

Nature Conservation (Administration) Regulation 2017

Explanatory notes for SL 2017 No. 156

made under the

Nature Conservation Act 1992
State Penalties Enforcement Act 1999

General Outline

Short title

Nature Conservation (Administration) Regulation 2017

Authorising law

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 policy objective of the *Nature Conservation (Administration) Regulation 2017* (the Regulation) is to replace the *Nature Conservation (Administration) Regulation 2006* in order to provide for the ongoing management of protected areas declared under the *Nature Conservation Act 1992*, and in particular, to:

- a) provide for a system of permits and other authorities for the use of protected areas;
- b) provide a system of licences, permits and other authorities for the use of wildlife outside of protected areas;
- c) include procedures and requirements relating to those permits and other authorities;
- d) include procedures and requirements relating to dealing with things seized under either the *Nature Conservation (Protected Areas Management) Regulation 2017* or the *Nature Conservation (Wildlife Management) Regulation 2006*;
- e) specify offences and penalties for those offences;
- f) include relevant definitions and schedules;
- g) include transitional provisions to provide for continuity between the *Nature Conservation (Administration) Regulation 2006* and the Regulation.

The Regulation also includes amendments to other related legislation, including the *Nature Conservation (Estuarine Crocodile) Conservation Plan 2007*, the *Nature Conservation (Wildlife Management) Regulation 2006*, the *Nature Conservation (Macropod Harvest Period 2017) Notice 2016* and the *State Penalties Enforcement Regulation 2014*.

The Regulation will make consequential amendments to the *Nature Conservation (Estuarine Crocodile) Conservation Plan 2007* to insert updated references to the *Nature Conservation (Administration) Regulation 2017*.

Minor amendment of the *Nature Conservation (Wildlife Management) Regulation 2006* is necessary to reflect a consolidation of wildlife licences in the Regulation and to update references to the *Nature Conservation (Macropod) Conservation Plan 2017* and the *Nature Conservation (Koala) Conservation Plan 2017*, the latter two of which are being remade under a separate regulatory process to replace conservation plans that expire on 31 August 2017.

Amendments to the *Nature Conservation (Macropod Harvest Period 2017) Notice 2016* are required to update a reference to the *Nature Conservation (Macropod) Conservation Plan 2017* and make minor amendments to reflect contemporary drafting style and amend section numbering.

The Regulation also makes consequential amendments to the *State Penalties Enforcement Regulation 2014* under the *State Penalties Enforcement Act 1999*, to update section numbers and provide for the continuation of existing infringement notice offences and penalties for these offences under the *Nature Conservation (Administration) Regulation 2017*, the *Nature Conservation (Koala) Conservation Plan 2017* and the *Nature Conservation (Macropod) Conservation Plan 2017*.

The need to replace the *Nature Conservation (Administration) Regulation 2006* arises from the automatic expiry provisions of the *Statutory Instruments Act 1992*. Under these provisions, the *Nature Conservation (Administration) Regulation 2006* was scheduled to expire on 1 September 2016; however, that expiry date was extended to 31 August 2017 on the basis that the Department of National Parks, Sport and Racing (NPSR) had begun a process to review and amend the *Nature Conservation (Administration) Regulation 2006* by preparing a Regulatory Impact Statement (RIS) for release to the community in late 2016.

However, this process was deferred owing to delays in related regulatory reviews. As a consequence of the approaching deadline to replace the regulations before expiry, the Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef approved the replacement of the *Nature Conservation (Administration) Regulation 2006* with minimal change to ensure the continuation of the existing regulatory framework for the management and administration of protected areas, while also committing to complete a subsequent review of the replacement regulations within 18 months.

Achievement of policy objectives

Provisions for management of protected areas and wildlife

The Regulation replaces the *Nature Conservation (Administration) Regulation 2006* in order to provide for the ongoing management and administration of protected areas, and the management of protected wildlife declared under the *Nature Conservation Act 1992*.

Protected areas are subject to a range of uses such as commercial tours, filming and photography, organised events, stock grazing and beekeeping. Recreational uses include activities such as camping, picnicking, scenic driving, motorcycling, mountain biking, horse riding and nature appreciation.

