

Forestry Regulation 2015

Explanatory notes for SL 2015 No. 83

made under the

Forestry Act 1959

Marine Parks Act 2004

Nature Conservation Act 1992

State Penalties Enforcement Act 1999

General Outline

Short title

Forestry Regulation 2015

Authorising law

Sections 28, 32A, 34A and 97 of the *Forestry Act 1959*

Section 150 of the *Marine Parks Act 2004*

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 objectives of the Regulation are to:

- (a) repeal the Forestry Regulation 1998 and replace it with new and updated regulations in order to:
 - provide for the management of conduct and activities in State forests and timber reserves;
 - provide for the continued designation of timber reserves, State plantation forests, feature protection areas, scientific areas and State forest parks; and
 - designate statutory fees payable under the *Forestry Act 1959*.
- (b) amend the State Penalties Enforcement Regulation 2014 to update listed infringement notice offences and penalties for provisions under the *Forestry Act 1959* (the Forestry Act) and the Forestry Regulation 2015.
- (c) make minor amendments to other legislation, including amendment of:
 - the Forestry (State Forests) Regulation 1987 to clarify that plans designating State forests will be available for inspection;

- the Nature Conservation (Administration) Regulation 2006 to change a cross-reference from the Forestry Regulation 1998 to the *Forestry Act 1959*;
- the Marine Parks Regulation 2006 to reinsert a penalty that was inadvertently omitted from an offence provision; and
- the State Penalties Enforcement Regulation 2014 to list the marine park offence referred to above, as an infringement notice offence.

The need to replace the Forestry Regulation 1998 with an updated Forestry Regulation 2015 arises due to the automatic expiry provisions of the *Statutory Instruments Act 1992*. Under these provisions, the Forestry Regulation 1998 was scheduled to expire in August 2009. However, that expiry date was extended to 31 August 2015, on the basis that provisions of the Forestry Act were under review.

The relevant provisions of the Forestry Act have been reviewed. Amendments to the Forestry Act were included in the *Forestry and Another Act Amendment Act 2014* (the Amendment Act). Many of these amendments have not yet commenced and are scheduled to commence automatically on 16 August 2015.

The Forestry Regulation 2015 will repeal and replace the Forestry Regulation 1998, with effect from 16 August 2015 – the same day that amendments to the Forestry Act (in the Amendment Act) automatically commence. Therefore, the changes to the Forestry Act and the new Regulation will take effect at the same time.

The Forestry Regulation 2015 will continue to maintain important provisions relating to the protection and use of State forests and timber reserves, including public use.

Achievement of policy objectives

Management of conduct and activities in State forests and timber reserves

State forests and timber reserves are subject to forest management and timber harvesting operations, and a range of other 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 Forestry Regulation 2015 addresses these issues by including a range of offence provisions as a deterrent to behaviour that could interfere with forest management, cause damage to forest resources or property, cause unacceptable environmental impact, affect other people's reasonable enjoyment of the forest environment and facilities, and threaten people's health and safety. For example, restrictions apply in regard to the driving and parking of vehicles, the control of animals such as dogs, and excessive noise.

These offence provisions will continue the effect of provisions already in operation under the Forestry Regulation 1998, and will operate in conjunction with non-regulatory measures such as the provision of information and education, and forest management staff working cooperatively with business and community groups.

The provisions in the Forestry Regulation 2015 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.

Some provisions in the Forestry Regulation 1998 have not been continued in the Forestry Regulation 2015. In most cases this is because equivalent provisions have been inserted into the Forestry Act by the Amendment Act. In effect, these provisions have been moved from the Forestry Regulation to the Forestry Act.

Designation of specific areas

The Forestry Regulation 2015 includes schedules of specific areas, as follows:

- timber reserves declared by regulation prior to 30 June 2014 – as provided by section 28 of the Forestry Act;
- State plantation forests, as provided by section 32A of the Forestry Act;
- feature protection areas, scientific areas and State forest parks, as provided by section 34A of the Forestry Act.

The schedules of timber reserves and State plantation forests are the same as the current schedules in the Forestry Regulation 1998, although the State plantation forests are now listed in order, by plan number. The schedules of feature protection areas, scientific areas and State forest parks are the same as in the Forestry Regulation 1998 except for the omission of areas that are no longer in State forest or forest reserve, for example, where the relevant land has become national park, and therefore is no longer subject to the Forestry Act.

Plantation timber within State plantation forests is managed under commercial licence by HQPlantations Pty Ltd. Having the State plantation forests designated in the schedule in the Regulation is an effective means of specifying the plantation forest areas, and creates a single and reliable point of reference that removes any doubt about the legality, accuracy and currency of the designation.

Listing designated areas in schedules in the Regulation is also an effective and efficient means of applying particular provisions of the Forestry Act to areas with differing management purposes and requirements. This enables designated areas to be managed to recognise particular commercial, environmental, scientific and recreational values.

Scheduled fees

A schedule in the Regulation specifies the fees payable under the Forestry Act for camping permits, commercial activity permits, permits for competitive motor vehicle and equestrian events, permits for group activities, and fees for mustering, holding and releasing stock to their owner. The scheduled fees are a continuation of the fees listed in the Forestry Regulation 1998.

The fee schedule in the Regulation is a transparent, accessible and effective means of specifying the relevant fees. Revenue derived from these fees is intended to:

- contribute to the cost of managing commercial and recreational activities in forest areas;
- contribute to the cost of providing related facilities in forest areas; and
- provide a return to the State for the commercial use of State owned lands and facilities.

The revenue derived from these fees makes a significant contribution to the cost of managing commercial and recreational use and providing and maintaining recreational facilities.

Providing for penalty infringement notices for forestry offences

The Forestry Regulation 2015 amends Schedule 1 of the State Penalties Enforcement Regulation 2014 to continue and update provisions relating to the issue of penalty infringement notices (PINs) that impose 'on-the-spot' fines for a variety of offences under the Forestry Act and Regulation, as an alternative to court proceedings.

The infringement notice penalties for these offences generally remain the same as the previous penalties for the corresponding offences (e.g. offences under the Forestry Regulation 1998). In a small number of instances, infringement notice penalties for individuals have been increased and some corporate level penalties have been added. These changes reflect the need for adequate penalties, and the associated deterrent they present, in relation to offences such as unlawful fires and noxious waste disposal which can pose significant safety and environmental management issues on forest lands. Infringement notice penalties for some camping offences have been reduced to be consistent with the infringement notice penalties for corresponding offences in similar areas such as national parks.

Under section 25 of the *State Penalties Enforcement Act 1999*, payment of an infringement notice fine avoids the need for the offender to appear in court and brings the matter to an end. As the matter is dealt with otherwise than before a court, it is not a conviction. The listed infringement notice fine for an offence is also considerably less than the statutory maximum penalty which might be imposed if the offence were dealt with by a court.

The listing in the State Penalties Enforcement Regulation 2014 of offences under the Forestry Act and Forestry Regulation as "infringement notice offences" promotes and supports effective enforcement by allowing enforcement action to be taken through the use of infringement notices. 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.

Minor amendments to other legislation

The Forestry (State Forests) Regulation 1987 is amended to clarify that plans designating State forests will be available for inspection by members of the public. This reflects the requirement under section 23A of the *Statutory Instruments Act 1992* that such documents are to be available for public inspection.

The Nature Conservation (Administration) Regulation 2006 is amended to change a cross-reference from the Forestry Regulation 1998 to the *Forestry Act 1959*.

The Marine Parks Regulation 2006 is amended to reinsert a penalty of 20 penalty units which was previously inadvertently omitted and relates to section 140(2) which prohibits dogs on beaches in the Moreton Bay Marine Park and beaches on islands in the Great Barrier Reef Coast Marine Park where these beaches adjoin national parks. The State Penalties Enforcement Regulation 2014 is also amended to list this marine park offence as an infringement notice offence (with a penalty of 1 penalty unit).

Consistency with policy objectives of authorising law

The Forestry Regulation 2015 is consistent with the objectives of the authorising laws:

- section 28 of the Forestry Act allows for the declaration of timber reserves by a regulation made before 30 June 2014. Schedule 1 of the Forestry Regulation 2015 lists the timber reserves declared by previous regulations prior to 30 June 2014;
- sections 32A and 34A of the Forestry Act allow for the designation by regulation of State plantation forests, feature protection areas, scientific areas and State forest parks;
- section 97 of the Forestry Act allows for regulations to be made in respect of State forests and timber reserves, including their management and control, conduct and duties of persons, recreational and commercial activities, fees and charges, permits and other authorities, and penalties in regulations not exceeding 20 penalty units;
- section 150 of the *Marine Parks Act 2004* allows for penalties in regulations not exceeding 165 penalty units;
- section 175 of the *Nature Conservation Act 1992* allows for regulations to be made in respect of activities in protected areas – this allows for reference to the Forestry Regulation 2015 in section 34 of the Nature Conservation (Administration) Regulation 2006;
- 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 Forestry Regulation 2015 is consistent with the policy objectives of other legislation. For example, the provisions for the management of conduct and activities in State Forests and timber reserves are consistent with corresponding provisions under other legislation, including the *Nature Conservation Act 1992*, which applies to protected areas such as national parks.

Alternative ways of achieving policy objectives

Forestry regulations

Potential alternatives to the creation of a new Forestry Regulation have been considered, including a 'no-legislative intervention' option, i.e. allowing the Forestry Regulation 1998 to expire without replacement. This option was rejected because of the unacceptable risks and consequences that would arise.

For example, the schedules of timber reserves and State plantation forests cannot be allowed to lapse and need to be maintained because of the need to ensure the continuity of these areas, and to meet Government commitments, including commitments under the commercial plantation licence.

The following adverse consequences would occur if the other provisions in the Forestry Regulation 1998 were allowed to lapse without replacement:

- Forest officers would be limited in their ability to ensure compliance with safety requirements in State forests and timber reserves, owing to the absence of regulatory measures. This would lead to a significant increase in instances of unsafe and inappropriate behaviour.
- The lapse of fees for activities in State forests and timber reserves would result in a loss of fee revenue, which would limit the ability to continue to provide services and facilities.
- As a compounding factor, the absence of fees (e.g. camping for free) would be likely to result in increased levels of use of these areas, which would then further increase management costs.
- The lapse of fees would be at odds with government policy relating to cost recovery and the commercial use of State land and assets.
- Any cost savings for the public and business resulting from the expiry of the fees without replacement would be outweighed by less efficient, costlier, and more onerous alternative interventions that would need to be applied eventually, to alleviate the relevant risks and address the consequences.
- For instance, interventions to address the risks and consequences of the expiry of the Regulation without replacement could include the following:
 - public access to some forest areas could be prohibited by the closure of forest roads, using barriers and regulatory signs, in order to manage safety and environmental risks;
 - facilities could be closed to save management and maintenance costs, because these costs would no longer be offset by fee revenue; and
 - funds from other areas could be diverted to forest areas to undertake repair and rehabilitation of environmental damage resulting from poorly regulated use, with detrimental consequences for the areas from which the funds were diverted.

The lack of appropriate regulatory provisions would quickly prove to be unacceptable and relevant regulations would need to be reinstated.

