



Queensland

Nature Conservation (Administration) Regulation 2006

Nature Conservation (Protected Areas Management) Regulation 2006

Nature Conservation (Wildlife Management) Regulation 2006

Nature Conservation (Wildlife) Regulation 2006

Regulatory Impact Statement for SL 2006 Nos. 203, 204, 205, 206

made under the

Nature Conservation Act 1992

This regulatory impact statement applies for each of the 4 items of subordinate legislation mentioned above. Separate explanatory notes accompany the 4 items.

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Summary

Background

This combined Regulatory Impact Statement (RIS) and Draft Public Benefit Test (PBT) is published as part of a process of review and remaking (replacement) of the *Nature Conservation Regulation 1994* (the Regulation), and the *Nature Conservation (Wildlife) Regulation 1994* (the Wildlife Regulation). The review was prompted by 'sunset provisions' in the Statutory Instruments Act, under which these Regulations are scheduled to expire on 1 September 2005.

The Regulation provides for the management of protected areas such as national parks, (including the wildlife in those areas) and for the management (including use) of native wildlife outside protected areas. It also includes provisions relating to non-native wildlife, in order to manage threats to native wildlife.

The Wildlife Regulation establishes which native animals and plants are 'protected wildlife' under the *Nature Conservation Act 1992* (the Act) by listing the wildlife under the five classes designated in the Act. It also establishes which animals are 'international wildlife' or 'prohibited wildlife' under the Act. This classification of wildlife is vital to the operation of the Act, and is a key factor in determining the application of regulatory requirements and enforcement provisions.

Objective and legislative intent

The primary objective of remaking the proposed regulations is to provide for effective management of protected areas, and of wildlife, in order to achieve the object of the Act – the conservation of nature.

The proposed *Nature Conservation Regulation 2005* will replace the *Nature Conservation Regulation 1994* and will:

- provide for a system of licences, permits and other authorities for the use of protected areas, and for taking, using, keeping, moving and interfering with wildlife, including specified exemptions and restrictions;

- include procedures and requirements relating to those licences, permits and other authorities, including opportunities to appeal decisions;
- regulate conduct in protected areas, with particular regard to matters of environmental impact and human health and safety;
- regulate actions that may affect wildlife, or relate to wildlife and human health and safety;
- include enforcement powers in relation to protection of environment, native wildlife, human well-being and property;
- specify offences and penalties for those offences;
- include definitions and schedules relevant to the operation of the Act and regulations, including fees payable under the Act;
- include transitional provisions to provide for continuity between the *Nature Conservation Regulation 1994* and the proposed regulation.

The proposed *Nature Conservation (Wildlife) Regulation 2005* will replace the *Nature Conservation (Wildlife) Regulation 1994* and will contain schedules to:

- establish the animals and plants that are 'protected wildlife' under the Act, by listing these animals and plants in five classes of protected wildlife, as provided by section 71(a) of the Act;
- establish the animals that are 'international wildlife' under section 71(b) of the Act;
- establish the animals that are 'prohibited wildlife' under section 71(c) of the Act; and
- as provided by section 72 of the Act, state the 'declared management intent' for the protected wildlife, international wildlife and prohibited wildlife, including a statement of the significance of the wildlife, the proposed management intent for the wildlife, and principles relating to taking and using the wildlife.

The provisions of the Regulation are proposed to retain their current effect in the remaking process (see Appendix 1), subject to a number of proposed changes (see Appendix 4).

The schedules in the Wildlife Regulation are proposed to remain essentially the same in the remaking process, other than changes resulting from amendments of the classes in the Act, and the ongoing process of scientific review.

- environmental protection;
- public safety; and
- sustainable economic benefits for local communities from the use of protected areas and from local wildlife-based businesses.

Consideration of alternative options

Potential alternatives to the proposed remade Regulations have been considered, including a 'no-legislative intervention' option (allow the Regulations to expire without replacement). The 'no legislative intervention' option and other potential alternatives to the proposed regulations are unsatisfactory because they have a range of serious, highly undesirable environmental, economic and social consequences, including:

- protected areas and wildlife would not be conserved (due to lack of regulatory controls and loss of management revenue from fees);
- wildlife-based businesses would be constrained or could not lawfully operate (due to lack of regulatory means to allow activities otherwise restricted by the Act);
- obligations under the Act would not be fulfilled; and
- Queensland would be perceived as out of step with internationally and nationally recognised practices and standards.

Cost-benefit assessment

Major stakeholder groups were identified and costs and benefits of the proposed remaking of the Regulations considered. Significant net benefits accrue to Government, business and the community from the option of replacing the current Regulations with 'remade' regulations as proposed, due to the continuation of the necessary regulatory and revenue arrangements. This option provides better outcomes than potential alternatives in terms of:

- the level and standard of access, facilities and services in protected areas;
- quality of protected area visitor experiences;
- sustainable commercial and recreational opportunities, in relation to both protected areas and wildlife;





1 Introduction

The *Nature Conservation Regulation 1994* (the Regulation) and the *Nature Conservation (Wildlife) Regulation 1994* (the Wildlife Regulation) are scheduled to expire on 1 September 2005. As a consequence, these Regulations are under review, with the intention that they be 'remade' as the *Nature Conservation Regulation 2005* and the *Nature Conservation (Wildlife) Regulation 2005* respectively.