As is the case with the management of most public places, a number of these activities are regulated in order to protect the environment, provide for public safety, avoid overcrowding and protect the rights of other visitors. These outcomes are achieved through a number of mechanisms, including the grant of permits, licences, agreements and other authorities. The Regulation provides a system of permits and other authorities for use in such circumstances and also includes the procedures and requirements relating to those permits and other authorities. This includes provisions regarding the application, assessment and decision-making processes, periods of time for which permits and other authorities may be granted, amendment, suspension, cancellation, transfer, renewal and review procedures and the fees payable under the *Nature Conservation Act 1992*.

The Regulation provides a similar regulatory framework for commercial and recreational permits, licences and authorities relating to the use of wildlife outside of protected areas. These provisions support the ecologically sustainable management of native plants and animals in Queensland, together with related provisions under the *Nature Conservation (Wildlife Management) Regulation 2006*.

The Regulation also contains provisions which continue existing requirements for dealing with things seized under the *Nature Conservation (Protected Areas Management) Regulation 2017* and the *Nature Conservation (Wildlife Management) Regulation 2006*. These include:

- ensuring seized things are stored and maintained in suitable condition and in a secure fashion;
- providing that it is an offence for a person to tamper with a seized thing;
- specifying that certain seized items must be destroyed, including traps, snares, poisons and weapons;
- disposal procedures for seized property, including requirements for owner notification, or where the owner is unknown, advertising processes to assist in identification of ownership.

The Regulation contains provisions regarding record keeping requirements and procedures for activities conducted under commercial activity permits in protected areas and activities relating to the commercial and recreational use of native wildlife outside of protected areas. These provisions help to ensure that appropriate fees are paid to the State for commercial use of protected areas and native wildlife, enable verification of lawful wildlife dealings and also contribute to sustainable management of protected areas and wildlife by providing information about the level of use of protected areas and wildlife species.

The provisions in the Regulation generally mirror the requirements that apply to other managed areas such as State forests and Recreation Areas. This allows for consistent and effective management and administration of similar issues, and also reduces confusion and promotes improved understanding of the relevant rules by commercial and recreational users.

The Regulation includes schedules to support the operation of provisions in the Regulation, as follows:

- an overview of the related regulations under the *Nature Conservation Act 1992* and their relationship to the Regulation;
- the matters for deciding suitability of an applicant who applies for a relevant authority under the Regulation;
- the fees payable for a range of protected area and wildlife permits, licences, agreements, wildlife tags, implants and record books and fees for amendments to a range of authorities;
- the fees payable for seeds, flowers and propagative material collected by permitted commercial suppliers from resources reserves and conservation parks;
- a dictionary of terms used in the Regulation.

The schedules in the Regulation match the schedules in the *Nature Conservation (Administration) Regulation 2006* subject to some minor corrections, e.g. removal of the commercial wildlife licence (mobile) which is not required by the harvest industry.

Providing for penalty infringement notices for offences

The Regulation amends Schedule 1 of the *State Penalties Enforcement Regulation 2014* to continue the ability to issue penalty infringement notices for offences under the *Nature Conservation (Administration) Regulation 2017*, the *Nature Conservation (Koala) Conservation Plan 2017* and the *Nature Conservation (Macropod) Conservation Plan 2017*. The infringement notice penalties for these offences remain the same as the previous penalties for the corresponding offences under these regulations.

The listing, in the *State Penalties Enforcement Regulation 2014*, of offences under the *Nature Conservation (Administration) Regulation 2017*, the *Nature Conservation (Koala) Conservation Plan 2017* and the *Nature Conservation (Macropod) Conservation Plan 2017* as infringement notice offences supports effective enforcement by allowing enforcement action to be taken through the use of infringement notice fines. This approach is more efficient and incurs significantly lower cost (for both the State and the offender), than having the matter dealt with by a court.

Consistency with policy objectives of authorising law

The Regulation is consistent with the objectives of the authorising law. The object of the *Nature Conservation Act 1992* is the conservation of nature while allowing for the involvement of Indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom.

The *Nature Conservation Act 1992* also provides that the conservation of nature is to be achieved by a range of measures including the declaration of protected areas and the

management of those areas in accordance with management principles specified in the Act to guide the conservation of natural and cultural resources, and use of the areas.

