

Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019

Explanatory notes for SL 2019 No. 150

made under the

Environmental Offsets Act 2014
Environmental Protection Act 1994
Nature Conservation Act 1992
State Penalties Enforcement Act 1999

Short title

Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019

Authorising law

Section 93 of the *Environmental Offsets Act 2014*
Section 580 of the *Environmental Protection Act 1994*
Section 175 of the *Nature Conservation Act 1992*
Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

Special wildlife reserves are a new class of private protected area introduced by the *Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Act 2019*. Special wildlife reserves have been created to allow for areas of privately owned or managed land to be recognised for their exceptional natural and/or cultural values, by providing protection equivalent to that of a national park. In order to effectively meet the objective of the new special wildlife reserves class, there is a need to ensure appropriate compliance tools are available.

The *Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019* (Amendment Regulation) provides for regulatory amendments to support the establishment of special wildlife reserves, by:

- adding the new class of private protected area, special wildlife reserves, to the list of *Category A environmentally sensitive areas* under the *Environmental Protection Regulation 2008*, consistent with the listing of national parks, and allowed for under the *Environmental Offsets Regulation 2014*;
- clarifying the application of the *Nature Conservation (Protected Areas Management) Regulation 2017* to the existing private protected area class, nature refuges, and including restrictions on the grant of permits on these areas. Under the *Nature Conservation (Administration) Regulation 2017*, a range of permits may be granted on protected areas; however, not all of these permit types are appropriate to be granted on privately owned and managed land such as nature refuges. The Amendment Regulation places restrictions on the grant of such permits on these areas, and ensures consistency with other protected areas when determining whether permits should be granted. The Amendment Regulation also seeks to make it clear that the grant of permits require landholder consent for these privately owned lands;
- applying relevant national park restrictions and offences under the *Nature Conservation (Protected Area Management) Regulation 2017* to special wildlife reserves; and
- amending the *State Penalties Enforcement Regulation 2014* to reflect the new offences created for private protected areas under the *Nature Conservation (Protected Areas Management) Regulation 2017*.

Achievement of policy objectives

To achieve the objectives:

1. the *Environmental Offsets Regulation 2014* will be amended to update the Environmental Offsets Policy to include reference to special wildlife reserves as a category of protected area under the *Nature Conservation Act 1992* to which the Environmental Offsets Policy applies;
2. The *Environmental Protection Regulation 2008* will be amended to add the new class of protected area, special wildlife reserves to the definition of *Category A environmentally sensitive areas*;
3. The *Nature Conservation (Protected Area Management) Regulation 2017* will be amended to identify which restrictions and offences apply to private protected areas, particularly the new class, special wildlife reserves; and
4. Schedule 1 of the *State Penalties Enforcement Regulation 2014* will be updated to accommodate amended section references as a consequence of this amendment regulation.

Consistency with policy objectives of authorising law

The amendments to the *Nature Conservation (Protected Areas Management) Regulation 2017* are consistent with the object of the *Nature Conservation Act 1992*, which 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 amendments to the *Environmental Offsets Regulation 2014*, the *Environmental Protection Regulation 2008* and the *State Penalties Enforcement Regulation 2014* are consistent with the objects of their authorising Acts.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

No additional costs are expected from this Amendment Regulation, as it is merely applying the relevant offences relating to State-owned protected areas to private protected areas. Resourcing is to be provided from the existing budget allocation.

Consistency with fundamental legislative principles

Declarations of special wildlife reserves are of a voluntary nature only. As this class of protected area has only just been created, there are no existing landholders who can be impacted by the restrictions or offences for special wildlife reserves.

Declaration of a restricted access area on a private protected area can only occur with the consent of the landholder of that land. As a result there is no risk of impacting upon the landholder's rights.

The Amendment Regulation includes, in clauses 34 to 46 and 48 to 54, a number of maximum penalties that exceed 20 penalty units, as is currently the case for other protected areas. 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.

However, given the authorisation in section 175(2)(t) of the *Nature Conservation Act 1992*, and the equivalent current offence provisions for national parks having identical offence penalties, these penalty levels are considered appropriate.

Section 48 of the *Nature Conservation (Protected Area Management) Regulation 2017* 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'). 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. However, this is consistent with the current approach for other protected areas.

Clause 21 of the Amendment Regulation seeks to apply section 48 of the *Nature Conservation (Protected Area Management) Regulation 2017* on private protected areas. This section may apply in the rare circumstance where additional feral animal or pest plant control is required in addition to those already authorised under the conservation agreement or management program for the private protected area. In these cases, 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. Given the elements of informed judgement involved in considering the decision, the review process is considered unlikely to change the outcome.

The Amendment Regulation also provides, in clauses 34, 35, 41, 44, 46, 47, 49, 52, 53, and 54, 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. However, this is consistent with the current approach for other protected areas.

As with national parks, 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. On special wildlife reserves, activities will largely be authorised under the associated conservation agreement or management program. However, there may be some circumstances where the landholder is required to undertake some unforeseen additional activity in order to ensure appropriate management of the property. For example, the landholder may need to erect a temporary fencing structure on the property while undertaking some rehabilitation works. In such a case, the application and approval process generally would be relatively straightforward, and the landholder would contact the department directly in the normal manner in order to arrange the necessary approval.

There is no impact on fundamental legislative principles from the amendments to the *Environmental Protection Regulation 2008*, the *Environmental Offsets Regulation 2014* and the *State Penalties Enforcement Regulation 2014*.

Consultation

No external consultation was undertaken on the Amendment Regulation as the amendments are as a result of the Amendment Act. Extensive consultation was undertaken with a broad range of stakeholders in the conservation, resources, forestry, agriculture, Native Title and local government sectors in the development of the Amendment Act. Broad public consultation was also undertaken through the Draft Queensland Protected Area Strategy which was released for comment in 2017. Stakeholders were largely supportive of the special wildlife reserves proposal.

The Office of Best Practice Regulation (OBPR) was consulted regarding the requirement for further analysis or assessment in accordance with *The Queensland Government Guide to Better Regulation* (the Guidelines). OBPR advised that the proposal was unlikely to result in any significant adverse impacts, and would not benefit from further assessment under the Guidelines.