Another alternative option considered was replacing the regulatory provisions with 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 forest officers in managing recreational and commercial use of State forests and timber reserves 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 will 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 non-regulatory and self-regulatory option 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 forest 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 State forests and timber reserves.

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

Without the ability to issue infringement notices, forest officers would be limited in their ability to ensure compliance with environmental and safety requirements in State forests and timber reserves, 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.

As previously indicated, 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

Costs to business arising from the Forestry Regulation 2015 generally relate to fees charged for conducting for commercial recreational and tourism activities in State forests. These fees are consistent with those already established under the Forestry Regulation 1998. Approximately 60 commercial operators are currently authorised to conduct these commercial activities.

The fees paid for a commercial activity permit represent a modest cost to each operator, relative to their overall business costs.

For example, an existing commercial operator renewing a permit for a year would currently pay a total of \$404.60 in application fees and permit fees. This equates to a cost to the operator of \$7.78 per week over the duration of the permit. Renewing the permit for three years rather than one year would cost \$861.60 which equates to a weekly cost to the operator of \$5.52. A commercial operator is also charged up to

\$3.35 per client per day and, if the activity also involves an overnight stay, the operator pays a camping fee of up to \$5.95 per client per night.

Sections 37 to 39 of the Regulation recognise equivalent commercial activity permits for other areas, such as a national park or recreation area, so that the holder of a commercial activity permit is not liable to pay duplicate fees if the commercial activity extends over a State forest and a national park or recreation area.

In return for the payment of the scheduled fees, the commercial operator derives the benefit of being allowed to use the State forest for the operator's commercial gain. Revenue from commercial activity permit fees is used to help maintain access and facilities.

Costs to the public arising from the Forestry Regulation 2015 generally relate to the payment of camping permit fees. These fees are set at a modest level of between \$3.30 and \$5.95 per person per night. Most equivalent private campgrounds charge significantly more.

In return for these camping permit fees, campers gain the benefit of the use of the forest land and camping facilities. Revenue from camping permit fees is used to help maintain access and facilities.

The Forestry Regulation 2015 applies some additional imposts on business and the public in terms of the need to comply with particular rules and restrictions. However, these rules and restrictions are similar to, and no more restrictive than, those that apply in most other public areas for environmental and safety reasons. The impact of complying with these requirements is generally minor.

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 benefits arising from the regulatory framework greatly outweigh the potential inconvenience to the commercial and recreational users of State forests and timber reserves. For example, regulations that enable the management of unsafe vehicle use, excessive noise, uncontrolled dogs, and disorderly behaviour contribute to a safe and enjoyable experience for forest users.

The Forestry Regulation 2015 imposes some costs on 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 new regulation.

The Queensland Government actively encourages recreational and tourism use of State forests and timber reserves 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 Forestry Regulation 2015 represent a tried and tested framework to achieve these outcomes.

Consistency with fundamental legislative principles

The Forestry Regulation 2015 raises one potential issue with regard to the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

The amendments to the State Penalties Enforcement Regulation 2014 include some infringement notice penalties for a corporation that exceed 20 penalty units. The introduction of penalties at this level may be seen to conflict with the fundamental legislative principle of having regard to the institution of Parliament, by placing a penalty of greater than 20 penalty units in subordinate legislation.

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, it seems likely that the former Committee's policy was intended to refer to 20 penalty units in the context of an individual penalty, rather than a corporate penalty. The alternative interpretation – that a corporate penalty in subordinate legislation should not exceed 20 penalty units – would unreasonably constrain the level of individual penalties, given that corporate penalties are typically five times the level of individual penalties.

For example, section 181B of the *Penalties and Sentences Act 1992* allows a court to impose a penalty for a corporation at up to 5 times the penalty for an individual, and section 165 of the *State Penalties Enforcement Act 1999* allows for an infringement notice penalty for a corporation to be prescribed at up to 5 times the penalty for an individual.

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. The State Penalties Enforcement Regulation 2014 contains a number of corporate infringement notice penalties of more than 20 penalty units, with some as high as 100 penalty units.

Infringement notice penalties of up to 40 penalty units are considered appropriate in relation to specific offences committed by a corporation under the Forestry Act, e.g. offences that involve unauthorised interference with timber or quarry materials.

For example, the scale of unauthorised extraction of timber or quarry materials from a State forest or timber reserve is not always sufficient to justify court action. In such cases, in order to serve as an appropriate deterrent, the infringement notice penalty should be an amount of some consequence – for an individual or corporation as the case may be – and the penalty should not be outweighed by the potential gain from the unlawful activity.

Consultation

The Forestry Regulation 2015 primarily deals with the management of conduct and activities in State forests and timber reserves and continues the effect of existing and established provisions in the Forestry Regulation 1998.

As part of ongoing liaison with stakeholders, the Queensland Parks and Wildlife Service has undertaken general consultation with commercial tour operators and community groups to identify 'red tape reduction' measures that can be applied across all QPWS managed areas. A number of such measures have been implemented and are continued in the Forestry Regulation 2015 (e.g. permit exemptions for a generator used to operate a device for treatment of a medical condition).

Commercial and recreational interests were consulted specifically about the provisions in the Forestry Regulation 2015 as follows:

HQPlantations, which holds a 99 year licence from the State over State plantation forests for the purposes of plantation timber production, was consulted in March 2014 about the Forestry and Another Act Amendment Bill 2014 and associated subsequent process of remaking the forestry regulations. This consultation included providing representatives of HQPlantations with the draft Amendment Bill, and discussions about the provisions proposed to be moved from the Forestry Regulation 1998 into the amended Forestry Act, and the provisions that would be continued in the replacement Forestry Regulation. In this context, HQPlantations supported the need for appropriate regulations to remain in place to ensure adequate compliance and orderly management of forest areas, particularly with regard to vehicle use. The Forestry Regulation 2015 takes account of these requirements.

