *Marine Parks Regulation 2006* with minor amendments to provide for the continued effective management and operation of Queensland marine parks. Effective management in this context includes:

- fulfilling the State's obligations under the *Marine Parks Act 2004* to conserve the marine environment while also recognising the cultural, economic, environmental and social relationships between marine parks and other areas, and providing opportunities for public appreciation, understanding and enjoyment of the marine environment.
- fulfilling obligations under Commonwealth law and international conventions.
- having regard to recognised principles, practices and standards of marine protected area, nature conservation and natural resource management.
- maintaining legislation for conserving marine parks, as far as practicable, in line with the *Great Barrier Reef Marine Park Act 1975* (C'wlth) and subordinate legislation.

Under section 150 of the *Marine Parks Act 2004* a regulation may be made to support implementing a range of marine park management measures. The *Marine Parks Regulation 2017*, along with marine park zoning plans, plays a key role in managing the three State marine parks – the Great Barrier Reef Coast Marine Park, Great Sandy Marine Park and Moreton Bay Marine Park.

A review and remake of the *Marine Parks Regulation 2006* was prompted by the automatic expiry provisions of the *Statutory Instruments Act 1992*. Initially, the *Marine Parks Regulation 2006* was scheduled to expire on 1 September 2016. However, that expiry date was extended to 31 August 2017 while a review of the provisions was undertaken.

Without the *Marine Parks Regulation 2017*, provisions relating to the following would not be able to be implemented:

- permissions that may be granted including the requirements for application, assessment, decision, amendment, transfer and conditions that may be applied;
- commercial activity agreements including restrictions and content of agreements, application, amendment and cancellation processes;
- accreditations of external authorities, external instruments, educational or research institutions, harvest fisheries and authorisation processes or management arrangements for an activity;
- regulatory notices and declarations;
- declaration of special activities;
- general entry and use provisions of marine parks;
- offences and other matters relating to the use of marine parks;
- internal and external reviews of decisions;
- fees; and
- prohibited purposes.

The *Marine Parks Regulation 2017* will commence on 1 September 2017 and remake the *Marine Parks Regulation 2006* ensuring the continuation of the above measures and achieving Queensland's marine conservation obligations.

Achievement of policy objectives

The policy objective is achieved by making the *Marine Parks Regulation 2017* in substantially the same form as the *Marine Parks Regulation 2006* with minor amendments to further improve the effectiveness and efficiency of the regulatory arrangements.

The minor amendments complement other protected area legislation and provisions in the *Great Barrier Reef Marine Park Regulations 1983* (C'wlth) (GBRMP Regulation) hence giving effect to the purpose of the *Marine Parks Act 2004*, that being the conservation of the marine environment. The minor amendments recognise the necessity to continue the *Marine Parks Regulation 2006*, in substantially the same form, to support the ongoing integrity of the marine park management regime.

The following minor amendments have been included to address several operational and functional issues, provide clarity on certain provisions, improve consistency throughout the *Marine Parks Regulation 2017* and update the text to reflect contemporary legislative drafting requirements.

