Recreation Areas Management Regulation 2017

Explanatory notes for SL 2017 No. 158

made under the

Recreation Areas Management Act 2006
State Penalties Enforcement Act 1999

General Outline

Short title

Recreation Areas Management Regulation 2017

Authorising law

Section 232 of the *Recreation Areas Management Act 2006*
Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The policy objective of the *Recreation Areas Management Regulation 2017* (the Regulation) is to replace the *Recreation Areas Management Regulation 2007* in order to provide for the ongoing management of recreation areas declared under the *Recreation Areas Management Act 2006*.

The need to replace the *Recreation Areas Management Regulation 2007* arises from the automatic expiry provisions of the *Statutory Instruments Act 1992*. Under these provisions, the *Recreation Areas Management Regulation 2007* is scheduled to expire on 1 September 2017.

The Regulation provides for:

- declared recreation areas to continue;
- the display of camping tags by people camping under a camping permit;
- the management of the use of motor vehicles, vessels and recreational craft such as hang gliders;
- the management of visitor conduct such as littering and use of generators;
- the regulation of activities to ensure the protection of the environment, such as the disposal of waste, and bringing domestic animals or plants into the area;

- record keeping requirements to apply to particular permit holders such as commercial operators;
- specific offences and the penalties for these offences relating to activities in recreation areas;
- fees payable under the *Recreation Areas Management Act 2006*;
- relevant definitions and schedules; and
- transitional provisions to provide for continuity between the *Recreation Areas Management Regulation 2007* and the Regulation.

There are seven recreation areas declared in Queensland:

- Green Island;
- Fraser Island;
- Inskip Pensinsula;
- Cooloola;
- Bribie Island;
- Moreton Island; and
- Minjerribah (on North Stradbroke Island).

Part of Green Island and North Stradbroke Island, and most of Moreton Island, Bribie Island, Fraser Island and Cooloola are also national parks, managed under the *Nature Conservation Act 1992* by the Department of National Parks, Sport and Racing (NPSR). Given the overlap of national park lands and declared recreation area, the legislation used to manage national parks and recreation areas have a number of complementary provisions. This is to ensure there are consistent laws and approaches to management applied to these lands which reduces confusion for the community when using these areas for recreational and commercial purposes.

Two regulations under the *Nature Conservation Act 1992* – the *Nature Conservation (Administration) Regulation 2006* and the *Nature Conservation (Protected Areas Management) Regulation 2006* (the NC Regulations) – apply to the management of national parks. These NC Regulations are expiring at the same time as the *Recreation Areas Management Regulation 2007*. A planned review of the NC Regulations, including community consultation, was deferred as a consequence of delays in other related regulatory reviews. The two NC Regulations will instead be replaced by new NC Regulations, with effect from 1 September 2017, with minimal change to the current regulatory provisions, apart from minor changes to improve clarity and comply with contemporary drafting standards.

The *Recreation Areas Management Regulation 2007* is therefore also being remade with minimal changes because of the need for the recreation area regulations to maintain consistency with the two NC Regulations.

All three remade regulations will subsequently be reviewed concurrently to ensure a harmonised regulatory framework. A comprehensive review, including the release of a Regulatory Impact Statement for community consultation, will occur in the 18 months following the commencement of the new NC Regulations and the Regulation. This approach has been endorsed by the Office of Best Practice Regulation (OBPR), within the Queensland Productivity Commission.

Achievement of policy objectives

Provisions for management of recreation areas
The Regulation replaces the *Recreation Areas Management Regulation 2007* in order to provide for the ongoing management of recreation areas.

Recreation areas are subject to a range of commercial and recreational uses – including use by the public for activities such as camping, picnicking, scenic driving 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 some offence provisions as a deterrent to behaviour that could interfere with recreation 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 and the disposal of waste.

The offence provisions continue the effect of provisions already in operation under the *Recreation Areas Management Regulation 2007*, and operate in conjunction with non-regulatory measures such as the provision of information and education, and staff from NPSR working cooperatively with business and community groups.