In May 2015, HQPlantations was consulted on the draft Forestry Regulation 2015. HQPlantations subsequently advised there were no issues of concern arising from the draft Regulation.

In June 2015, the Queensland Outdoor Recreation Federation (QORF), as the body representative of commercial and non-commercial outdoor recreation, was consulted on the draft Forestry Regulation 2015.

QORF acknowledged the role of the Regulation in managing recreational use and advised support for the provisions.

Through departmental correspondence and meetings, the Department of Agriculture and Fisheries, the Department of Environment and Heritage Protection, the Department of Justice and Attorney-General, the Department of Natural Resources and Mines, the Department of the Premier and Cabinet, the Department of Transport and Main Roads, and Queensland Treasury were consulted.

Consultation also occurred with the Office of Best Practice Regulation that confirmed that there was no requirement for a Regulatory Impact Statement.

Notes on particular provisions

Part 1 Preliminary

Section 1 provides for the regulation to be cited as the *Forestry Regulation 2015*.

Section 2 states that the Regulation will commence on 16 August 2015.

Section 3 indicates that the dictionary in schedule 7 defines terms used in the regulation.

Part 2 Timber reserves and State forests

Sections 4 to 8 indicate that timber reserves, State plantation forests, feature protection areas, scientific areas and State forest parks are described in schedules 1 to 5 respectively.

Section 9 provides for public inspection of specified plans, in order to meet the requirements of section 23A of the *Statutory Instruments Act 1992*, which allows for a statutory instrument (such as a regulation) to use a plan to refer to land if the plan is available for inspection by members of the public.

Part 3 Regulating and controlling State forests and timber reserves

Division 1 Conduct

Section 10(1) makes it an offence to be disorderly, unreasonably disturb someone, or interfere with another's health or safety in a State forest or timber reserve. This section has been included to preserve the amenity of these public spaces, so they can be reasonably and safely used and enjoyed by the public. Section 10(2) is intended to remove any potential overlap between subsection 10(1)(b) and the application of the *Work Health and Safety Act 2011*.

Section 10(3) is intended to ensure that people cannot unduly restrict general public access to parts of State forests and timber reserves and their associated facilities, including claiming areas or facilities for their exclusive use. However, section 10(4) allows for authorised exclusive use where required, for example, an authority may allow exclusive use of an area for a short-term activity such as a car rally on forest roads.

Some previous misconduct offences have been omitted from the regulation as they are considered of low risk to public order or enjoyment, or may be covered by other provisions. For example, the offence in section 16(2)(b) of the *Forestry Regulation 1998* for using indecent or obscene language has not been continued. However, someone being disorderly or creating a disturbance (which may include using indecent or obscene language) will still commit an offence.

Section 11 regulates amplified sound because it is a common issue within campsites and other popular places in State forests and timber reserves. The section prohibits the use of a radio or other sound system in a way that unreasonably disturbs someone else or an animal. Whether the disturbance is unreasonable will be influenced by the circumstances, for example, a particular sound level may not unreasonably disturb people during the day, but may be too loud late at night.

The section allows for someone to use a sound system with “reasonable excuse”. This could apply, for example, if a person uses the sound system in accordance with an authority granted under the Forestry Act for the conduct of an organised recreational event, or a music event such as the Gympie Music Muster.

Section 12(1) continues the effect of section 9(1)(a) of the Forestry Regulation 1998 and prohibits the unauthorised use of generators and similar machines within feature protection areas and State forest parks. The use of these devices can be authorised by regulatory notice (a specific sign) or a written approval, and may be subject to conditions. This allows potential nuisance and safety issues to be addressed, for example, in relation to noise, exhaust gases, fuel storage and use of power extension cords.

Sections 12(2) and 12(3) provide an exemption which allows the use of a quiet generator to operate a medical device.

Section 13 requires a person to obtain an approval to solicit information or donations from other people in a State forest or timber reserve. This provision aims to limit the impact such activities might have on the public’s enjoyment of these areas. Generally, approvals will be limited to non-commercial activities. For example, an approval might be given to a research body to survey State forest users about matters relevant to forest management.

Sections 13(2) and 13(3) provide that the holder of an approval cannot continue to solicit a donation or information from people who have indicated they do not wish to provide the donation or information.

Section 14(1) prohibits the unauthorised use of notices (including signs), without reasonable excuse, on State forests and timber reserves. Authorised notices in this context include official signs erected by forestry staff, and approved signs displayed by other people, e.g. signs relating to an authorised recreational event in the forest. Unauthorised notices could include, for example, commercial advertising signs erected without approval.

A reasonable excuse for erecting an unauthorised notice could be, for example, using an improvised sign to warn of a road hazard, such as a fallen tree across the road.

Section 14(2) prohibits unauthorised interference with notices in a State forest or timber reserve. As indicated by the note in section 14(2), notices which are State property and displayed in State forests are not covered by section 14(2) – they are subject to a separate provision [section 86(1)(j) of the Forestry Act], which prohibits unauthorised interference with such notices.

Section 15 prohibits the theft of timber that is supplied for use as firewood in a State forest or timber reserve. A quantity of such timber can have significant value. The provision confirms that the timber is for lawful use within the area but cannot be removed from the area.

Division 2 Animals

Section 16 prohibits bringing animals into a State forest or timber reserve without authority. Section 16 indicates that this requirement does not apply to a dog (although restrictions apply under section 20 to a dog staying overnight).