Under section 175 of the *Nature Conservation Act 1992* regulations may be made in respect of a range of matters, including access to protected areas and the use of land, and activities, in protected areas, the seizure, removal and disposal of property either abandoned or in contravention of a regulation, the take and use of wildlife and movement of wildlife into or in and out of the State, records to be kept by the holders of permits, licences and other authorities, and the fees, costs and charges payable under the *Nature Conservation Act 1992* and the amounts of those fees and when they are payable, authorising the take, keeping or use of a protected animals and prescribing offences with a maximum penalty of a fine of up to 165 penalty units.

The Regulation allows for the effective management of protected areas to achieve the object of the *Nature Conservation Act 1992*, and is consistent with the regulation making powers under the Act.

The Regulation also takes the opportunity to make minor amendments to the *Nature Conservation (Estuarine Crocodile) Conservation Plan 2007* to insert updated references to the *Nature Conservation (Administration) Regulation 2017*. It also amends the *Nature Conservation (Wildlife Management) Regulation 2006* to insert updated references to the *Nature Conservation (Koala) Conservation Plan 2017* and the *Nature Conservation (Macropod) Conservation Plan 2017* which are being updated through a separate regulatory process, and remove redundant provisions as a consequence of the remaking of these conservation plans. Similarly, the Regulation makes a minor amendment to the *Nature Conservation (Macropod Harvest Period 2017) Notice 2016* to update a reference to the *Nature Conservation (Macropod) Conservation Plan 2017* and make minor amendments to reflect contemporary drafting style and amend section numbering.

The Regulation makes consequential amendments to the *State Penalties Enforcement Regulation 2014* to provide for the continuation of infringement notice offences and penalties for protected area offences. This contributes to achieving the objects of the *State Penalties Enforcement Act 1999*, and is consistent with the regulation making power under that Act.

The objects of the *State Penalties Enforcement Act 1999* include—

- a) maintaining the integrity of fines as a viable sentencing or punitive option for offenders;
- b) maintaining confidence in the justice system by enhancing the way fines and other money penalties may be enforced; and
- c) reducing the cost to the State of enforcing fines and other money penalties.

Section 165 of the *State Penalties Enforcement Act 1999* allows for a regulation to prescribe an offence to be an infringement notice offence and to provide for an infringement notice fine, including a fine for a corporation not more than five times the fine for an individual.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation. For example, the provisions for the management of conduct and activities in protected areas are consistent with corresponding provisions under related legislation, including the *Forestry Act 1959* which

applies to State forests and timber reserves, and the *Recreation Areas Management Act 2006* which applies to declared recreation areas.

Alternative ways of achieving policy objectives

Protected area management provisions

Potential alternatives to the creation of the Regulation have been considered.

One such alternative considered was a ‘no-legislative intervention’ option, i.e. allowing the *Nature Conservation (Administration) Regulation 2006* to expire without replacement. This option was rejected because of the unacceptable risks and consequences that would arise.

It is considered that the lack of appropriate regulatory measures would quickly prove to be unacceptable and relevant regulations would need to be reinstated. For example, the following adverse consequences would occur if the provisions in the *Nature Conservation (Administration) Regulation 2006* were allowed to lapse without replacement:

- Members of the public and commercial businesses could not readily obtain permits required under the *Nature Conservation Act 1992* to conduct a range of activities in protected areas, owing to the lack of regulations providing for permit issue and administration. This would cause the public, businesses and research organisations considerable inconvenience and financial impacts, for example, universities wouldn’t be able to be provided with permits to undertake work on protected areas.
- This would in turn result in increased management costs to develop and implement alternative management strategies that would be less likely to be effective, and more expensive for applicants and the State. The lessened ability to properly manage some areas might lead to the closure of areas to public and commercial use.
- The absence of a framework of permits, licences and agreements and the associated fees payable under the Regulation would also result in a loss of revenue to the State, leading to a decline in the funding available to maintain the infrastructure and general condition of protected areas.
- The loss of the ability to regulate the levels of use at popular national parks through the grant of permits and agreements would result in overcrowding and the associated decline in visitor’s experience and the natural condition of the environment in popular camping areas and commercial tour destinations throughout the State.
- The absence of the schedule of fees payable would also result in the need to recreate an alternative fees regime for access and use of protected areas and their natural resources.