The provisions in the Regulation generally mirror the requirements that apply to other managed areas such as national parks. 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 provisions have the same effect as the provisions they are replacing in the *Recreation Areas Management Regulation* 2007, subject to some minor corrections, for example, corrections to latitude and longitude references under the current Australian latitude and longitude datum, the Geocentric Datum of Australia 1994 (GDA94).

The Regulation includes schedules to meet requirements under the *Recreation Areas Management Act 2006* and support the operation of provisions in the Regulation, as follows:

- recreation areas are listed in schedule 1, as provided for by sections 7 and 235 of the *Recreation Areas Management Act 2006* and sections 4 and 5 of the Regulation;
- fees payable under the *Recreation Areas Management Act 2006* are listed in schedule 2, as provided for by section 51 of the Regulation, and subject to other provisions in part 9 of the Regulation;
- a map of the Inskip and Rainbow Beach areas is shown in schedule 3, to clarify the application of a fee exemption as provided for in section 59 of the Regulation.

These schedules generally match the schedules in the *Recreation Areas Management Regulation 2007*. However, some recreation areas that were listed in the body of the *Recreation Areas Management Regulation 2007* are now included in schedule 1 of the Regulation, so that all recreation areas appear together in the one schedule. The schedule contains two parts – part 1 lists recreation areas declared under the previous *Recreation Areas Management Act 1988* and continued in existence under the *Recreation Areas Management Act 2006*, and part 2 lists the recreation areas declared under the *Recreation Areas Management Act 2006.*

The Regulation also makes consequential amendments to the *State Penalties Enforcement Regulation 2014*, to update references to the *Recreation Areas Management Regulation 2017*

and section numbers, in order to allow for penalty infringement notices to continue to apply to recreation area offences.

The infringement notice penalties for these offences generally remain the same as the previous penalties for the corresponding offences under the *Recreation Areas Management Regulation 2007*. However, one infringement notice penalty was reduced from 4 penalty units to 2 penalty units to meet guidelines relating to the relativity of the infringement notice penalty to the maximum penalty for the offence. This relates to section 50(2) of the Regulation, which requires holders of commercial activity permits and relevant organised event permits to keep and provide accurate records of their activities under the permit.

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 main purpose of the *Recreation Areas Management Act 2006* is:

a) the establishment, maintenance and use of recreation areas; and
b) to provide, coordinate, integrate and improve recreational planning, recreational facilities and recreational management for recreation areas, having regard to the conservation, cultural, educational, production and recreational values of the areas, and the interests of area land-holders.

The *Recreation Areas Management Act 2006* provides that the purpose of the Act is to be achieved by a range of measures, including ensuring that the management of recreation areas and activities permitted in recreation areas in a way that is not inconsistent with the tenure of the land in the recreation area. For example, the management of a recreation area that overlays national park tenure must be consistent with the national park tenure.

Section 232 of the *Recreation Areas Management Act 2006* allows the Governor-in-Council to make regulations under the Act. Recreation areas may be declared by regulation (as outlined in section 6 of the Act) and regulations may be made about recreation area matters such as entry to, use of, and conduct in the areas, the records and information required to be kept, fees and charges that apply, and prescribing offences with a maximum penalty of a fine of up to 20 penalty units.

The Regulation allows for the effective management of recreation areas to achieve the object of the *Recreation Areas Management Act 2006*, and is consistent with the regulation-making powers under the Act.

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 recreation 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 recreation areas are consistent with corresponding provisions under related legislation, including the *Forestry Act 1959* which applies to State forests and timber reserves, and the *Nature Conservation Act 1992* which applies to protected areas.