Under sections 16(a) and 16(b), authorisation to bring an animal into the area could be provided by a regulatory notice allowing for the entry, for example to authorise horse riding, or by a specific written authority for the animal.

Section 16(c) allows for the entry of an animal that is used in conjunction with an authority granted under the Forestry Act or another Act, for example, a horse used to muster stock on a grazing lease granted under the Land Act over land in State forest, or a police officer using a police horse for official purposes.

Section 17 provides that a person in charge of an animal must not allow the animal to stay in a State forest or timber reserve, subject to exceptions specified in sections 17(a) to (c).

Section 17 complements the prohibition, under section 16, on bringing an animal into the area without authority. It recognises that the person in charge of an animal after it is brought into the area may not be the same person who brought the animal into the area.

The exceptions in section 17 are consistent with those in sections 16(a) to (c) in relation to bringing an animal into the area, e.g.:

- section 17 allows a person to have a dog in the area;
- section 17(a) allows a person to have an animal in the area in accordance with a regulatory notice, for example, a person with a horse complying with a notice permitting horse riding in the area;
- section 17(b) allows a person to have an animal in the area under an authority under the Forestry Act; and
- section 17(c) allows a person who conducts an activity in the area under the Forestry Act or another Act to use an animal to conduct the activity, for example, a horse used to muster stock on a grazing lease granted under the Land Act over land in State forest, or a police officer using a police horse for official purposes.

A note at the end of section 17 indicates that sections 20 and 22(b) place some restrictions on staying overnight in a State forest or timber reserve with a dog or a horse.

Section 18 requires a dog in a State forest or timber reserve to be kept under control, in order to manage human safety and nuisance issues and protect wildlife. The term 'under control' has been defined in subsection (3) to include the dog being on a leash or being securely tethered, while in the charge of a person able to control the dog. The term also includes the dog being transported in an enclosed vehicle or container, or while tethered within the tray of a vehicle.

An exception under section 18(2) allows for a dog to be used to conduct an activity under an Act without being on a leash or tethered or confined, e.g. a dog used to muster stock on a grazing lease granted under the Land Act over land in State forest, or a police officer using a police dog for official purposes.

Section 19(1) requires a person in charge of a dog in a State forest or timber reserve to ensure that the dog does not cause a nuisance or unreasonably disturb people or animals, is not dangerous to persons or animals, and does not damage property. This requirement applies even where a dog is "under control" for the purposes of section 18. For example, it could apply to a tethered dog in a

campground that barks constantly, or snarls and lunges at passing children, or steals the neighbouring camper's food.

A limited exception under section 19(2) allows a person using a dog for an activity under an authority under an Act to take steps to minimise (rather than prevent) the dog causing nuisance and disturbance. For example, a person using a dog to muster stock under a stock grazing permit would need to take reasonable steps to limit the noise in the vicinity of a camping area, such as by moving the stock slowly with limited need for barking from the dog. The person is still required to prevent the dog causing danger or damage.

Section 20 prohibits a person allowing a dog to stay overnight in a State forest or timber reserve other than in an area specified by a regulatory notice, or if the dog is used for an activity authorised under the Forestry Act or another Act (such as mustering stock on a stock grazing lease on the State forest), or unless the person has a reasonable excuse. A reasonable excuse in this instance could be that the person was unable to leave with the dog due to the person's car breaking down.

Guide dogs and hearing and assistance dogs are exempt from this prohibition in accordance with section 8(1) of the *Guide, Hearing and Assistance Dogs Act 2009*, which states: "Despite any other Act, a person with a disability who relies on a guide, hearing or assistance dog to reduce the person's need for support may be accompanied by the guide, hearing or assistance dog in a place of accommodation, public place or public passenger vehicle." State forests and timber reserves are public places in this context.

Section 21(1) requires a person in charge of a horse in a State forest or timber reserve to ensure the horse is under control. Horses are allowed on some designated forest roads and trails which may be shared with other users, including pedestrians, mountain bikes, motorbikes and cars. Control of horses is therefore necessary to maintain safety. The term 'under control' is defined in section 20(3) to include the horse being controlled by means such as reins, or being securely tethered, or held in an approved enclosure.

Section 22 is also related to control and use of horses. Section 22(1) does not allow a horse to be tethered in a State forest or timber reserve where it may prevent free use of a road or track by other users of the forest.

Section 22(2) prohibits a person allowing a horse to stay overnight in a State forest or timber reserve other than in an area specified by a regulatory notice, or if the horse is used for an activity under the Forestry Act or another Act (such as mustering stock on a stock grazing lease on the State forest), or unless the person has a reasonable excuse. A reasonable excuse in this instance could be an inability to remove the horse because heavy rain had made creek crossings unsafe to negotiate with a horse float.

Section 23 is intended to allow for the management of safety and environmental matters associated with the conduct of equestrian events.

Section 23(1) provides that a person must not organise, promote or conduct an equestrian event in a State forest or timber reserve unless the event will be authorised under the Act. For example, the organiser would need to apply to obtain an authority, such as a group activity permit or commercial activity permit, to authorise the event.

Section 23(2) provides that a person may not compete or allow a horse to compete in an equestrian event in a State forest or timber reserve, unless the event is authorised or the person has a reasonable excuse. A reasonable excuse in this instance may be that the person reasonably believes that the event is authorised. However, a person would not have a reasonable excuse if the person continues to participate in the event after being advised by a forest officer that the event is unauthorised and that it would be an offence to continue to take part.

Division 3 Vehicles

Division 3 comprises sections specifying offences relating to the use of vehicles in State forests and timber reserves. The provision of these offences in the Forestry Regulation 2015 is necessary to deliver better public safety outcomes, given that police or transport officers are not usually present or available to enforce vehicle offences in forest areas, although from time to time forest officers and police run shared enforcement operations.