A second alternative option that was considered was allowing the *Nature Conservation (Administration) Regulation 2006* to expire without replacement, while attempting to achieve the effect of the lapsed regulatory provisions by additional non-regulatory and self-regulatory measures, such as increasing the provision of information and education, and increased liaison with business and community groups.

This option was rejected because this option would fail to sufficiently alleviate the relevant risks, as follows:

- The long-term experience of conservation officers employed by NPSR to manage recreational and commercial use of protected areas clearly indicates that non-

regulatory and self-regulatory measures by themselves are insufficient to achieve satisfactory compliance and alleviate safety and environmental risks.

- Regulatory measures would still be necessary to deal with situations where non-regulatory and self-regulatory measures are ineffective. A small but significant proportion of people are prepared to ignore the rules, even with regulations in place to serve as a deterrent.
- Without these regulatory measures, unsafe and inappropriate behaviour can be expected to increase significantly, unchecked by a regulatory framework.

It is considered that the use of non-regulatory and self-regulatory alternatives would quickly prove to be unacceptable and relevant regulations would need to be reinstated.

Infringement notice provisions

Consideration was given to an alternative approach to prescribing offences as penalty infringement offences. This would entail:

- not listing these offences as infringement notice offences in the *State Penalties Enforcement Regulation 2014*;
- undertaking court prosecutions as the sole means of taking action for offences; and
- using increased non-regulatory and self-regulatory measures to try to manage access and use within protected areas.

This option was rejected because of the unacceptable risks and consequences that would arise.

Without the ability to issue infringement notices, conservation officers would be limited in their ability to ensure compliance with environmental and safety requirements in protected areas, owing to the diminished deterrent effect, and the additional demand on enforcement resources that would result.

The cost of enforcement would increase due to the extra effort that would be required to try to maintain effective compliance, and due to the additional cost of court proceedings instituted for minor offences.

This option would also result in an inconsistent management approach relative to similar areas such as State forests.

Additional effort to address unsafe and inappropriate behaviour using non-regulatory and self-regulatory measures would not be effective and would fail to sufficiently alleviate the risks.

The ability to use infringement notices with appropriate penalties is an essential requirement to deter unacceptable behaviour, allow effective enforcement action to be taken, and maintain public confidence that appropriate action will be taken against people who do not obey the rules and who jeopardise public safety and enjoyment.

Benefits and costs of implementation

The Queensland Government actively encourages recreational and tourism use of protected areas and accepts the responsibility to manage these lands to maintain their environmental recreational and commercial values, and to take appropriate steps to maintain visitor safety. The Government also recognises the need to ensure that native wildlife is protected and

conserved, and that appropriate laws are in place to manage its commercial and recreational use. The provisions in the Regulation, including the system of permits, licences, and other authorities, represent a tried and tested framework to achieve these outcomes.

The benefits arising from the regulatory framework greatly outweigh potential costs or inconvenience experienced by the commercial and recreational users of protected areas in order to comply with the regulations. For example, regulations to ensure people obtain permits to conduct certain activities on protected areas contribute to a safe and enjoyable experience for protected area users. Fees payable under the Regulation contribute to some of the Government's costs to administer the licence and permit requirements and provide facilities and services. Fees payable under commercial permits and licences provide a financial return to the Government for the commercial use of Queensland's protected areas and wildlife.

The Regulation provides for penalties for breaches of the requirements, in the form of infringement notice offence penalties, and offence penalties that can be imposed by a court. However, the cost of these offence penalties is only borne by a small number of people who commit offences that warrant action stronger than a warning.

The Regulation imposes some continuing costs on the Government, including administrative and compliance costs. However, these costs are overshadowed by substantial benefits in terms of meeting government responsibilities for the management of State-owned lands, and ongoing cost savings delivered by effective management. No new costs are introduced by the Regulation.

Consistency with fundamental legislative principles

The Regulation has been examined for compliance with the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992* and is considered to have sufficient regard to the rights and liberties of individuals and the institution of Parliament. Some potential issues were identified during drafting of the Regulation and are discussed below.

