

Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2020

Explanatory notes for SL 2020 No. 138

made under the

Forestry Act 1959

Marine Parks Act 2004

Nature Conservation Act 1992

Recreation Areas Management Act 2006

State Penalties Enforcement Act 1999

General Outline

Short title

Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2020

Authorising law

Section 97 and Schedule 2 of the *Forestry Act 1959*

Section 150 of the *Marine Parks Act 2004*

Section 175 of the *Nature Conservation Act 1992*

Section 232 of the *Recreation Areas Management Act 2006*

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The Department of Environment and Science has undertaken a statutory review of the protected wildlife framework ahead of the impending expiry of the *Nature Conservation (Wildlife Management) Regulation 2006* (the Wildlife Management Regulation). As an outcome of the review, a new framework comprising two new regulations (one for plants and one for animals), are being made to replace the Wildlife Management Regulation.

The *Nature Conservation (Administration) Regulation 2017* (the Administration Regulation) contains relevant administrative provisions that apply to management of protected areas and protected wildlife. Under the new framework, these administrative provisions are now to be included in each of the new wildlife regulations and the *Nature Conservation (Protected Areas Management) Regulation 2017* (the PAM Regulation) as required, meaning a common administrative regulation is no longer necessary. Consequently, the Administration Regulation will be repealed.

As a result, the policy objective of the *Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2020* (the Amendment Regulation) is to make consequential amendments associated with the repeal of the Administration Regulation.

These include:

- incorporating administrative provisions relating to protected areas into the PAM Regulation;
- amending the *State Penalties Enforcement Regulation 2014* to update the references to legislation for protected area penalty infringement notice offences;
- changing a reference in the *Marine Parks Regulation 2017* from the Administration Regulation which will become redundant, to the PAM Regulation; and
- administrative amendments to the *Forestry Regulation 2015* and the *Recreation Areas Management Regulation 2017* to insert an informative note regarding COVID-19 fee waivers.

Achievement of policy objectives

The Amendment Regulation transfers protected area provisions from the repealed Administration Regulation to the PAM Regulation. Transferred provisions largely relate to the administration of protected area authorities, specifically the authorities that may be granted, their terms, the application processes, considerations for decisions, conditions, and the transfer, renewal, amendment, suspension and cancellation of such authorities.

Provisions relating to commercial activity agreements have also been transferred, including expression of interest, application processes, requirements, and the grounds and process for amendment, suspension, cancellation and transfer of agreements.

Provisions relating to dealing with seized items, review processes, record keeping and fees relevant to protected areas have also been transferred into the PAM regulation.

There is no change to the policy intent of transferred provisions, however, contemporary drafting practices have resulted in minor edits consistent with current best practice drafting guidelines. This includes inserting a timeframe for decisions to be made regarding amendment applications.

The administrative review procedures provisions have been updated in line with current drafting practices and to ensure consistency with the Queensland Government's *Administrative Review Policy*. The administrative review process provides a mechanism by which a person can seek redress against a decision made by a government entity that affects them. Administrative review, over time, seeks to provide protections to applicants and result

in better government decisions over time. Specific updates included in the Amendment Regulation relate to having a review application dealt with by a more senior officer than the one who made the original decision (rather than stating that the person must not be less senior); and clarifying when the Queensland Civil and Administrative Tribunal may make an order to stay the operation of the original decision while review processes are undertaken.

Transitional provisions seek to ensure that existing applications, protected area authorities and commercial activity agreements issued under the Administration Regulation remain valid to the end of their original term.

A transitional provision has been included to ensure that the COVID-19 fee waiver provisions in the Administration Regulation remain valid until the date fixed by a gazette notice signed by the Minister on 2 July 2020. An amendment will also be made to the *Forestry Regulation 2015* and the *Recreation Areas Management Regulation 2017* to note the date fixed by the gazette notice which also applies to these two regulations.

The Amendment Regulation amends the *State Penalties Enforcement Regulation 2014* to update the references to legislation and section numbers for protected area Penalty Infringement Notice (PIN) offences. This amendment replaces the existing PIN offences under the repealed regulation and provides reference to the new location of these offences within the PAM Regulation. Offences have been reviewed to reflect current drafting practices and the Department of Justice and Attorney-General Guidelines, but do not result in any policy change. There is no change to the penalty amounts for PINs.

The Amendment Regulation also amends the *Marine Parks Regulation 2017* to remove a reference to the repealed Administration Regulation, instead replacing this with the new location of the relevant provision within the PAM Regulation.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the authorising laws.

The objective of the *Forestry Act 1959* is to provide for forest reservations, the management, silvicultural treatment and protection of State forests, and the sale and disposal of forest products and quarry material, the property of the Crown on State forests, timber reserves and on other lands; and for other purposes. Section 97 of the *Forestry Act 1959* provides a regulation making power and Schedule 2 outlines the subject matters for regulations under the Act, including in respect of fees.

The purpose of the *Marine Parks Act 2004* is to provide for the conservation of the marine environment. Under section 150, regulations may be made in respect of a range of relevant matters, including authorities required under that Act.

The object of the *Nature Conservation Act 1992* 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. Under section 175 of the *Nature Conservation Act 1992*, regulations may be made in respect of a range of matters, including matters relating to protected areas.

The objective of the *Recreation Areas Management Act 2006* is the establishment, maintenance and use of recreation areas; and to provide, coordinate, integrate and improve recreational planning, recreational facilities and recreational management for recreation areas, having regard to the conservation, cultural, educational, production and recreational values of the areas; and the interests of landholders.

Section 232 of the *Recreation Areas Management Act 2006* provides a regulation making power with respect to the fees and charges payable under that Act, including the waiver of fees.

The Amendment Regulation is also consistent with the objectives of the *State Penalties Enforcement Regulation 2014* and section 165 of the *State Penalties Enforcement Act 1999* which allows for a regulation to prescribe an offence to be an infringement notice offence and to provide for an infringement notice fine.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

The benefit of the Amendment Regulation is that all protected area administration and management provisions will now be located within a single instrument. Transitional provisions contained within the Amendment Regulation ensure that existing applications and protected area authorities continue unaffected for the remainder of their term.

No additional costs are expected from the Amendment Regulation, as the amendments are merely consequential.

Consistency with fundamental legislative principles

There is no impact on fundamental legislative principles from the consequential amendments.

Consultation

No external consultation was undertaken for the Amendment Regulation, as the changes are merely consequential to the outcomes of the review of the Wildlife Management 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. DES applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category (a) – Regulatory proposals that make consequential amendments and Category (f) Regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice).