

# Nature Conservation (Protected Areas Management) Regulation 2017

Explanatory notes for SL 2017 No. 157

made under the

*Nature Conservation Act 1992*  
*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*Nature Conservation (Protected Areas Management) Regulation 2017*

### Authorising law

Sections 31 and 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 (Protected Areas Management) Regulation 2017* (the Regulation) is to replace the *Nature Conservation (Protected Areas Management) 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) include procedures and requirements relating to those permits and other authorities;
- c) regulate conduct in protected areas, with particular regard to conserving natural and cultural resources and values, and protecting human health and safety;
- d) include enforcement powers in relation to protecting the environment, human well-being and property;
- e) specify offences and penalties for those offences;
- f) include relevant definitions and schedules; and
- g) include transitional provisions to provide for continuity between the *Nature Conservation (Protected Areas Management) Regulation 2006* and the Regulation.

The Regulation also 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.

Additionally, the Regulation amends the *Nature Conservation (Protected Areas) Regulation 1994* to update a reference to a protected area name.

The need to replace the *Nature Conservation (Protected Areas Management) Regulation 2006* arises from the automatic expiry provisions of the *Statutory Instruments Act 1992*. Under these provisions, the *Nature Conservation (Protected Areas Management) 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 (Protected Areas Management) 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 (Protected Areas Management) Regulation 2006* with minimal change to ensure the continuation of the existing regulatory framework for managing 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***

The Regulation replaces the *Nature Conservation (Protected Areas Management) Regulation 2006* in order to provide for the ongoing management of protected areas declared under the *Nature Conservation Act 1992*.

Protected areas are subject to a range of commercial and recreational uses – including use by the public for 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, some actions and behaviours need to be regulated in order to protect the environment, provide for public safety and protect the rights of other visitors. The Regulation addresses these issues by including a range of offence provisions as a deterrent to behaviour that could interfere with protected area management, cause damage to property, cause unacceptable environmental impact, affect other people's reasonable enjoyment of the environment and facilities, and threaten people's health and safety. For example, restrictions apply in regard to the driving of vehicles, disposing of waste, and the lighting of fires.

These offence provisions continue the effect of provisions already in operation under the *Nature Conservation (Protected Areas Management) Regulation 2006*, and operate in conjunction with non-regulatory measures such as the provision of information and education, and NPSR staff working cooperatively with business and community groups.

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

The Regulation includes schedules to meet requirements under the *Nature Conservation Act 1992* and support the operation of provisions in the Regulation, as follows:

- trustees of specific conservation parks and resources reserves and their powers are listed in schedules 1 and 2, as provided for by section 31 of the *Nature Conservation Act 1992* and sections 14 and 15 of the Regulation;
- permitted uses in specified national parks are listed in schedules 3 and 4, as provided for by sections 35 and 37 of the *Nature Conservation Act 1992* and sections 17 and 18 of the Regulation;
- prescribed forest reserves for the temporary continuation of beekeeping are listed in schedule 5, as provided for by section 184 of the *Nature Conservation Act 1992* and sections 31 and 50 of the Regulation;
- prescribed national parks within which fish, invertebrate animals and mud crabs may be taken are listed in schedule 6, as provided for by section 49 of the Regulation; and
- minimum aircraft flying height over specified protected areas are listed in schedule 7, as provided for by section 117 of the Regulation.

The schedules in the Regulation match the schedules in the *Nature Conservation (Protected Areas Management) Regulation 2006* subject to some minor corrections, e.g. updated latitude and longitude references to match the current Australian latitude and longitude datum, the Geocentric Datum of Australia 1994 (GDA94).

#### ***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 Regulation.

The infringement notice penalties for these offences remain the same as the previous penalties for the corresponding offences under the *Nature Conservation (Protected Areas Management) Regulation 2006*.

The listing, in the *State Penalties Enforcement Regulation 2014*, of offences under the Regulation 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.

The *Nature Conservation Act 1992* allows for the making of regulations under the Act:

- section 31 of the *Nature Conservation Act 1992* allows for the Governor in Council, by regulation, to place a conservation park or resources reserve under the management of trustees; and
- section 175 of the *Nature Conservation Act 1992* allows for regulations to be made in respect of a range of matters, including access to protected areas and the use of land, and activities, in protected areas, 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 correct a reference to a protected area name. The *Nature Conservation (Protected Areas) Regulation 1994* sets out the protected areas created under the *Nature Conservation Act 1992*, in a series of schedules. The entry for ‘Rindoparr Coordinated Conservation Area’ in schedule 6 includes a reference to ‘the cultural and natural values of the adjacent Lakefield National Park’. However, that adjacent area has now become Rinyirru (Lakefield) National Park (Cape York Peninsula Aboriginal Land). Therefore, the Regulation amends the *Nature Conservation (Protected Areas) Regulation 1994* to correct the reference from ‘Lakefield National Park’ to ‘Rinyirru (Lakefield) National Park (Cape York Peninsula Aboriginal Land)’.

As indicated above, 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 (Protected Areas Management) 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 (Protected Areas Management) 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 and businesses considerable inconvenience and financial impacts.
- Conservation officers would be limited in their ability to ensure compliance with conservation and safety requirements in protected areas, owing to the absence of regulatory measures. This would lead to a significant increase in instances of unsafe and inappropriate behaviour.
- This would in turn result in increased management costs to develop and implement alternative management strategies that would be less likely to be effective. The lessened ability to properly manage some areas might lead to the closure of areas to public and commercial use.
- The management of conservation parks and resources reserves by appointed trustees would also become more costly and difficult for those trustees, owing to the lack of regulatory provisions and the need to find alternative management measures.
- The *Nature Conservation Act 1992* requires particular types of use to be prescribed by regulation as a permitted use for individual national parks before they can be authorised. The types of use that require specific regulations in order to be authorised for a national park include ecotourism facilities, communications facilities and utility infrastructure. If the provisions and schedules in the *Nature Conservation (Protected Areas Management) Regulation 2006* were allowed to lapse without replacement, existing permitted uses would not be able to continue beyond their current authorised term, and new permitted uses could not be granted without a new set of regulations being developed. However, it is unnecessary to make new regulations to do this – it is more timely and efficient to carry the existing provisions and schedules forward in the Regulation.

A second alternative option that was considered was allowing the *Nature Conservation (Protected Areas Management) 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 in managing 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.
- The requirements under the *Nature Conservation Act 1992* that specify that various types of activities that can only be allowed if they are prescribed by regulation (as indicated above), would not be able to be met by this option.

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 reduce the incidence of unsafe and inappropriate behaviour 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 commercial, recreational and environmental values, and to take appropriate steps to maintain visitor safety. The provisions in the Regulation represent a tried and tested framework to achieve these outcomes.

The benefits arising from the regulatory framework greatly outweigh the potential inconvenience to 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.

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. Several potential issues were identified during drafting of the Regulation and are discussed below.

### *Maximum penalty levels*

The Regulation includes a number of maximum penalties that exceed 20 penalty units. Placing a penalty greater than 20 penalty units in subordinate legislation may be seen to conflict with the fundamental legislative principle of having regard to the institution of Parliament.

This interpretation is based on the former Scrutiny of Legislation Committee's Policy No. 2 of 1996, 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 former Scrutiny of Legislation Committee's policy is a general guideline, and does not prevent appropriate instances of penalties of more than 20 penalty units in subordinate legislation.

Section 175(2)(t) of the *Nature Conservation Act 1992* allows for regulations under the Act to prescribe offences with a maximum penalty of up to 165 penalty units. This indicates that Parliament's support was given for regulations under the Act to be able to include offences with penalties up to this level, if required.

Much of the detail of protected area management relies upon the subordinate legislation, and for many serious protected area offences, a maximum penalty of 20 penalty units is too low. For example, the provision that a person must not feed dangerous animals (such as dingoes) in a protected area carries a penalty of 40 penalty units. A range of other offences about taking natural resources, unauthorised fires and unauthorised works carry maximum penalties of 165 penalty units.

The penalties are consistent with those for equivalent offences in related legislation and are proportional to the potentially serious nature of the offences. For example, section 110 of the Regulation carries a maximum penalty of 165 penalty units for the offence of lighting a fire in a protected area when lighting a fire is prohibited by a regulatory notice. Lighting a fire when fires are prohibited during a period of high fire danger could result in a wildfire with capacity to cause environmental damage, destroy property and endanger lives. In such circumstances it is considered reasonable and proportional to provide a court with the ability to impose a penalty of up to 165 penalty units.

***Written permission to carry out a controlling activity***

Section 48 of the Regulation provides that the chief executive may give a person a written permission to conduct an activity that the chief executive considers to be reasonable and necessary to significantly reduce the population of, or eradicate, wildlife that is not native wildlife in a protected area (a 'controlling activity').

For example, the chief executive could give written permission to a landholder of land adjoining a protected area to enter the protected area to undertake feral animal control. However, the permission can only be given if the controlling activity is undertaken in such a way as to significantly reduce or eradicate the feral animal population, i.e. permission cannot be granted for a control measure that is unlikely to have adequate effect.

The ability to grant a permission for a 'controlling activity' allows for permissions to be granted as part of planned and coordinated feral animal and weed control programs. NPSR works with local governments, landholders, and the community in this regard. The *Biosecurity Act 2014* requires every local government in Queensland to develop a biosecurity plan for their area. Local government biosecurity plans bring together all sectors of the local community, including NPSR, to manage invasive plants and animals.

The refusal of the chief executive to grant a permission for a controlling activity is not subject to review or appeal. This absence of review rights might be seen to breach the fundamental legislative principle that rights and liberties, or obligations, should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

In the case of control of feral animals or pest plants in protected areas involving the use of herbicides, poisons or firearms, the chief executive is best placed to decide whether an activity is, in the particular circumstances, 'reasonable and necessary to significantly reduce



the population of, or eradicate, wildlife that is not native wildlife' and to take account of the associated environmental and safety issues.

It would be unreasonable to have these decisions open to review or appeal. The review and appeal process would require complex matters informing the permission decision to be explained and documented, which would consume significant amounts of staff time. Additionally, given the elements of informed judgement involved in considering the decision, the review process is considered unlikely to change the outcome.

### ***Regulatory signage***

The Regulation allows for the use of signs which may regulate some actions in specified areas or prohibit entry in some cases, in order to protect the environment and provide for public safety and the rights of other visitors. These provisions allowing such restrictions to be imposed by signs might be considered to breach fundamental legislative principles relating to delegation of power only in appropriate cases and to appropriate persons.

However, regulatory signs in protected areas can be used only in the circumstances and for the purposes specified in the provisions in the Regulation. Apart from signs such as traffic signs, which need to be brief as well as clear, other regulatory signs in protected areas are required to indicate the limits of the area to which the signs apply, to advise that a penalty applies for failure to comply, and list the amount of penalty.

The power to use signs for the purposes specified in the Regulation to manage activities is considered to be appropriate and necessary because:

- it ensures that information about requirements and offences at specific sites is conveyed fully and directly to the public;
- it is consistent with contemporary practice and public expectations in areas such as national parks;
- it allows a timely, relevant and flexible management response to unpredictable or changing circumstances affecting protected areas, involving natural factors such as drought, wildfire or cyclone, as well as directing visitor behaviour; and
- the directness and convenience of using signs to achieve management objectives ensures greater efficiency in the use of limited staff time and resources.

The use of regulatory signs in protected areas is managed through operational policies and signage guidelines and standards to ensure consistency, adequate consultation and balance.

### ***New regulatory signs imposing restrictions that may affect existing authority holders***

As indicated above, regulatory signs can restrict activities and/or access to protected areas or parts of protected areas. The implementation of new restrictions through the installation of new signs could restrict activities and use of the area by permit holders who already hold permits to conduct the activities or to access the area. This may be considered to be inconsistent with the fundamental legislative principles requiring provision of natural justice, and having administrative power subject to appropriate review.

However, the power to use signs to declare restrictions is subject to circumstances and requirements specified in the Regulation. In some instances, immediate restrictions need to be applied for environmental reasons or for health and safety reasons, and these restrictions need to apply to permit holders as well as members of the public. For example, an immediate restriction may be necessary to secure the safety of people or property, or because of a fire or

other natural disaster; or to protect native wildlife or the cultural or natural resources of a protected area. Immediate action in urgent and serious circumstances does not allow time for advance notice to be given or for representations to be made by permit holders.

In less urgent circumstances, the Regulation requires consultation with the holder of any organised event permit, commercial activity permit or commercial activity agreement whose activities might be significantly affected by the proposed restriction. For example, such consultation would apply to non-urgent proposals to use a sign to declare a restricted access area (sections 78 to 83 of the Regulation) or to declare an activity for an area to be a restricted 'special activity (sections 85 to 87 of the Regulation). The consultation requirement does not apply to section 88, which provides the power to declare an area closed to the public when it is considered necessary or desirable for public health and safety, for example, when there is need to close a damaged bridge or walking track for repair.

The situations in which restrictions can be applied without consultation are considered to be appropriate allow urgent responses to conservation and safety concerns when necessary.

### ***Consideration of reasonable excuse for offence***

Some of the offence provisions in the Regulation provide that a person does not commit the relevant offence if the person has a reasonable excuse, but this is not the case for all the listed offences. Not providing for a 'reasonable excuse' defence in these instances may be considered to be a breach of the fundamental legislative principle to have regard to the rights and liberties of individuals.