Where practicable these vehicle-use offences are described by reference to equivalent offence provisions under the transport legislation, i.e. the *Transport Operations (Road Use Management) Act 1995* and the Transport Operations (Road Use Management—Road Rules) Regulation 2009 (also known as the Queensland Road Rules).

This approach (of describing particular State forest and timber reserve offences by reference to the equivalent transport law) ensures consistency of requirements for road users, while allowing forest officers to enforce the offences under the Forestry Regulation. The same approach has been successfully used for several years for vehicle offences in national parks.

Note that the provisions of the Forestry Regulation 2015 do not in any way alter a person's obligations to comply with requirements under transport laws.

Section 24 clarifies that Division 3 applies to all areas within a State forest or timber reserve, including but not limited to roads. The term "road" is defined in schedule 7 to mean a road as defined under the *Transport Operations (Road Use Management) Act 1995*. This includes any area that is open to or used by the public and has as one of its uses, the driving or riding of motor vehicles.

Section 25 continues the effect of section 21 of the Forestry Regulation 1998 and prohibits unlicensed drivers from driving motor vehicles within State forests and timber reserves in order to maintain public safety.

Section 26 continues the effect of section 22(1) of the Forestry Regulation 1998 and restricts the entry into and use of unregistered vehicles in State forests and timber reserves, in order to maintain public safety.

Section 26 is structured as follows:

- Section 26(1) applies to vehicles that are driven or ridden in a State forest or timber reserve.
- Sections 26(2) and (3) apply to vehicles that are brought into a State forest or timber reserve without being driven or ridden (e.g. a vehicle carried on another vehicle or trailer).

- Section 26(4) includes definitions for section 26. For example, a “registered” vehicle is a vehicle that, under vehicle registration laws, can be lawfully used on a road. This definition includes vehicles that can be lawfully driven or ridden on a road without registration, such as bicycles. It also includes vehicles that are conditionally registered for limited road use. However, under section 27, conditionally registered vehicles need to obtain specific authorisation.

The provisions within section 26 operate as follows:

- Section 26(1) requires that a vehicle must be registered, subject to the exception in section 26(1)(b). This exception allows for an unregistered vehicle to be used under a specific authorisation under the Forestry Act, but only if the vehicle is not used on a road and not used for a recreational purpose. This exception is intended to cater for forestry operations, such as timber harvesting operations that take place in restricted areas away from roads and can involve use of non-standard vehicles such as skidders.
- Section 26(2) does not allow a person to transport an unregistered vehicle into a State forest or timber reserve without authorisation. For example, a person is not allowed to bring an unregistered trail bike into a State forest in the back of a registered vehicle without specific authority.
- The intention of section 26(2) is to generally exclude unregistered vehicles that are not able to be lawfully used in the area, but to allow an authority to be granted if necessary. For example, authorisation could be given for the owner of land adjoining a State forest to transport an unregistered vehicle through the State forest to the land, if this is the only reasonable means of access.
- In recognition that a person can be allowed to use an unregistered vehicle (such as a timber harvest vehicle) in specific circumstances under section 26(1)(b), provision is made in section 26(3) for the person to be taken to have approval to transport the unregistered vehicle (on a registered vehicle) to the place where it is authorised to be used.

Section 27(1) requires a person to obtain written approval to use a conditionally registered vehicle in a State forest or timber reserve. Conditionally registered vehicles include quad bikes and some trail bikes that do not qualify for full road registration, as well as some agricultural and construction vehicles.

As a condition of their vehicle registration, the operator of a conditionally registered vehicle must usually obtain the landowner’s prior approval for the use of the vehicle on the land (including land in a State forest or timber reserve). Section 27 places an equivalent approval requirement into the Forestry Regulation so that forest officers can apply and enforce the requirement.

The approval requirement under section 27 extends to all conditionally registered vehicles, whether intended for, commercial or other use. The approval can be in the form of a specific document, or can be included in another authority or agreement.

Sections 27(2), (3) and (4) impose restrictions on when approvals for conditionally registered vehicles may be granted. These restrictions are intended to recognise and address serious safety and environmental issues associated with the use of non-standard vehicles, i.e. vehicles that do not comply with the standards required for vehicle registration. For example:

- Section 27(2) allows for approval to be granted to use a conditionally registered vehicle for specified purposes, including for the sole purpose of direct access to adjoining land. It allows for approval for recreational use of conditionally registered vehicles as part of a permitted group activity or commercial activity, but does not provide for approval to be granted for individual recreational use.
- Sections 27(3) and 27(5) allow approval where use of the conditionally registered vehicle is required due to a person's ongoing mobility impairment.
- Section 27(4) requires that approval for conditionally registered vehicle use under specified subsections of section 27 cannot be given if the chief executive considers the use of a particular vehicle would cause unreasonable damage or represent a safety risk. (This would depend on the location and the nature of the vehicle's use.)
- Section 27(6) defines "conditionally registered vehicle" by reference to the Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010.

Section 27 is consistent with requirements for conditionally registered vehicles for national parks and other protected areas under section 115 of the Nature Conservation (Protected Areas Management) Regulation 2006 and consequentially provides a consistent legislative framework in relation to managing such vehicle use on State forests and protected areas.

Section 28 specifies a number of offences relating to use of a vehicle in a State forest or timber reserve. This section continues the effect of previous offence provisions from sections 23 and 26 of the Forestry Regulation 1998. However, the offences are now described by reference to equivalent offence provisions under the transport legislation, in order to maintain consistent rules for vehicle use. Although described by reference to the transport laws, these offences operate under the Forestry Regulation 2015 and can be enforced by forest officers.