Amendment, suspension or cancellation of relevant authorities

The Regulation includes provisions enabling the chief executive to amend, suspend or cancel a relevant authority. A relevant authority is a protected area authority granted under section 9 or 10 of the Regulation or a wildlife authority granted under sections 11 to 16 of the Regulation. These authorities are granted to enable particular activities relating to the access to, and use of, a protected area and the resources within it or for the taking and use of protected native plants and animals outside of a protected area.

Where necessary, the chief executive may undertake the following actions in relation to relevant authorities under the Regulation:

- apply a non-immediate amendment
- apply an immediate amendment or suspension
- apply a non-immediate suspension or cancellation.

This power may appear to have insufficient regard to the rights and liberties of the holder of a relevant authority, and this is discussed below.

The situations where these actions may be applied generally fall into two types of circumstances. The first is characterised by an immediate need to take action to restrict the rights under the granted authority in response to public safety matters, the need to protect the environment and native wildlife, or failure by the holder to comply with payment requirements following a notice to do so. The second is non-immediate action, in response to less immediate concerns, such as the authority being obtained on the basis of incorrect information, the holder failing to provide the chief executive with information required as a condition of their authority, the activity considered to be having an impact on the character or amenity of the area, or for a wildlife authority, concerns regarding the suitability of the facilities or location where the wildlife is being kept.

Immediate action

Where immediate action is required, the Regulation requires the chief executive to advise an affected authority holder of any amendment or suspension of their authority. For protected area authorities, this may occur verbally if practical, or otherwise by the use of signs in the area to which the authority relates. For a wildlife authority an information notice is provided unless the matter relates to the immediate protection of life and property. There are clear limits in the Regulation with specific situations listed when the chief executive may exercise this power. For example, immediate amendment or suspension may only occur to secure the safety of people and property, because of a fire or natural disaster, protection of the cultural or natural resources of an area, or if an area is declared to be a restricted access area. Generally such situations are short term in nature. For example, in response to a wildfire in a national park, the chief executive may suspend all permits authorising access to the area to ensure public safety.

The Regulation requires that as soon as practicable after the amendment or suspension ends, the chief executive must either verbally inform the affected authority holders or place a notice on the department's website advising that the amendment or suspension has ended, and remove any signs in relation to the suspension. In the example above, this would result in access to the area being reinstated after the risks associated with the fire had passed. It is considered that in the context of the circumstances prescribed, the Regulation provides a fair balance between the rights and liberties of authority holders to access protected areas under their authority and the need for the chief executive to be able to immediately act to protect life and property or the resources of a protected area in response to emergent situations.

The Regulation also provides for amendment or suspension resulting from a failure to pay a fee, royalty or submit a return of operations. Some authorities, such as commercial activity permits require the payment of fees by the authority holder based on the number of people taken on tours over a stated period. This information is submitted to the chief executive through a return of operations to allow calculation and invoicing of fees. Similarly, the holder of a permit to take quarry material from a resources reserve is required to pay a royalty based on the volume of quarry material taken.

In circumstances where the necessary payment or return has not been received from such authority holders, the Regulation provides for amendment or suspension of the authority. However, before taking such action, the Regulation requires the chief executive to provide a notice to the holder of the authority alerting them to the need to pay the fee or provide a return and allowing at least 10 business days to correct the situation. This process provides a reasonable protection against the risk of infringing the rights and liberties of authority holders by ensuring a further opportunity for the authority holder to rectify any oversight that may have occurred on their behalf in relation to payment or submission of a return. Furthermore, it is

considered reasonable to provide for the chief executive to immediately amend or suspend an authority when the holder is not meeting their financial obligations to the State in return for the access or use provided under the authority, despite the holder being given notice of an additional 10 business days to correct the situation.

Non-immediate action

The Regulation also provides for non-immediate amendment, suspension and cancellation of relevant authorities. It is considered that these provisions contain adequate protections so as not to infringe the rights and liberties of individuals. For example, prior to taking such action, the chief executive must write to an authority holder outlining the circumstances regarding the proposed action and invite the authority holder to make a submission in response. At least 20 business days must be allowed for the submission to be provided and following consideration of any submission, the chief executive must provide an information notice outlining their decision. Processes also apply that allow for internal review and further appeal to the Queensland Civil and Administrative Tribunal.