The Regulation and the Wildlife Regulation are primary legislative instruments that support attainment of the object of the Act – the conservation of nature, as follows:

- The Regulation provides for the management of protected areas such as national parks, (including the wildlife in those areas) and for the management of wildlife outside protected areas. 'Wildlife' in this regard includes native animals in the wild and in captivity, and native plants in the wild and in cultivation. The Regulation also includes provisions relating to exotic (non-native) wildlife, generally involving species that could constitute a threat to native wildlife.
- The Wildlife Regulation establishes which animals and plants are 'protected wildlife' under the Act by listing the wildlife under the five classes designated in the Act – presumed extinct wildlife, endangered wildlife, vulnerable wildlife, rare wildlife and common wildlife¹. The Wildlife Regulation also establishes which animals are 'international wildlife' or 'prohibited wildlife' under the Act. This classification of wildlife is vital to the operation of the Act, and is a key factor in determining the application of regulatory requirements and enforcement provisions.

Parallel regulations for the use of protected areas and the use of wildlife are in place in all Australian states and territories, with a high degree of consistency. This reflects the need of each State to manage similar issues, and the need for consistent protective measures across State borders, particularly in relation to wildlife trade and movement.

¹ The Nature Conservation Amendment Act 2004, which has been passed but is not yet in force, changes these classes to bring them into line with categories established by the World Conservation Union (IUCN). The current 'presumed extinct' class will be replaced with 'extinct in the wild', and the current 'common wildlife' class will be replaced with two classes – 'near threatened' and 'least concern'.

Such regulations also reflect international standards and practices, partly in recognition of cooperative international efforts, and partly in order to satisfy Commonwealth Government requirements relating to national and international obligations. The proposed *Nature Conservation Regulation 2005* and *Nature Conservation (Wildlife) Regulation 2005* have been developed in this context.

2 Title of proposed legislation

Nature Conservation Regulation 2005; and *Nature Conservation (Wildlife) Regulation 2005*.

In this document:

- **'the proposed regulation'** means the proposed *Nature Conservation Regulation 2005*;
- **'the proposed wildlife regulation'** means the proposed *Nature Conservation (Wildlife) Regulation 2005*; and
- **'the proposed regulations'** means both these proposed pieces of legislation.

However, in the framing of this legislation by the Office of the Queensland Parliamentary Counsel, the *Nature Conservation Regulation* may be redrafted as two or more Regulations, rather than as a single Regulation.

3 Authorising law

The proposed regulations are to be made under the provisions of the *Nature Conservation Act 1992*, and in particular, section 175, which states the matters about which regulations may be made.

4 Background

The scheduled expiry date for the Regulation and the Wildlife Regulation (1 September 2005) is set by the *Statutory Instruments Act 1992*, which states that subordinate legislation expires automatically after ten years, unless specifically exempted or extended. This ensures that regulations are regularly reviewed to:

- reduce 'the regulatory burden', without compromising law and order and essential economic, environmental and social objectives;

- ensure subordinate legislation is relevant to the economic, social and general well-being of the people of Queensland; and
- otherwise ensure subordinate legislation is of the highest standard.

The Statutory Instruments Act also requires that if proposed subordinate legislation is likely to impose appreciable costs on the community or a part of the community, then, before the legislation is made, a regulatory impact statement (RIS) must be prepared about the legislation. Preparation of a RIS requires consideration of the policy intent of the proposed legislation and how best to achieve that intent, while the completed RIS forms the basis for public comment on the proposed legislation. This RIS includes a draft public benefit test, in accordance with National Competition Policy in regard to legislation that restricts competition (see section 15 below).

The Nature Conservation Regulation 1994 and *Nature Conservation (Wildlife) Regulation 1994* operate under the *Nature Conservation Act 1992*, in conjunction with other subordinate legislation under the Act, including various conservation plans².

The Regulation contains two chapters that deal separately with protected areas such as national parks (Chapter 2) and wildlife outside of protected areas (Chapter 3), while Chapters 1 and 4 have general application to both protected areas and wildlife.

The Wildlife Regulation consists of seven Schedules. The first five of these list the taxa of protected wildlife under five classes, and the next two list the taxa that comprise international wildlife and prohibited wildlife.

Both the Regulation and the Wildlife Regulation have been subject to periodic review since their creation in 1994:

- Provisions in the Regulation relating to protected areas (Chapter 2) have been subject to ongoing review and amendment as required, generally involving 'fine-tuning' rather than major changes;

- Provisions in the Regulation relating to wildlife outside of protected areas (Chapter 3) were extensively updated in December 2003, with effect from 1 March 2004³, following an extensive review process that commenced in 2001. This 'wildlife management review' included public meetings, consultation with major stakeholder groups and consideration of public comments on a discussion paper listing proposed reforms. Among other things, the amendments included changes to standardise provisions and provide greater clarity about operation of licences, allow recreational wildlife licences to be issued for five years instead of one year; regulate the commercial trade in protected spiders and scorpions, and permit the commercial trade of a limited range of native reptiles through pet shops.
- Schedules of wildlife under the *Nature Conservation (Wildlife) Regulation 1994* are subject to regular scientific review, with changes and additions in 1995, 1997, 1998, 1999, 2000, 2001, and with further changes to occur to match revised classes under the Act, as previously indicated. The continuous process of review of the classification of wildlife is imperative for ensuring the list is current, so that adequate and appropriate protection for species can be provided under the Act. This process also gives effect to Australia's international obligations under a number of international treaties and conventions such as the Convention on Biological Diversity.

Given the review processes listed above, it is considered unnecessary and undesirable to make further significant changes to the effect of the wildlife provisions in Chapter 3 of the Regulation, or to the schedules in the Wildlife Regulation (subject to current scientific review).

However, a number of changes are proposed to be made to the protected area provisions in Chapter 2 of the Regulation (see Appendix 4).



² *The Nature Conservation Act 1992, Nature Conservation Regulation 1994, Nature Conservation (Wildlife) Regulation 1994 and other legislation can be purchased from Goprint, telephone (07) 3246 3399, or 1800 679 778 for callers outside the Brisbane area, or can be viewed, downloaded and printed from the website of the Office of Queensland Parliamentary Counsel at: <http://www.legislation.qld.gov.au/>*



5 Consultation

Submissions on the RIS/Draft PBT are invited from stakeholders, other interested parties and the broader community. Further consultation may be undertaken following receipt of these submissions, depending on the comments received.

During the development of the RIS/Draft PBT, major stakeholder representatives were invited to suggest issues that need to be addressed in the remaking of the *Nature Conservation Regulation 1994*. In the case of the *Nature Conservation (Wildlife) Regulation 1994*, initial contact was made with the Scientific Advisory Committee, conservation groups, and primary producer representatives by telephone. No significant new issues were identified during this consultation.

Previous consultation has occurred in relation to the wildlife management provisions in the Regulation as part of the wildlife management review, as indicated above. The tourism industry has been involved in extensive consultation over the proposed tourism management arrangements as part of the 'Tourism in Protected Areas' Initiative⁴.

6 Policy objective

The proposed regulations are intended to replace the *Nature Conservation Regulation 1994* and the *Nature Conservation (Wildlife) Regulation 1994* before they expire on 1 September 2005.

The primary objective of making the proposed regulations is to provide for effective management of protected areas, and of wildlife, in order to achieve the object of the Act – the conservation of nature⁵.

Effective management in this context includes:

- fulfilling obligations under the Act, for example, requirements to manage protected areas and wildlife in accordance with specified management principles;

- fulfilling obligations under Commonwealth law and international conventions;
- having regard to recognised principles, practices and standards; and
- subject to the above, providing for reasonable use of protected areas and wildlife.

7 Legislative intent

The policy objective is proposed to be achieved by maintaining the effect of the existing provisions in the *Nature Conservation Regulation 1994* with some changes to improve efficiency and effectiveness, and by maintaining the schedules of wildlife in the *Nature Conservation (Wildlife) Regulation 1994*.

The matters to be covered by the proposed regulation are listed in Appendices 1 and 4. Briefly, the proposed regulation will:

- provide for a system of licences, permits and other authorities for the use of protected areas, and for taking, using, keeping, moving and interfering with wildlife, including specified exemptions and restrictions;
- include procedures and requirements relating to those licences, permits and other authorities, including opportunities to appeal decisions;
- regulate conduct in protected areas; with particular regard to matters of environmental impact and human health and safety;
- regulate actions that may affect wildlife, or relate to wildlife and human health and safety;
- include enforcement powers in relation to protection of environment, native wildlife, human well-being and property;
- specify offences and penalties for those offences;
- include definitions and schedules relevant to the operation of the Act and regulations, including fees payable under the Act;

³ See the *Nature Conservation and Other Legislation Amendment Regulation (No. 3) 2003*, available at the following internet address: <http://www.legislation.qld.gov.au/LEGISLTN/SLS/2003/03SL375.pdf> with notes at: http://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2003/03SL375E.pdf

⁴ See information on the 'Tourism and Protected Areas' Initiative at <http://www.tq.com.au/industry/sustainable-tourism/policy-development.cfm>

⁵ The Act (s.9) defines 'conservation' as the protection and maintenance of nature while allowing for its ecologically sustainable use 'Ecologically sustainable use' is also defined (s.11 of the Act).

- include transitional provisions to provide for continuity between the Nature Conservation Regulation 1994 and the proposed regulation.

The proposed wildlife regulation will contain schedules to:

- establish the animals and plants that are ‘protected wildlife’ under the Act, by listing these animals and plants in five classes of protected wildlife, as provided by section 71(a) of the Act;
- establish the animals that are ‘international wildlife’ under section 71(b) of the Act;
- establish the animals that are ‘prohibited wildlife’ under section 71(c) of the Act; and
- as provided by section 72 of the Act, state the ‘declared management intent’ for the protected wildlife, international wildlife and prohibited wildlife, including a statement of the significance of the wildlife, the proposed management intent for the wildlife, and principles relating to taking and using the wildlife.

8 Consistency with the authorising law

The proposed regulations are entirely consistent with the authorising law (see, for example, section 175 of the Act which lists subject matters for regulations, and section 174A which allows the approval or making of codes of practice). They serve as a primary means to realise the object of the Act (see, for example, sections 4, 5, 6 and 8 of the Act) and fulfil requirements in the Act about how protected areas and wildlife must be managed (see sections 15 to 26, and sections 71 to 75 of the Act).