Sections 28(1)(a) to (g) include offences relating to riding a bicycle without wearing a bicycle helmet, failing to wear seatbelts, travelling in or on part of a vehicle not designed for passengers, riding on a motorbike without wearing an approved helmet, and riding a motorbike with more than one passenger on a pillion seat.

Section 28(2) includes the offences of careless driving of a motor vehicle, and dangerous driving of a vehicle other than a motor vehicle.

Section 28(3) clarifies that a person cannot be charged twice for the same act or omission in relation to the operation of a vehicle, i.e. the person cannot be charged with an offence under section 28 of the Forestry Regulation and also be charged with the equivalent offence under the transport legislation. In this respect, forest officers will be able to take action under the Forestry Regulation 2015 in the majority of cases, but can (and will) refer serious incidents to police.

Section 29 requires quad bike riders (and passengers) to wear an approved motorbike helmet. The helmet standard specified is the same as in the transport laws for motorbike use. This contributes to an enforceable safety framework for circumstances in which quad bikes are authorised to be used within State forests and timber reserves.

In terms of safety, relatively heavy, full-face style motorbike helmets may not suit some operations conducted on quad bikes in a forest environment. However, lighter “shorty” style helmets are available that still meet the specified helmet standard. These “shorty” helmets provide head protection while still enabling good peripheral vision and hearing.

Section 30(1) requires a rider of a moving motorbike or motorised quad bike to keep all wheels in contact with the ground unless the rider has a reasonable excuse. This is intended to ensure that the rider operates the vehicle in a way that is consistent with safe driving practice. Section 30(3) specifies that, for section 30, the term “motorbike” takes its meaning from the *Transport Operations (Road Use Management) Act 1995*, and therefore includes a three wheeled motorbike.

Section 30(2) specifies that a quad bike passenger can only be carried on a seat designed to carry a passenger.

Section 31 continues the effect of other vehicle use provisions from section 23 of the Forestry Regulation 1998.

Section 31(1) provides that it is an offence for a person to ride in or on something towed by a motor vehicle. This is a safety provision that is intentionally broad to capture any kind of object being towed. However, the provision allows for a person to have a “reasonable excuse”. A reasonable excuse in this instance could be a person riding in a motor vehicle that needs to be towed because it has broken down.

Section 31(2) prohibits driving a vehicle at a speed or in a way that unreasonably damages or may damage the State forest or timber reserve. This provision is intended to apply to behaviour that is clearly avoidable and that can cause significant and unreasonable damage that would be costly to repair.

The circumstances of each such potential offence would be taken into account. For example, in some areas signs may advise people not to use the forest roads after heavy rain, because substantial road damage can be caused by a heavy vehicle forcing a passage along the road when it is boggy and soft. However, it could be reasonable for a person to drive on the road if it is the only route available for the person to leave the forest after camping during the rain. On the other hand, it would not be reasonable for a person to drive repeatedly back and forth along the road merely to “try out” the person’s vehicle capabilities.

Section 31(3) contains various offence provisions intended to prevent damage to a State forest or timber reserve and to allow other forest users to have reasonable use and enjoyment of the forest environment. Section 31(3)(a) allows enforcement of unlawful vehicle entry to a State forest or timber reserve where a fence or barrier is in place to prevent entry. Section 31(3)(b) prohibits the use of a vehicle in a way that can disrupt someone else’s reasonable enjoyment. This would apply, for example, to a person riding a noisy trailbike round and round on a dusty track within a campground. Sections 31(3)(c), (d) and (e) are intended to ensure that vehicles are not parked in an inappropriate way, for example, in a way that blocks other traffic, or causes unreasonable damage (e.g. by breaking and crushing vegetation), or parking contrary to line markings in a carpark.

Section 31(4) provides an exemption from the offences in section 31 for vehicles used in accordance with an authorisation under the Forestry Act, for example, an authority for timber harvesting. This recognises that such activities may not be able

to be reasonably carried out without some level of damage, disturbance or disruption.

Section 31(5) indicates that section 31(2) does not apply to a feature protection area, State forest park or forest drive, to avoid duplication of an equivalent offence for these specific areas in section 34G(4)(a)(iii) of the Forestry Act.

Section 32 requires that a person must not drive a vehicle in a feature protection area or State forest park other than under an authority or agreement under the Forestry Act. However, the note in section 32 indicates that notices (signs) under section 34G of the Forestry Act may also regulate or prohibit the use of vehicles in these areas.

In practice, signs will generally be used to manage vehicle use in feature protection areas and State forest parks, but section 32 allows for authorities and agreements relating to vehicle use in these popular areas to be enforced.

Division 4 Vessels and aircraft

Section 33(1) continues the effect of section 24(1) of the Forestry Regulation 1998. It requires the use of a motorised vessel on a lake or watercourse in a State forest or timber reserve to be authorised by a regulatory notice or an authority or agreement under the Forestry Act. This allows safety, environmental, and health concerns to be taken into account.

Section 33(2)(a) prohibits use of a vessel on a lake or watercourse in a State forest or timber reserve in a way that would cause unreasonable damage to the State forest or timber reserve, for example, damage to stream banks and waterside vegetation. Section 33(2)(b) does not allow a vessel to be used in a way that disrupts other people's reasonable enjoyment of a State forest or timber reserve. This might apply, for example, to vessel use that creates unreasonable noise or a wash that threatens to capsize canoes.

Section 34 continues the effect of section 26 of the Forestry Regulation 1998 and requires a person to be authorised for landing and take-off of aircraft in State forests and timber reserves, unless the person has a reasonable excuse. This requirement allows for the management of environmental and public safety issues.