Overall, the processes that must be followed by the chief executive in the event of an amendment, suspension or cancellation are clearly stipulated in the Regulation and are considered to be proportional with the need to manage protected areas and native wildlife whilst also considering the rights and liberties of individuals who hold relevant authorities.

Amendment, suspension or cancellation of commercial activity agreements

A commercial activity agreement may be granted under section 83 of the Regulation to provide for the conduct of commercial activities on protected areas. Section 106 to 110 of the Regulation provide a continuation of existing powers for the chief executive to amend, suspend or cancel a commercial activity agreement under particular circumstances. During the drafting of the Regulation, these provisions were identified as having the potential to impact on the rights and liberties of individuals.

The provisions for amendment, suspension or cancellation of a commercial activity agreement contain the same requirements for amending, suspending or cancelling relevant authorities. Therefore, as outlined above in relation to the same powers regarding relevant authorities, it is considered that suitable protections of the rights and liberties of agreement holders are provided for in the Regulation, while also balancing the need for the chief executive to manage such uses on protected areas.

Seizure of things on protected areas and for the protection of native wildlife

The *Nature Conservation Act 1992* provides for the making of regulations dealing with the seizure of things such as vehicles, boats, aircraft or property found in a protected area in contravention of a regulation, or found abandoned in a protected area. Sections 155 to 159 of the *Nature Conservation (Protected Areas Management) Regulation 2017* continue provisions from the previous regulation to allow such things to be seized in these circumstances.

The *Nature Conservation Act 1992* also allows regulations to be made about seizure, for the protection of native wildlife, of vehicles, boats, aircraft or appliances (such as traps) that are found on land without the landholder's consent, or found abandoned on land. Section 346 of the *Nature Conservation (Wildlife Management) Regulation 2006* provides for such seizure.

The procedures for how seized things are subsequently dealt with are contained in Part 5 of *Nature Conservation (Protected Areas Management) Regulation 2017*.

These seizure powers may appear to be contrary to the fundamental legislative principle that legislation should confer power to seize property only with a warrant issued by a judge or other judicial officer.

The *Nature Conservation (Protected Areas Management) Regulation 2017* provides conservation officers with the power to seize things only if the things are not authorised to be in the protected area under the Act, or it is necessary to seize the thing to protect the cultural or natural resources of the protected area. Similarly, the *Nature Conservation (Wildlife Management Regulation) 2006* only allows things to be seized if they need to be seized to protect native wildlife and they are on land without the landholder's consent or are abandoned.

In many situations, such as property found abandoned in a protected area, or bird traps found on other land, the owner or person in control of the thing is unknown, and it would not be possible to serve a warrant on the owner or person in any case.

However, where a conservation officer knows, or ought reasonably to know, the name of the person in charge or control of an unauthorised structure or work, vehicle, boat, recreational craft or aircraft in a protected area, the conservation officer may seize the thing only if the person has been given a written direction to remove the thing and provided with the opportunity to do so, and has failed to comply with the direction to remove the thing.

Part 5 of the Regulation provides for specific and transparent procedures that must be followed in relation to securing and storing seized things, identifying owners through the use of public notices and the release and disposal of seized things. Seized things such as explosives, poisons and traps must be destroyed, but the procedures in Part 5 allow for other seized things to be claimed by their owners, or disposed of if they are not claimed.

The above provisions represent a reasonable and limited departure from the legislative principles that legislation should confer power to seize property only with a warrant.

Consultation

The Office of Best Practice Regulation within the Queensland Productivity Commission was consulted and supported the proposal to replace the *Nature Conservation (Administration) Regulation 2006* with minimal change, on the basis of a commitment by NPSR to undertake a subsequent comprehensive review of the replacement regulation within 18 months of its commencement.

No consultation with the community was undertaken as the Regulation makes no significant changes to the effect of the provisions in the *Nature Conservation (Administration) Regulation 2006*, which it replaces.

Community consultation, including release of a RIS, will be undertaken as part of that planned review of the Regulation.