9 Consistency with other legislation

The proposed regulation is consistent with related legislation, such as the *Forestry Act 1959*, *Recreation Areas Management Act 1988*, *Marine Parks Act 1982* and subordinate legislation under those Acts. This consistency applies at a broad level, for example in intent and approach, and generally at a more

specific level, for example in the application of permits, fees and penalties, recognising that there is some individual variation.

The proposed wildlife regulation is consistent with related legislation, including the *Land Protection (Pest and Stock Route Management) Act 2002* and *Land Protection (Pest and Stock Route Management) Regulation 2003* which deal with declared pest species.

10 Options and alternatives – Nature Conservation Regulation 2005

The Statutory Instruments Act requires a RIS to contain, if appropriate, ‘a brief statement of any reasonable alternative way of achieving the policy objectives (including the option of not making subordinate legislation) and why the alternative was rejected’.

In considering alternative means to deliver the policy objective it is useful first to consider the policy needs relating to each of the two main aspects of the proposed regulation – the management of protected areas (including the wildlife within those areas), and the management of wildlife outside of protected areas.

10.1 Management needs for protected areas

Protected areas, such as national parks, include the most outstanding natural areas in Queensland, and large numbers of people visit them to undertake scientific, educational, cultural and recreational activities. For example, Queensland national parks receive around 13 million person-visit-days⁶ in each year.

This high level of visitor use puts these places under enormous pressure, with potential for significant environmental damage to occur through overuse or inappropriate behaviour, and for visitor enjoyment to be diminished by crowding or by conflicting activities.

In conjunction with the Act and other subordinate legislation under the Act, the proposed regulation (or alternative) should provide a means to control and manage

⁶ One person-visit-day is counted for each person who is present in a protected area on a given day. This includes people who enter on the day or who stay over from the previous day.





potential harm to protected areas and to people using protected areas, while generally maintaining opportunities for appropriate and sustainable use.

10.2 Management needs for wildlife

Queensland's wildlife (both animals and plants) is outstanding in its abundance and diversity. Most of this wildlife lives all or some of the time outside of protected areas, and is subject to a range of pressures – pressures which threaten the survival of nearly 600 species of vulnerable or endangered native animals and plants⁷. These pressures include habitat loss and impacts from weeds and feral animals. Legislative measures to address these issues include the Vegetation Management Act 1999, the Land Protection (Pest and Stock Route Management) Act 2002 and the Nature Conservation Act 1992.

However, wildlife is also significantly affected by activities directly related to its scientific, educational, commercial, recreational and indigenous traditional and customary use. In conjunction with the Act, and other subordinate legislation under the Act, the proposed regulation (or alternative) should provide a means to manage these activities and their impacts on native wildlife.

10.3 Alternatives considered

Several alternatives to the proposed regulation were considered, singly or in combination, including:

- 'no legislative intervention' (the regulation expires and is not replaced);
- public education;
- self regulation;
- voluntary standards and codes of practice; and
- co-regulation (a shared regulatory role, usually involving some self-regulation).

Most of these alternatives were rejected on preliminary assessment because they would not ensure satisfactory environmental, social and safety outcomes, generally because of compliance difficulties. However, the 'co-

regulation' option was considered to warrant further assessment and is discussed below, with the 'no legislative intervention' and 'proposed legislation' options for comparison. Costs and benefits of the three selected options are examined in further detail in section 13.

10.3.1 The 'no legislative intervention' option

The following examination of the consequences of expiry of the current legislation (the Nature Conservation Regulation 1994) allows assessment of the need for legislative intervention, or alternative measures that would achieve an acceptable outcome.

The Nature Conservation Regulation 1994 operates as part of an integrated 'package', comprising the Act and other subordinate legislation under the Act, including:

- the Nature Conservation (Protected Areas) Regulation 1994 which specifies protected areas by class and by name;
- the Nature Conservation (Wildlife) Regulation 1994 which specifies protected, prohibited and international wildlife by class and by taxon; and
- various conservation plans, such as the Nature Conservation (Protected Plants) Conservation Plan 2000, which include particular provisions relating to wildlife or wildlife habitat.

If the Nature Conservation Regulation 1994 expires, these other pieces of legislation will continue to operate. Protected areas and native wildlife outside of protected areas will retain a high level of protection, for example:

- natural and cultural resources in protected areas will be generally protected by section 62 of the Act;
- protected animals will be generally protected by section 88 of the Act;
- rare and threatened plants in the wild will be generally protected by section 89, 90 of the Act; and
- release, keeping and use of prohibited wildlife will be generally prohibited under section 91 of the Act.

⁷ For further detail – see *State of the Environment Queensland 2003* at www.epa.qld.gov.au

However, there would be serious consequences for the management of protected areas and wildlife, not least because the Regulation provides a means to authorise activities, as well as restrict or regulate activities.

The 'no legislative intervention' option equates to an effective absence of regulation under the Act, because, even though conservation plans under the Act would continue in force, they deal with specific matters, and largely operate in conjunction with, and are dependent on, the current Regulation.

Consequences for protected areas

Expiry of the Regulation without replacement would result in loss of ability to issue a range of permits or approvals, use enforceable signs and regulate visitor conduct. These measures are used as management tools to ensure that environmental impacts are minimal and sustainable, visitor experiences are high quality, and activities that would be otherwise prohibited under the Act⁸ can be authorised.

Loss of the Regulation and its regulatory management tools would have a number of consequences including:

- commercial operators, tourists and recreational visitors would not need permits or to pay fees⁹ (so long as they do not interfere with natural or cultural resources), with the implications indicated below;
- some \$2.5 million in 'user-pays' permit revenue would be lost, resulting in downgrading or removal of visitor services such as ranger services, park information, park roads, walking tracks and camping and picnic facilities;
- protected areas would become degraded from overuse and inappropriate activities through the lack of any regulatory controls;
- the quality of visitor experiences would decline due to revenue losses and inability to manage use, separate

conflicting activities and control inappropriate behaviour;

- visitor safety would be reduced through lack of ability to manage risks;
- longer term consequences would be reduced visitor numbers (due to degradation and poorer services), increased public dissatisfaction and complaints, increased injuries, greater litigation and compensation costs, and increased costs to other land managers (including local government) for increased use of alternative facilities;
- it is likely that any fee savings would be quickly offset by alternative revenue-raising measures, including by legislative means, given that the Queensland Government could not ignore obligations to manage use of protected areas to address environmental and safety issues;
- trustees of conservation parks or resources reserves would lose powers used to manage those areas¹⁰;
- restrictions on minimum flying heights (for example, to protect seabird colonies from disturbance) would cease¹¹; and
- certain activities would be constrained due to lack of regulatory authorisations, for example:
 - fishing in national parks would cease, due to lack of scheduled parks¹²;
 - scientific research would be curtailed through loss of permit capability;
 - permitted 'service facilities' in national parks, such as communications towers or marine navigation facilities, could not be allowed due to lack of authorising regulations¹³;
 - stock grazing, beekeeping, water extraction and service facilities in conservation parks and resources reserves would be curtailed through loss of permit capability; and
 - neighbouring landholders' activities, such as fence construction and firebreak maintenance along park boundaries, could be affected by loss of approval capability.

⁸ For example, the Act (section 62) prohibits interference with natural and cultural resources within protected areas, unless specifically authorised, including by 'a licence, permit or other authority given under a regulation'.

⁹ Permits and fees would still apply under the Recreation Areas Management Act 1988 for national parks within the Fraser Island, Moreton Island and Green Island Recreation Areas.

¹⁰ See section 26 and schedule 1 of the Regulation.

¹¹ See section 82(1) and schedule 5 of the Regulation.

¹² See section 62(4) of the Act, and section 27 and schedule 2 of the Regulation.





In a broader sense:

- Queensland would be perceived as out of step with internationally and nationally recognised management practices and standards;
- obligations under the Act could not be met, including the requirement to manage protected areas in accord with specified management principles¹⁴; and
- obligations under Commonwealth laws could not be met, including those that relate to international conventions, such as the management of World Heritage Areas¹⁵.

Consequences for wildlife

Expiry of the Regulation without replacement would result in loss of ability to issue a range of licences, permits and other approvals, and regulate interactions with wildlife. These measures are used as management tools to ensure that impacts on wildlife are minimal and sustainable, risks to human safety are minimised, activities that would be otherwise prohibited under the Act¹⁶ can be authorised, and wildlife-based industries operate under an effective regulatory framework, which, if necessary, meets requirements for accreditation under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.

Loss of the Regulation would include the following consequences:

- licences and permits under the regulation would cease to exist, and while this would mean no licence fees, the means to allow most wildlife-related activities would also cease to exist; systems would become unworkable, as indicated below;
- for some time at least, the legal status of captive wildlife and cultivated plants lawfully taken, kept and used prior to expiry of the Regulation would become uncertain, or at the very least complex and confusing;

- unlawful taking of wildlife from the wild could escalate due to difficulties in tracking lawful origins of captive animals or cultivated plants;
- Australia-wide regulatory controls could be undermined, because persons in all States could 'launder' illegal wildlife due to confusion over Queensland controls on keeping and movement;
- wildlife risks to human safety would increase due to loss of ability to manage risks;
- Queensland's wildlife-based industries, including native plant growers, sellers and exporters, wildlife parks, and the kangaroo skin and meat industry, crocodile farms, emu farms and some commercial whale watching, would be unable to lawfully operate due to the loss of licence and permit provisions in the Regulation¹⁷;
- dealing in products made from native plants or animals would be curtailed due to the lack of capability to exempt 'processed products' from restrictions under the Act;
- pet shops and hobbyists would be unable to buy or sell, keep or move, birds, reptiles and other protected animals due to loss of licence capability;
- primary producers would suffer increased financial loss from native wildlife though lack of permit capability for damage mitigation actions.
- scientific research would be curtailed by the loss of permit capability.

In a broader sense:

- Queensland would be perceived as out of step with internationally and nationally recognised management practices and standards;
- obligations under the Act could not be met, including the requirement to manage wildlife in accord with specified management principles and conservation plans¹⁸; and

¹³ See sections 35 and 37 of the Act, and sections 27A, 27B, schedule 3 and schedule 4 of the Regulation.

¹⁴ See sections 15 to 26 of the Act.

¹⁵ The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 deals with these matters.