Alternative ways of achieving policy objectives

Recreation 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 *Recreation Areas Management Regulation 2007* 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 provisions 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 *Recreation Areas Management Regulation 2007* were allowed to lapse without replacement:

- Authorised officers would be limited in their ability to ensure compliance with conservation and safety requirements in recreation areas, for example, because of the absence of requirements about the safe use of vehicles and the disposal of waste. This lack of regulation 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 lapse of regulated fees would diminish the ability to collect fees to provide revenue for the management of commercial and recreational use and the provision of facilities. The loss of revenue could diminish management capability and lead to the closure of some facilities and areas.
- The *Recreation Areas Management Act 2006* provides that regulations can specify exemptions for parts of recreation areas from the need to obtain vehicle access permits. The *Recreation Areas Management Regulation 2007* provides such exemptions for

parts of Minjerribah Recreation Area and Cooloola Recreation Area. This allows visitors to access particular places without having to obtain a vehicle access permit. If the *Recreation Areas Management Regulation 2007* was allowed to lapse without replacement, vehicle access permits would be required for all of the areas currently exempted. New regulations could be developed to provide for the exemptions. However, it is unnecessary to make new regulations to do this – it is more timely and efficient to carry the existing exemptions forward in the Regulation.

A second alternative option that was considered was allowing the *Recreation Areas Management Regulation 2007* 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 authorised officers in managing recreational and commercial use of recreation 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 lapse of regulated fees would diminish the ability to collect fees to provide revenue for the management of commercial and recreational use, and the provision of facilities. This could lead to closures of areas or facilities.
- The provision of the *Recreation Areas Management Act 2006* that allows for vehicle access permit exemptions to be 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 recreation areas.

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

Without the ability to issue infringement notices, authorised officers would be limited in their ability to ensure compliance with environmental and safety requirements in recreation 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 national parks and 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 recreation areas and manages 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 recreation areas in order to comply with the regulations. For example, regulations for the use of vehicles in recreation areas contribute to a safe and enjoyable experience for recreation 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 government, including administrative and compliance costs. However, these costs are overshadowed by substantial benefits in terms of meeting management responsibilities, 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.

Signs to regulate use of vehicles, vessels and recreational craft

The Regulation allows for the use of signs to regulate the use of vehicles, vessels or other craft in specified areas, or even to prohibit their use in some areas, in order to protect the environment and provide for public safety and the rights of other visitors. The 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, the power to use signs for these purposes is considered to be appropriate and necessary because:

- it ensures that information about requirements is conveyed fully and directly to the public;
- it is consistent with contemporary practice and public expectations for the use of vehicles on roads in public areas, and for the use of vessels and recreational craft, particularly in environmentally sensitive areas;
- it allows a timely, relevant and flexible management response to unpredictable or changing circumstances affecting recreation areas, involving natural factors such as drought, wildfire or cyclone; and
- the directness and convenience of using these signs to achieve management objectives ensures greater efficiency in the use of limited staff time and resources.

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

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 9, a person commits an offence if the person tampers with a camping tag displayed on a tent, unless the person has a reasonable excuse. A reasonable excuse would be, for example, that the person is packing up to leave the area, and has removed the tag in the process of dismantling the tent.

In other instances, providing for a reasonable excuse is not justified or could lead to uncertainty about the application of the offence. For example, under section 23, it is an offence to display a 'vehicle tag' (a windscreen label) on a vehicle in a recreation area if the vehicle access permit for the vehicle has expired. This offence does not have a 'reasonable excuse' component. This is appropriate, because providing for a 'reasonable excuse' could create doubt about the circumstances in which it would be acceptable to fail to remove the tag once the permit had expired.

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.

Authorised 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.

Offence punishable only once

Section 18 of the Regulation provides a number of offences related to use of vehicles in recreation 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.

Consultation

OBPR was consulted and supported the proposal to replace the *Recreation Areas Management Regulation 2007* with minimal change, on the basis of a commitment by NPSR to undertake a subsequent comprehensive review of the 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 *Recreation Areas Management Regulation 2007*, which it replaces.

Community consultation will be undertaken as part of the planned subsequent review of the Regulation.