1. The *Marine Parks Regulation 2006* did not allow the chief executive to consider an application to be withdrawn if the applicant failed to comply with a direction to undertake public notice of an application, or provide additional information if requested to do so when amending an existing permission. This is inconsistent with other sections of the Regulation which require an applicant to “do something” in relation to an application and is inconsistent with similar provisions in the GBRMP Regulation. To ensure consistency with other provisions dealing with the failure to provide additional information required by the chief executive, new provisions have been included in the *Marine Parks Regulation 2017* with respect to public notice provisions (section 15) and amending an existing permission (section 27).
2. The *Marine Parks Regulation 2006* did not prescribe a process for the holder of an agreement to initiate an amendment to a Commercial Activity Agreement. Only the chief executive could initiate an amendment, which is inconsistent with the nature and intent of an “agreement”. A new provision (section 79) outlines the process for an amendment to a Commercial Activity Agreement to be initiated by the holder of the agreement.
3. The *Marine Parks Regulation 2006* contained inconsistencies in relation to the amount of time an applicant had to supply additional information requested by the chief executive before an application, for a permission or agreement, was considered to be withdrawn. Amendments have been made to ensure the same timeframe is applied to activities that are similar in nature i.e. supply of additional information, regardless of the application type (sections 12, 27, 48, 63 and 69).
4. A new provision (section 27) has been included which allows the chief executive to request additional information, if required, for applications to amend an existing permission. This will mirror existing provisions for a new permission or transfer of an existing permission, ensuring consistency throughout the *Marine Parks Regulation 2017* for actions that are similar in nature.
5. Clarity as to what constitutes an ‘emergency’ is required for government, public authorities and other stakeholders to determine when notification and/or permission is required before certain activities can be undertaken in a marine park. As such a definition for an ‘emergency’ has been included (schedule 6).
6. The *Marine Parks Regulation 2017* is required to prescribe equipment that can be used to retrieve data sent from the monitoring system equipment of an aircraft or vessel as per section 128 of the *Marine Parks Act 2004*. The list is required to assist authorised officers gather potential evidence for legal proceedings and was inadvertently omitted in the *Marine Parks Regulation 2006*. A provision (section 171) has been included to address the Act’s requirement.

7. The *Marine Parks Regulation 2006* referred to ‘days’ and ‘business days’ in prescribing timeframes for various actions. In the interests of consistency both within the *Marine Parks Regulation 2017* and with the GBRMP Regulation, all relevant references have been amended to refer to ‘business days’ (sections 9, 12, 15, 26, 38, 46, 49, 65, 166 and 168).
8. While the *Marine Parks Regulation 2006* prescribed the process to be undertaken to notify the public when a regulatory notice was put in place, similar provisions did not exist to notify the public when a restricted access area had been declared in a marine park. As such, provisions consistent with those for notifying the public about a regulatory notice have been included for restricted access areas (section 120).
9. Amendments have been made to provide clarity with respect to the provisions restricting the grant of a permission authorising dolphin feeding (section 19), changes to an accreditation that require the chief executive to prepare a gazette notice (sections 89 and 112), and the information that is to be provided by an applicant for a commercial activity agreement (section 67).

Consistency with policy objectives of authorising law

The *Marine Parks Regulation 2017* is consistent with the main objective of the *Marine Parks Act 2004*, which is to provide for marine parks and the conservation of the marine environment. This purpose is achieved by giving effect to the Act and maintaining legislation, as far as practicable, in line with Commonwealth marine park legislation.

The *Marine Parks Regulation 2017* is also consistent with:

- Section 93 of the *Environmental Offsets Act 2014* which allows for a regulation to be made in relation to the inclusion of offset conditions on some marine park authorities. This allows for the *Environmental Offsets Regulation 2014* to include a cross reference to the *Marine Parks Regulation 2017* in regard to a situation where the authority holder seeks to remove a duplicated offset condition.
- Section 223 of the *Fisheries Act 1994* which allows for offences to be created and penalties prescribed. This allows for the *Fisheries Regulation 2008* to include a cross reference to the *Marine Parks Regulation 2017* in regard to serious fisheries offences applying to the reef line commercial fishery.
- Section 150 of the *Marine Parks Act 2004* which allows for a regulation to be made which describes the zones used to manage marine parks, how people can enter and use marine parks, how compliance will be enforced, how permissions and other authorities are to be managed, fees and penalties.
- Section 175 of the *Nature Conservation Act 1992* which allows for the making of a regulation in respect of the use of wildlife and dealing with wildlife. This allows for the *Nature Conservation (Wildlife Management) Regulation 2006* to include a cross reference to the *Marine Parks Regulation 2017* in regard to a permission under the *Marine Parks Regulation 2017* to feed a dolphin.
- Section 165 of the *State Penalties Enforcement Act 1999* which allows for a regulation to prescribe an offence to be an infringement notice offence and to provide for an infringement notice fine.

Inconsistency with policy objectives of other legislation

There are no inconsistencies with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no alternative to achieving the policy objective. It is essential the *Marine Parks Regulation 2017* continues to support the long-term conservation and management of marine parks.