¹⁶ The Act (sections 88 to 90) prohibits taking, keeping and using protected animals, and taking and using rare or threatened protected plants, unless specifically authorised, including by 'a licence, permit or other authority given under a regulation'. The Nature Conservation (Protected Plants) Conservation Plan 2000 deals with common native plants as well as rare or threatened plants.

¹⁷ The Act, Regulation and conservation plans operate together – including conservation plans relating to macropod harvesting, protected plants and whales and dolphins. Commercial whale-watching permits are also issued under the Marine Parks Act 1982.

- obligations under Commonwealth laws could not be met, including those that relate to international conventions, such as the Convention on International Trade in Endangered Species, and the Biodiversity Convention¹⁹.
- specific exemptions from wildlife licence or permit requirements, for example keeping ‘exempted’ or ‘controlled’ birds, dealing in ‘processed products’, or selling tagged plants.

Conclusion

Under the no intervention ‘option’, as the above discussion indicates, Queensland’s protected areas and wildlife could not be adequately conserved, recreation and tourism values would deteriorate, and wildlife-based industries would shut down. These consequences are politically, environmentally, economically and socially unacceptable.

10.3.1 The ‘co-regulation’ option

The option of additional co-regulation was considered as an alternative (or part alternative) to the proposed regulation. Co-regulation refers to sharing of regulatory responsibilities between industry or other interested parties and Government. It usually involves some self-regulation, often backed by law, and may include other reductions in direct regulation, such as reduced regulatory requirements for accredited persons.

Some co-regulatory measures are already in place under the current Regulation in the form of self-regulation, simplified regulation, or measures that assist co-operative regulation. These include:

- ‘self-serve’ camping bookings via the internet;
- ‘self-registration’ camping at particular protected area campsites;
- use of ‘commercial activity agreements’ rather than permits for the conduct of some commercial activities on protected areas;
- use of cooperatively-developed codes of practice relating to bird keeping, crocodile farming, emu farming, exhibiting wildlife, and keeping reptiles and amphibians²⁰;
- reduced regulatory requirements for authorised plant propagators and cultivators;
- use of movement ‘advices’ rather than permits for specified wildlife movement;

Some additional co-regulatory measures were identified, as a possible alternative to provisions in the proposed regulation, and consideration given to whether these measures could satisfactorily deliver the policy objective. However, feasible co-regulatory alternatives to many proposed measures proved difficult to find. The diverse and often conflicting views and interests among the individuals and groups concerned with the management and use of protected areas and wildlife tend to limit the use of a shared regulatory approach, especially given that such an approach depends on common interests and incentives to operate successfully.

Potential measures identified include:

- wider use of internet camping bookings and ‘self-registration’ camping (on-site self-issued permits) in protected areas;
- wider use of negotiated commercial activity agreements to authorise commercial activities in protected areas, instead of permits or approvals under regulations;
- use of negotiated agreements under the Act, instead of permits or approvals under regulations, to authorise a range of activities involving the taking, keeping, use or interference with cultural or natural resources of protected areas; and
- in association with regulations, the wider use of codes of practice relating to activities in protected areas, and to the taking, keeping and using protected wildlife, international wildlife and prohibited wildlife.

These measures involve use of provisions in the Act, or existing provisions of the Regulation which are to be continued in the proposed regulation. While many of these measures have merit, none are considered capable of completely replacing the licence, permit or approval provisions in the proposed regulation. Each is discussed below.

¹⁸ See sections 72 to 75 of the Act.

¹⁹ The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 deals with these matters.

²⁰ Section 174A of the Act provides for approval of ‘codes of practice’.





Internet camping bookings and self-registration camping

The proposed regulation, like the current legislation, is to provide the capacity for self-registration camping and internet camping bookings. On-site self-registration and internet bookings have the advantage of campers being able to quickly obtain permits or bookings during business and non-business hours, with minimal 'red tape'. Currently, self-registration is available at more than 70 sites in 20 parks, and internet bookings can be made for sites in around 50 parks, with an intention to expand this in future.

However, not everyone can, or wants to, use internet bookings. Operation of on-site self-registration also involves extra costs in collecting and processing permits and payments, and does not suit locations where demand exceeds capacity (in which case, people can arrive to self-register, only to find no site is available). Therefore, camping bookings and permits need to be available through other channels, such as over the counter, by mail, fax or telephone.

Commercial activity agreements

The Regulation currently provides for the use of agreements to authorise commercial activities in protected areas²¹. The proposed regulation will continue this capability and clarify how it should operate. For example, particular sites may be designated at which commercial activities would be subject to commercial activity agreements, and opportunities for use of these commercial activity agreements may be allocated through an 'expression of interest' process.

The use of commercial activity agreements allows greater flexibility than a permit system, with opportunities for greater cooperation and less direct regulation, and the ability for payments to include non-monetary contributions, such as assistance with protected area management. However, individual commercial activity agreements are time-consuming and costly to negotiate.

As well, there can be potential equity issues, for example if there is a mix of operators under permits and commercial activity agreements for the same activity at the same site. It is intended that, in the interests of transparency, commercial activity agreements will be publicly available.

While commercial activity agreements could apply in specific cases where this would benefit both operators and the State, 'standard' permit arrangements could remain elsewhere.

Agreements authorising resource use of protected areas

An agreement under the Act, rather than a permit under a regulation, could authorise the use of resources in a protected area²². For example, an agreement could authorise activities such as stock grazing, bee keeping, water extraction or seed collecting.