The defence of reasonable excuse has been included in offence provisions where this is considered practical and appropriate. For example, under section 95, a person commits an offence if the person enters a restricted access area without authorisation, unless the person has a reasonable excuse. A reasonable excuse would be, for example, that the person entered the area to retrieve the person's child who had wandered into the area.

In other instances, providing for consideration of a reasonable excuse is not justified or could lead to uncertainty about the application of the offence. For example, in section 98, the offence of unauthorised grazing of stock in a protected area does not have a 'reasonable excuse' component. This is appropriate, because the offence of unauthorised grazing is directed at grazing that does not involve straying stock, and a separate provision (section 103) requires a person to take all reasonable steps to prevent stock from straying onto a protected area.

In instances where an offence provision in the Regulation does not include a 'reasonable excuse', a defence may still be available under provisions of the Criminal Code relating to, for example, acting under duress, a genuine mistake of fact, or acting in an emergency.

Conservation officers who enforce the offence provisions under the Regulation are trained to consider the particular situation, including any reasonable excuse or mitigating circumstances, before deciding whether to take no action, issue a warning, or proceed with infringement or prosecution action.

***Process to apply for and consider applications for written approvals***

The Regulation and the associated *Nature Conservation (Administration) Regulation 2017* provide for the grant of particular permits, such as a camping permit, commercial activity permit, or stock grazing permit, and generally indicate the considerations that apply when deciding whether to grant such a permit.

Several sections of the Regulation also provide that a particular activity or action cannot be conducted without the ‘written approval’ of the chief executive. However, the Regulation does not specify how a person applies for a written approval or the process for deciding such approvals. This lack of guidance might seem to be out of step with the fundamental legislative principle that rights and liberties, or obligations, should be dependent on administrative power only if the power is sufficiently defined.

The process for applying for written approvals varies according to the circumstances. Written approvals are commonly granted to authorise a supplementary aspect of another activity and are therefore ‘applied for’ in the broader context of seeking authorisation for the other activity. For example, a permit for scientific research granted to a person ‘to take, use, keep or interfere with’ a natural resource of a protected area might contain the necessary written approvals to camp, erect a structure, enter a restricted access area, drive a vehicle other than on a road, use a generator, and possess and use traps for animal capture and release.

However, in some circumstances a person may need to seek a written approval that is not associated with another authorisation, for example, a neighbouring property owner might need a written approval to drive a vehicle through a part of a protected area normally closed to vehicles in order to inspect and repair a boundary fence. In such a case, the application and approval process generally would be relatively straightforward.

The need to clarify written approval processes will be considered as part of the planned review of the Regulation during the next 18 months.

***Permit suspension or cancellation as well as conviction or fine***

Section 108(2) of the Regulation requires the holder of an organised event permit to pay an additional daily fee for the permit if applicable. There is a penalty for failure to pay the fee. Sections 63 to 65 of the associated *Nature Conservation (Administration) Regulation 2017* provide the power to suspend or cancel a permit for failure to pay a prescribed fee. It is possible for a permit holder who is convicted or fined for failure to pay fees to also have the permit suspended or cancelled. The potential loss of a permit as well as a conviction or fine could be seen to have inadequate regard to the rights and liberties of individuals.

However, the ability to suspend or cancel the permit in addition to a fine is necessary to ensure compliance with the requirement to pay. There are two different aspects involved. One is the failure to pay the fees on time, and the other is failure to pay the fees at all.

Under the permit suspension process in the *Nature Conservation (Administration) Regulation 2017*, the person is given an additional 10 business days to pay the outstanding fees before the permit can be suspended, that is, the permit can be suspended in response to this second failure to pay.

This further ‘sanction’ is necessary to take account of the situation where a person given an infringement notice (for failure to pay the fees on time) could choose to pay the infringement notice fine, but still choose to not pay the outstanding fees.

For example, the amount of the infringement notice penalty could be less than the amount of outstanding fees. In the absence of any additional sanction, it could be cheaper for the person to be infringed (and pay the fine) and still not pay the fees, without suffering any further penalty. The ability to suspend the permit for non-payment of the fees serves as the necessary additional sanction to encourage the person to pay.

This situation is similar to the potential suspension of a driver’s licence for failure to pay a debt arising from unpaid fines.

