

Nature Conservation (Wildlife Management) (Infrastructure) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 151

made under the

Nature Conservation Act 1992

General Outline

Short title

Nature Conservation (Wildlife Management) (Infrastructure) Amendment Regulation 2019
(the Amendment Regulation)

Authorising law

Sections 89 and 175 of the *Nature Conservation Act 1992*.

Policy objectives and the reasons for them

The *Nature Conservation (Wildlife Management) Regulation 2006* (Wildlife Management Regulation), made under section 175 of the *Nature Conservation Act 1992* (NC Act), contains a range of exemptions authorising the ‘take’ and ‘use’ of ‘protected plants’ to satisfy section 89 of the NC Act.

These exemptions include taking a protected plant by clearing for:

- routine maintenance of existing ‘infrastructure’, including any core airport infrastructure, buildings, fences, helipads, oil and gas pipelines, roads, stockyards, vehicular tracks, water pipelines, watering facilities and constructed drains other than contour banks; and
- establishing or maintaining a necessary firebreak to protect ‘infrastructure’, other than a fence, road, or vehicular track.

Long-standing policy interpretation of the term ‘infrastructure’ includes any building or structure built or used for any purpose.

This interpretation is used by government in the same context in both the protected plants framework under the Wildlife Management Regulation, and the vegetation management framework under the *Vegetation Management Act 1999*, the *Planning Act 2016* and the *Planning Regulation 2017*.

While all governments have upheld this interpretation of the term ‘infrastructure’ for these frameworks, the term could be open to alternative interpretation and challenge unless the relevant legislation defines it to include any building or structure built or used for any purpose.

On 24 May 2019 amendments were made to the vegetation management framework by the *Natural Resources and Other Legislation Amendment Bill 2019* (the Amendment Act) to confirm this interpretation. This included amending the definition of ‘infrastructure’ under the *Planning Regulation 2017* (section 357D of the Amendment Act) and the definition of ‘built infrastructure’ under the *Vegetation Management Act 1999* (section 359E of the Amendment Act).

The objectives of the Amendment Regulation are to amend the Wildlife Management Regulation to:

- clarify the long-standing policy intent that for the purposes of Queensland’s protected plants framework, the definition of ‘infrastructure’ includes buildings or other structures built or used for any purpose; and
- align with amendments made to the vegetation management framework by the NROLA.

The Amendment Regulation also seeks to update references in the Wildlife Management Regulation to sections of the Commonwealth *Great Barrier Reef Marine Park Regulations 1983*, which were replaced on 1 April 2019 by the *Great Barrier Reef Marine Park Regulations 2019*.

These amendments do not change the objects of the NC Act, the Wildlife Management Regulation, or the regulation of these matters.

Achievement of policy objectives

The policy objectives will be achieved by:

- inserting a definition of ‘infrastructure’ in the Wildlife Management Regulation, for the purposes of Chapter 4, to include buildings or other structures built or used for any purpose; and
- updating section 43 and schedule 2 of the Wildlife Management Regulation to refer to the relevant sections of the Commonwealth *Great Barrier Reef Marine Park Regulations 2019* instead of the replaced *Great Barrier Reef Marine Park Regulations 1983*.
- updating section 43 to refer to the *Marine Parks (Moreton Bay) Zoning Plan 2008* and the *Marine Parks (Great Sandy) Zoning Plan 2017*

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the object of the NC Act, which is the conservation of nature, and with how the object is to be achieved, including ensuring the take and use of protected wildlife is ecologically sustainable.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

Without the amendments:

- future clearing to maintain and protect structures, such as clearing for a firebreak around a residence, may not be lawful under the relevant exemptions. This clearing would require a protected plants clearing permit. The delay that a permit process may cause, relative to the timeliness of the need to clear, may present a public safety risk and is inconsistent with the long-standing policy intent of the protected plants framework;
- provisions would continue to reference sections of the replaced Commonwealth *Great Barrier Reef Marine Park Regulations 1983*
- provisions would not refer to the traditional use of marine resources agreements under the *Marine Parks (Moreton Bay) Zoning Plan 2008* and the *Marine Parks (Great Sandy) Zoning Plan 2017*.

The current amendments will ensure that:

- people will be able to clear using these firebreak and maintenance exemptions for all intended buildings and structures in the future;
- provisions reference the correct sections of the Commonwealth *Great Barrier Reef Marine Park Regulations 2019* instead of the replaced *Great Barrier Reef Marine Park Regulations 1983*; and
- the definition of traditional use of marine resources agreement includes reference to the *Marine Parks (Moreton Bay) Zoning Plan 2008* and the *Marine Parks (Great Sandy) Zoning Plan 2017*.

The proposed amendments are not anticipated to impose costs on the community, business or government. The changes confirm long-standing policy interpretation, and provide confirmation for the way the protected plants framework has been used since its establishment.

Consistency with fundamental legislative principles

The amendments have been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* and are consistent with these provisions.

Consultation

External consultation was not undertaken as the amendments are considered machinery in nature.

The Great Barrier Reef Marine Park Authority (GBRMPA) was consulted in relation to the Commonwealth Great Barrier Reef Marine Park legislation. GBRMPA supports the Amendment Regulation.

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted in relation to the regulatory proposal. The department applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category g – Regulatory proposals that are of a machinery nature).

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