The Act limits who can grant such an agreement. In most instances, the Chief Executive would need to sign in person; in other cases, specific consent would be needed from the Chief Executive or Minister.

Similar advantages and disadvantages apply to agreements for resource use as apply to commercial activity agreements (see above). If approval is justified, it would be simpler, faster and more appropriate in most cases to use a permit or approval under a regulation rather than an agreement under the Act.

Use of codes of practice

Codes of practice can be used as a more cooperative and flexible alternative to including specific requirements in regulations. However, adherence to a code needs to be mandatory rather than voluntary where non-compliance would have serious consequences. The Regulation currently provides that specified persons, usually licence holders, meet specific regulatory requirements if they abide by the relevant code.

²¹ Section 63 of the Regulation provides that a person must not conduct a commercial activity in a protected area other than under a permit or agreement.

²² Section 34 of the Act allows for the use of leases, agreements, licences, permits or other authorities (other than those issued under a regulation) for uses consistent with the management principles. Sections 35, 36 and 37 of the Act allow use of leases, etc for uses inconsistent with the management principles, subject to specific requirements (including, for ss.35 and 37, making a specific regulation.)

Codes of practice potentially could be used more widely than at present. While initially time-consuming and costly to develop, advantages can accrue in the longer term in terms of greater flexibility and reduced direct regulation. However, to be adopted, a code would need to meet specific outcomes and be enforceable to the necessary extent. One disadvantage in this regard is that infringement notices are unlikely to be available for 'a breach of a code of practice'. This means that enforcement action relating to a code of practice would need to proceed through a court.

Conclusion

The feasibility of co-regulatory measures as an alternative to the proposed regulation is highly limited due to:

- the lack of common interests among stakeholders;
- difficulties in providing incentives and sanctions sufficient to ensure effective compliance; and
- timeframes and cost associated with developing cooperative measures, in particular those specific to various interest sectors.

Some measures were identified that, while not providing an alternative to the proposed regulation, can operate more widely under the proposed regulation, although they will take time and resources to further develop and implement. These measures include the use of internet 'self-serve' camping bookings for protected areas, use of commercial activity agreements for commercial activities on protected areas, and use of approved codes of practice relating to activities in protected areas or taking, keeping and use of wildlife.

10.3.1 The 'proposed regulation' option

The proposed regulation is intended to replace the Nature Conservation Regulation 1994. It is not intended to differ in effect from the legislation it is to replace, except to the extent of the changes listed in Appendix 4. However, the proposed regulation will be drafted in accordance with modern standards and will not necessarily retain the same wording or structure as the present

legislation. Section 7 of this RIS (legislative intent), and Appendices 1 and 4 summarise the matters to be included.

The proposed regulation, like the present legislation, will operate in conjunction with a range of complementary non-legislative measures, including public information and education, use of voluntary codes of practice, and public involvement in planning and policy development.

The legislation provides a regulatory framework that includes legally enforceable licence and permit requirements. Fees paid for protected area permits, such as camping permits and commercial activity permits, contribute to the cost of facilities provided in protected areas and the management of protected area use. Fees paid for wildlife licences and permits contribute to the cost of administering the licensing system. Scheduled fees are not proposed to increase in the proposed regulation, although it is possible that a fee adjustment to take account of inflation (based on the Consumer Price Index) may occur independently of the review and remaking of the legislation. Such adjustments are made from time to time, often on 1 July each year.

Offences and penalties under the proposed regulation are intended to remain generally the same as those in the present legislation, except to the extent of any additions or changes in Appendix 4. However, in finalising the legislation, penalty levels will be reviewed to ensure that there is consistency for similar offences and that the maximum penalty levels are appropriate to the seriousness of each offence. For example, entering a national park (scientific) without a permit should carry a high penalty, because such entry could affect the survival of critically endangered wildlife or jeopardise long-term research programs.

Appendix 3 provides a summary of current offences and penalties under the Regulation. Most of these offences are also subject to infringement notices provisions under the State Penalties Enforcement Regulation 2000, which will need to be updated to continue the ability to issue infringement notices for offences under the proposed regulation.





The current legislation has been in place for nearly ten years and its operation has been thoroughly tested. It has been the subject of ongoing review and refinement over that period, including major review and amendment of wildlife management provisions, as previously discussed. As a result of these reviews, regulatory requirements have been simplified, while retaining the ability of the regulations to serve their purpose.

Conclusion

The proposed combination of licence and permit requirements, fees and other regulatory measures, operating with the Act and its other subordinate legislation, has been chosen as the best and most appropriate means of achieving the policy objective. The required outcomes cannot be satisfactorily achieved by alternative non-legislative means.

The proposed regulation is intended to cause minimum disruption in the 'changeover' from the present legislation. The only other feasible option for achieving the policy objective would be to significantly 'reshape' the operation of the present legislation. This would be too disruptive given the familiarity with, and acceptance of, the present legislation. The proposed regulation is clearly the best option.

11 Options and alternatives – Nature Conservation (Wildlife) Regulation 2005

11.1 Alternatives considered

The feasibility of alternatives to the proposed wildlife regulation is constrained by the need to continue the protection of native wildlife under the Act, in order to deliver the policy intent as indicated above. This inevitably requires delineation, by regulation, of protected wildlife, international wildlife and prohibited wildlife. Possible options, including no legislative intervention, are discussed below.

