

Nature Conservation (Wildlife Management) and Another Regulation Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 163

made under the

Nature Conservation Act 1992

Queensland Civil and Administrative Tribunal Act 2009

General Outline

Short title

*Nature Conservation (Wildlife Management) and Another Regulation Amendment Regulation
(No. 1) 2014*

Authorising law

Section 175 of the *Nature Conservation Act 1992*

Section 242 of the *Queensland Civil and Administrative Tribunal Act 2009*

Policy objectives and the reasons for them

The objectives of the proposed legislative amendments are to correct an error regarding the inadvertent omission of particular species from schedule 3A of the *Nature Conservation (Wildlife Management) Regulation 2006* (Wildlife Management Regulation), and to clarify the intent of provisions prescribing requirements regarding harvest and trade labels to ensure that a label remains with a plant for the required period of time but acknowledging that this may be achieved through means other than attaching the label directly to the plant itself.

The error of omission occurred when new schedule 3A was inserted into the Wildlife Management Regulation as part of broader amendments to the protected plants legislative framework commencing on 31 March 2014. The Department of Environment and Heritage Protection (EHP) is clarifying the labelling requirements to address issues raised by the native plant industry.

The objective of the proposed legislative amendments to the *Queensland Civil and Administrative Tribunal Regulation 2009* (QCAT Regulation), which refer to the *Environmental Offsets Regulation 2014*, is to correct errors in relation to inclusion of provisions for fees for external reviews, in relation to advanced offsets and applications for a stay of decision to be included in the QCAT Regulation.

Achievement of policy objectives

The Wildlife Management Regulation is being amended to:

- Correct the list of special least concern plants under schedule 3A to include all plant species that were restricted prior to the amendments to the Wildlife Management Regulation that came into effect on 31 March 2014; and
- Clarify the requirements for attaching protected plant harvest labels and protected plant trade labels, by allowing labels to be attached in close proximity to a plant rather than directly on a plant itself.

The QCAT Regulation is being amended to:

- Correct the insertion of sections relating to advanced offsets. The relevant section of the *Environmental Offsets Regulation 2014* relates to a new jurisdiction and the highest fees should apply;
- Include provisions for fees for applications to the Queensland Civil and Administrative Tribunal (QCAT) for a stay of a decision under the *Environmental Offsets Regulation 2014*; and
- Amend the insertion of decisions relating to a failure to give notice under the *Environmental Offsets Act 2014* into the same part that references other sections of the *Environmental Offsets Act 2014*. From 1 July 2014, the same fee applies to both parts 1 and 2 and items relating to the *Environmental Offsets Act 2014* have been amended to be included in the same part for ease of reference.

Consistency with policy objectives of authorising law

The amendments to the Wildlife Management Regulation are consistent with the objective of the *Nature Conservation Act 1992*, which is the conservation of nature, and with how the objective is to be achieved, specifically the protection of native wildlife and its habitat, and ensuring the use of protected wildlife is ecologically sustainable.

The amendments to the QCAT Regulation are consistent with the policy objectives of the *Queensland Civil and Administrative Tribunal Act 2009*.

Inconsistency with policy objectives of other legislation

The amendments are not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The amendments do not impose any additional costs on government, business or the community. The amendments correct errors and clarify requirements that were part of the amendments to the protected plants legislative framework that commenced on 31 March 2014. The amendments to the labelling requirements will benefit industry by providing greater flexibility in achieving the required outcomes.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

The amendments did not undergo a formal public consultation process as they were prepared in order to correct errors and to clarify requirements in response to issues raised by industry.

The Commonwealth Department of the Environment and the Queensland Herbarium were consulted in regard to the list of special least concern plants under schedule 3A of the Wildlife Management Regulation and the need for an amendment to include cycads (families Cycadaceae and Zamiaceae) and Aponogeton (genus of flowering aquatic plants), which had been inadvertently omitted, despite having been restricted prior to the amendments to the protected plants legislative framework that commenced on 31 March 2014. The Commonwealth Department of the Environment and the Queensland Herbarium confirmed the necessity of including these plants in schedule 3A, as they may otherwise be subject to unsustainable harvesting pressure.

Amendments to clarify particular requirements under sections 246 and 261ZK of the Wildlife Management Regulation concerning labelling of whole plants are being made in response to industry requests for greater clarity, and to allow for a more practical approach to meet the legislative requirements.

The Office of Best Practice Regulation was consulted on the proposed amendments through the submission of a Regulatory Principles Checklist describing the amendments and a request for an exclusion from the Regulatory Impact Statement (RIS) process due to the nature of the amendments, being corrections and clarification. The Office of Best Practice Regulation determined that the amendments were not likely to result in significant adverse impacts and that further analysis and assessment, including a RIS, were not required.

QCAT has approved the amendments to the QCAT Regulation. The Attorney-General and Minister for Justice has approved that amendments can be made to the QCAT Regulation.

Reasons for non-inclusion of information

As the amendments correct errors and clarify regulatory intent, alternative ways of achieving the policy objectives, other than through legislative change, were not feasible.

Notes on Provisions

Part 1 Preliminary

Clause 1 Short title

This clause states that the subordinate legislation making the amendments may be cited as the *Nature Conservation (Wildlife Management) and Another Regulation Amendment Regulation (No. 1) 2014*.

Part 2 Amendment of Nature Conservation (Wildlife Management) Regulation 2006

Clause 2 Regulation amended

This clause specifies that the regulation being amended in this part is the *Nature Conservation (Wildlife Management) Regulation 2006*.

Clause 3 Amendment of s 246 (Harvest labels for taking whole restricted plants or restricted plant parts in the wild)

Section 246 of the Wildlife Management Regulation prescribes harvest label requirements for whole restricted plants and restricted plant parts that have been taken from the wild under a protected plant licence or exemption. Section 246 states that a harvest label, in the approved format, is required for all whole restricted plants and restricted plant parts at the point of harvest and that the label is to be attached to each whole plant, bundle of plant parts or container of plant parts.

Clause 3 amends section 246 by inserting a new section 246(2A), to allow for a harvest label to be attached as close as is reasonably practicable to the plant, where it is impractical or unreasonable for a person to attach a harvest label to a whole plant. This amendment accounts for situations where it may not be possible or suitable to attach a harvest label to a whole plant, for example where a plant may be too small or fragile to support an attached label, or for any other appropriate reason based on the nature or condition of the plant.

Section 246(5) requires that a person must not remove an approved harvest label from a plant, bundle or container of plant parts until the plant or plant parts have been moved and an approved trade label has been attached, or the plants start being used for a purpose other than trade. Clause 3 also amends section 246(5) to clarify that in the case of a whole plant, a person must not remove an approved harvest label from either the plant or the place where it has been attached, until the stated time.

Clause 4 Amendment of s 261ZK (Labelling of restricted plants for trade)

Section 261ZK of the Wildlife Management Regulation prescribes trade label requirements for whole restricted plants and restricted plant parts to be used or moved for trade. Section

261ZK states that a person must not use or move a restricted plant for trade unless a trade label is attached to a whole plant (excluding sandalwood), bundle of plant parts or container of plant parts.

Clause 4 amends section 261ZK by inserting a new section 261ZK(2A), to allow for a trade label to be attached as close as is reasonably practicable possible to the plant, where it is impractical or unreasonable for a person to attach a trade label to a whole plant. This amendment accounts for situations where it may not be possible or suitable to attach a trade label to a whole plant, for example where a plant may be too small or fragile to support an attached label, or for any other appropriate reason based on the nature or condition of the plant.

Clause 5 Amendment of sch 3A (Special least concern plants)

Clause 5 amends schedule 3A of the Wildlife Management Regulation to prescribe plants of the families *Cycadaceae* and *Zamiaceae* and plants of the genus *Aponogeton* as special least concern plants, to maintain historic restrictions on the harvest and trade of these species.

Special least concern plants are plants that are either commercially valuable or are known to have sensitive reproductive biology, rendering them more susceptible to increased harvesting pressures. Special least concern plants are restricted under the Wildlife Management Regulation in regard to the take, keep, use and movement of the plants. The list includes species previously classified as Type A or listed in section 11 or schedule 1 of the repealed *Nature Conservation (Protected Plants) Conservation Plan 2000* and any species that were previously restricted under the repealed *Nature Conservation (Protected Plants Harvest Period) Notice 2013*.

Part 3 Amendment of Queensland Civil and Administrative Tribunal Regulation 2009

Clause 6 Regulation amended

This clause specifies that the regulation being amended in this part is the *Queensland Civil and Administrative Tribunal Regulation 2009*.

Clause 7 Amendment of sch 1 (Enabling Acts and provisions)

Clause 7(1) and (2) corrects an error with the insertion of provisions relating to fees that apply to applications for decisions originally made under identifying advanced offsets, amendment of registration of advanced offsets, and failure to give notice under the *Environmental Offsets Act 2014*, into the correct schedule of the QCAT Regulation. This is a new jurisdiction for QCAT and should be included in the schedule that prescribes the highest fee.

Clause 7(3) corrects an error and inserts the relevant sections of the *Environmental Offsets Regulation 2014* (s41(3)) into the QCAT Regulation to prescribe a fee for an application to stay decisions.