Part 4 Fees

Division 1 Fees

Section 35 specifies that the fees payable under the Forestry Act are listed in schedule 6.

Division 2 Waiver

Section 36 provides that a fee under schedule 6, items 1 to 4, may be waived partially or entirely at the discretion of the chief executive, however only if the permit is for a charitable, cultural, educational, environmental or scientific purpose. This provision allows consideration of a reduction of fees for camping or commercial activity permits for activities that provide an appreciable social or community benefit or a benefit to the management of State forests and timber reserves.

Sections 37 to 39 continue the effect of sections 36A, 36B and 36C of the Forestry Regulation 1998 to ensure that the holder of a commercial activity permit is not charged duplicate fees if the commercial activity extends over a State forest or timber reserve and another area such as a national park or recreation area for which a commercial activity permit under other legislation is also required.

Under these provisions, a commercial operator will not pay an application fee, permit fee or daily fees under the Forestry Act where a corresponding fee of equivalent amount has already been paid under the *Nature Conservation Act 1992* or the *Recreation Areas Management Act 2006* for the same activity.

This acknowledges that some places have a patchwork of differing lands which may be traversed as part of the same commercial activity such as a scenic tour. For example, the greater part of Bribie Island is a mixture of State forest and national park overlapped by a designated recreation area.

Part 5 Repeal provision

Section 40 repeals the Forestry Regulation 1998 (Subordinate Legislation No. 264 of 1998) because it is being replaced by the Forestry Regulation 2015.

Part 6 Amendment of Forestry (State Forests) Regulation 1987

Sections 41 and 42 refer to public inspection of specified plans in order to meet the requirements of section 23A of the *Statutory Instruments Act 1992*, which allows for a statutory instrument (such as a regulation) to describe land by reference to a plan if the plan is available for inspection by members of the public.

Part 7 Amendment of Marine Parks Regulation 2006

Part 7 allows for an amendment to be made to Marine Parks Regulation 2006 and is unrelated to the Forestry Act and forestry regulations.

Sections 43 and 44 amend section 140(2) of the Marine Parks Regulation 2006 to insert a maximum penalty of 20 penalty units. This reinstates the penalty that was accidentally omitted from section 140(2) by a previous amendment.

Part 8 Amendment of Nature Conservation (Administration) Regulation 2006

Sections 45 and 46 amend the *Nature Conservation (Administration) Regulation 2006* in order to change a cross-reference from the Forestry Regulation 1998 to the *Forestry Act 1959*.

Part 9 Amendment of State Penalties Enforcement Regulation 2014

Sections 47 and 48 amend the State Penalties Enforcement Regulation 2014 to update listed infringement notice offences and penalties for provisions under the Forestry Act (as amended by the *Forestry and Another Act Amendment Act 2014*) and provisions under the Forestry Regulation 2015. This allows forest officers to

issue penalty infringement notices (PINs) for these offences. PINs (commonly called “tickets” or “on-the-spot fines”) have been used for offences under the Forestry Act and Forestry Regulation since July 1991. PINs have proven to be an effective enforcement tool and an effective deterrent to inappropriate conduct, resulting in a clear improvement in compliance compared with the situation before PINs were available for use.

Generally, these provisions for PINs are consistent with those that were previously in place (for offences under the Forestry Act and the Forestry Regulation 1998). However, corporate PIN penalties have been added for some offences that previously only had an individual penalty, and some individual PIN penalties have increased.

These increases relate to offences involving inappropriate conduct with significant safety or environmental risks. For example:

- the PIN penalty for an individual for disposing of waste or a noxious substance in a State forest was 2 penalty units, but this has been increased to 4 penalty units, and a penalty of 20 penalty units has been added for a corporation. [A penalty unit is currently \$117.80].
- the PIN penalty for an individual for leaving a fire without putting the fire out was 4 penalty units, but this has been increased to 5 penalty units, and a penalty of 25 penalty units has been added for a corporation.

To complement the amendment of the Marine Parks Regulation 2006 (see sections 43 and 44 above), section 48 includes an amendment to the State Penalties Enforcement Regulation 2014 to list section 140(2) of the Marine Parks Regulation 2006 as a PIN offence with a PIN penalty of one penalty unit.

Schedules

Schedule 1 continues the listing of Timber Reserves from the Forestry Regulation 1998 with no changes.

Schedule 2 continues the listing of State Plantation Forests from the Forestry Regulation 1998, and now lists these areas in order, by plan number.

Schedules 3, 4 and 5 list feature protection areas, scientific areas, and State forest parks respectively.

Some areas in the equivalent schedules in the Forestry Regulation 1998 are no longer in State forest, and as a result have been omitted from schedules 3 to 5 in the Forestry Regulation 2015. For example, feature protection areas, scientific areas, and State forest parks have been omitted from the schedules if the land has become national park or regional park, and is therefore no longer subject to the Forestry Act.

Apart from such changes, schedules 3, 4, and 5 remain the same as in the Forestry Regulation 1998.

Schedule 6 continues the listing of statutory fees from the Forestry Regulation 1998. The scheduled fees apply to camping permits, commercial activity permits, permits for competitive motor vehicle and equestrian events, permits for group activities, and mustering, holding and releasing stock to their owner.

Schedule 7 Dictionary

Schedule 7 of the Forestry Regulation 2015 defines terms used in the Regulation.

New terms defined in schedule 7 to assist with interpretation include ***person in charge***, and ***road***. Some terms previously defined in the Forestry Regulation 1998 are now defined in the *Forestry Act 1959*, as a consequence of amendments made under the *Forestry and Another Act Amendment Act 2014*.

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