### ***Offence punishable only once***

Section 123 of the Regulation provides a number of offences related to use of vehicles in protected areas, such as failure to wear a bicycle or motorcycle helmet, or to wear a seatbelt. These offences are identified by reference to equivalent sections in the transport legislation, e.g. the Queensland Road Rules, in order to maintain consistency with the equivalent transport laws.

This could seem to raise the possibility that a person could be penalised for the same offence twice –i.e. for the offence as listed under the Regulation and for the same offence under the transport legislation.

However, any double punishment is prevented by section 45 of the *Acts Interpretation Act 1954*, which provides that if something is an offence under each of two or more laws, an offender may be punished under any of the laws, but may not be punished more than once for the same offence.

### ***Powers of conservation officers to give directions***

Sections 93, 94, 113, 115, 126, 133, 143, 151 and 152 of the Regulation provide conservation officers with powers to give a person in a protected area a direction requiring the person to take specified actions, for example, to move camp, reduce the intensity of the person’s fire, remove the person’s unlawful structure, drive or park a vehicle in a specified way, remove the person’s dangerous animal, remove the person’s litter, or leave the area in circumstances of an emergency or unlawful activity.

These powers could be seen to be inconsistent with the fundamental legislative principles in relation to subordinate legislation containing only matter appropriate to subordinate legislation, and requiring due regard to the rights and liberties of individuals.

The directions powers in the Regulation are reasonable and necessary to provide for public safety, protection of the rights of other visitors and for the protection of the environment. Each provision specifies the circumstances in which these powers can be exercised. For example, a person may be directed to leave an area if circumstances exist that are a danger to people or property (such as a wildfire), or if the person’s presence may interfere with an emergency or rescue activity, or if the person is found committing an offence and needs to be directed to leave to ensure that the offence will not continue to be committed.

Powers to give enforceable directions are often located in Acts rather than regulations. However, the regulation-making power in section 175 of the *Nature Conservation Act 1992* allows for regulations to be made in regard to a broad range of matters, including removal from protected areas of persons who are believed on reasonable grounds to have contravened the Act, and to impose offence penalties of up to 165 penalty units. The penalties under the Regulation for failing to comply with a direction generally range between 40 penalty units and 80 penalty units, although a penalty of 165 penalty units applies in two circumstances owing to their potentially serious consequences, i.e. fail to comply with a direction to reduce the intensity of the person's fire in the protected area, or fail to comply with a direction to stabilise or rehabilitate unauthorised works in the protected area.

The opportunity to move all of the directions powers from the Regulation into the Act (by means of an amendment Bill) will be explored as part of the planned review of the Regulation during the next 18 months.

### ***Seizure of things on protected areas***

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 Regulation continue provisions from the previous regulation to allow such things to be seized in these circumstances.

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 Regulation 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.

In many situations, such as property found abandoned in the protected area, or bird traps found in the area, 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, 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.

Things that have been seized must be dealt with as specified in Part 5 of the *Nature Conservation (Administration) Regulation 2017*. 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.

### ***Forest reserves apparently listed twice***

The fundamental legislative principles require legislation to be unambiguous and drafted in a sufficiently clear and precise way.

In this regard, parts 1 and 2 of schedule 5 of the Regulation may need explanation. The schedule relates to areas that have been transitioning (and some that are still transitioning) from forest reserve to protected area, and specifies the permitted number of beekeeping sites within these areas.

Schedule 5 of the Regulation operates under section 184 of the *Nature Conservation Act 1992* and has been drafted to meet the requirements of that section. In order to be consistent with the requirements of section 184 of the Act, schedule 5 of the Regulation lists ‘forest reserves and former forest reserves intended to become, or that have become, national park’ [Part 1 of the schedule] and ‘forest reserves and former forest reserves intended to become, or that have become, national park (recovery)’ [Part 2 of the schedule].

Seven of the nine forest reserves listed in Part 2 of the schedule are also listed in Part 1. This apparent inconsistency is because one part of a forest reserve can become national park, while the remaining part can become national park (recovery). To add to the complexity, national park (recovery) areas are now called special management areas (controlled action), within national parks.

The process of transition of these forest reserves to protected area is continuing. The opportunity to provide clearer drafting to explain schedule 5 will be explored as part of the planned review of the Regulation during the next 18 months.

## **Consultation**

The Office of Best Practice Regulation within the Queensland Productivity Commission was consulted and supported the proposal to replace the *Nature Conservation (Protected Areas Management) Regulation 2006* with minimal change, on the basis of a commitment by NPSR to undertake a subsequent comprehensive review of the replacement regulations within 18 months of their 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 (Protected Areas Management) Regulation 2006*, which it replaces.

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