Alternatives considered and rejected were:

1. allow the *Marine Parks Regulation 2006* to expire without replacement. This option is unacceptable. Without subordinate legislation it would not be possible to meet the requirements of the *Marine Parks Act 2004* and effectively manage marine parks. The absence of a regulatory framework for management, permitting and compliance would place the natural and cultural values of marine parks, as well as the users of marine parks, at an unacceptable risk.
2. make the *Marine Parks Regulation 2017* without change, allowing the regulatory arrangements described in the *Marine Parks Regulation 2006* to continue. A simple remake would not have resolved known administrative issues or allow existing regulatory tools to be improved or modernised. This approach would not improve efficiency and effectiveness.

Benefits and costs of implementation

The continuation of the *Marine Parks Regulation 2006* in substantially the same form with minor amendments provides many benefits in the conservation of the marine environment, these include:

- providing the tools necessary for the management of marine parks and in achieving the purpose of the *Marine Parks Act 2004*, including zoning, permissions, commercial activity agreements, regulatory notices, declaration of special activities, accreditations, and fees;
- enabling compliance measures;
- providing for, and managing, a range of commercial, recreational, cultural, education and scientific uses in marine parks;
- enabling a complementary joint permitting system with the Commonwealth for the management of the Great Barrier Reef Coast Marine Park (State) and the Great Barrier Reef Marine Park (Commonwealth); and
- meeting national and international environmental obligations.

The *Marine Parks Regulation 2017* will not result in the need for additional government resources. Remaking the *Marine Parks Regulation 2006* with the minor amendments improves clarity and operational functionality. The changes impose no cost to the Government or the community.

Consistency with fundamental legislative principles

The *Marine Parks Regulation 2017* is consistent with the fundamental legislative principles prescribed in section 4 of the *Legislative Standards Act 1992*. The minor amendments aim to ensure the *Marine Parks Regulation 2017* is unambiguous and drafted in a sufficiently clear way so as to provide clarity to government, members of the public and other parties.

The *Marine Parks Regulation 2017* continues to include some offences that exceed a maximum of 20 penalty units. The continuation of penalties at this level may be seen to conflict with the fundamental legislative principle of having regard to the institution of Parliament by placing a penalty of greater than 20 penalty units in subordinate legislation. This interpretation is based on the former Scrutiny of Legislation Committee's Policy in which the Committee indicated that maximum penalties in regulations should be limited generally to 20 penalty units (See pages 6–7 of Alert Digest No. 4 of 1996 at: <http://www.parliament.qld.gov.au/documents/committees/SLC/1996/adno4-96.pdf>).

However, the Legislative Assembly has previously endorsed an approach for including penalty units greater than 20 through acceptance of section 150(3) of the *Marine Parks Act 2004* which states “a regulation may prescribe a penalty of not more than 165 penalty units for contravention of a regulation”.

The inclusion of higher penalty units recognises that for several serious marine park offences 20 penalty units is too low to serve as an appropriate deterrent. Having a higher penalty helps emphasise the importance of marine conservation and supports compliance and education initiatives. Examples of higher penalty offences in the *Marine Parks Regulation 2017* include undertaking the following activities without a marine park authority:

- taking natural or cultural resources;
- releasing an animal or plant;
- carrying out works or construction of a structure; and
- dumping of a chemical, waste or other pollutant.

Consultation

A consultation paper on the review of the *Marine Parks Regulation 2006* was released for internal Department of National Parks, Sport and Racing consultation and with the Great Barrier Reef Marine Park Authority (GBRMPA) in August 2016. Responses from GBRMPA contributed to the development of the amendments included in the remake of the *Marine Parks Regulation 2006*.

The Office of Best Practice Regulation (OBPR) was consulted regarding the requirement for further analysis or assessment in accordance with The Queensland Government Guide to Better Regulation (the Guidelines). OBPR advised that NPSR had satisfactorily met the objectives for a ten year review and that the proposed amendments to the *Marine Parks Regulation 2006* either met an exclusion category under the Guidelines or were unlikely to result in significant adverse impacts. As such, a Regulatory Impact Statement (RIS) was not required.