11.1.1 The 'no legislative intervention' option

Under this 'option', the Wildlife Regulation expires without renewal. The consequences of its expiry would include the following:

- The schedules of protected plants and animals would expire. Other than in protected areas, and on other State lands, most native plants and animals in Queensland would cease to be protected.
- Fish would still have the level of protection offered by the Fisheries legislation, and particular species would have limited protection under Commonwealth law. However, most species of frog, reptile, bird and mammal could be killed or caught without limit for commercial and recreational purposes.
- Broad-scale tree clearing would remain regulated by vegetation management legislation, but the Nature Conservation Regulation 1994 and Nature Conservation (Protected Plants) Conservation Plan 2000 would become unworkable. Other than on state lands, most native plant species could be cut down or dug up without limit for commercial and recreational uses such as horticulture or mulch.
- Use of native plants or animals by wildlife-based industries within Queensland would generally be free of regulation, so profiteering and over-exploitation could occur, although this could soon result in a drop in prices as a result of increased supply.
- Industries dependent on Commonwealth approval, such as the kangaroo skin industry and the native plant export industry, would become subject to direct Commonwealth regulation, in the absence of accredited Queensland arrangements, and could be severely restricted.
- The absence of protection in Queensland would have implications nationally. For example, unlawful wildlife from other States could be 'laundered' by its holders claiming a Queensland origin.

In a broader sense:

- Queensland would be perceived as out of step with internationally and nationally recognised wildlife protection measures;

- obligations under the Act could not be met, including the requirement to manage wildlife in accord with specified management principles and conservation plans; and
- obligations under Commonwealth laws could not be met, including those that relate to international conventions.

Conclusion

Under the no intervention ‘option’, as the above discussion indicates, Queensland’s wildlife could not be adequately conserved, and wildlife-based industries could be seriously impaired. These consequences are politically, environmentally, economically and socially unacceptable.

11.1.2 The ‘remaking the current Wildlife Regulation with significant changes’ option

The possibility of remaking the current Wildlife Regulation with significant changes to the content of schedules was considered. A lessened level of protection, for example, might allow more commercial and recreational use of some species. Therefore, an assessment was made of any need for changes in protection levels and any compelling reason to depart from the established criteria on which the schedules are based.

Considerations in this regard include the following:

- Apart from most invertebrates and fish, virtually all animals and plants native to Australia are listed as protected wildlife²³ in the Wildlife Regulation. There are no strong arguments for removal of any of these species from protected listing, and the retention of comprehensive protection has substantial community support.
- The class of protected wildlife to which any species (or other taxonomic group) is allocated is determined by the application of specific assessment criteria, including the application of consistent national and international scientific principles, and is subject to review by a scientific advisory committee. Any significant change in the assessment criteria would need to stand up to scientific scrutiny and achieve

widespread scientific and community acceptance. There is no apparent reason to depart from the accepted current criteria and review process.

- The listing of an animal as ‘international wildlife’ is based on specific criteria which take into account the level of threat to an Australian species posed by a genetic variant of that species from outside of Australia. Any significant change to these listings would need to be based on a change in the known threats.
- The listing of an animal as ‘prohibited wildlife’ is based on specific criteria which take into account the level of threat to native wildlife species posed by non-native wild species, in conjunction with other controls, including land protection legislation dealing with the control of pests. Any change would require a review of the threats posed by exotic wildlife taking into account the operation of related legislation.

Conclusion

There is no justification for any removal of native wildlife from protection under the Act. There is also no justification or need for changes in allocation to existing wildlife schedules, other than any changes that may result from the existing scientific review process. Any such necessary changes can be accommodated in the proposed wildlife regulation.

11.1.3 The ‘proposed wildlife regulation’ option

The proposed wildlife regulation is intended to replace the Nature Conservation (Wildlife) Regulation 1994. It is intended that the replacement schedules will mirror the existing schedules, except to the extent of any changes occurring as part of the ongoing process of scientific review. As previously indicated, there may be a reallocation of some species to take account of changes in the protected area wildlife classes through amendments to the Act (which have already been passed and will commence on a date to be proclaimed). The current declared management intents are proposed to continue

²³ This does not mean that these species are totally protected. Protected animals and plants may be taken, kept and used in accordance with exemptions and restrictions provided in regulations, including the Nature Conservation Regulation 1994 and conservation plans.





in effect, except to the extent of any changes necessary as a result of amendments of the protected area classes in the Act.

The proposed wildlife regulation, like the regulation it is to replace, will operate to underpin the Act and support other subordinate legislation under the Act.

Conclusion

The proposed wildlife regulation is the best and most appropriate means of achieving the policy objective. Proper operation of the Act and its other subordinate legislation cannot be achieved without scheduling of wildlife into the classes provided by the Act, and the allocation of wildlife into the relevant classes should reflect the existing schedules. The required outcomes cannot be satisfactorily achieved by alternative legislative or non-legislative means.

12 Who is likely to be affected

The proposed regulations will have some effect on a range of 'stakeholders', including indigenous people, recreational protected area users, protected area tourism and commercial interests including commercial resource users, protected area neighbours and local communities, recreational wildlife interests, wildlife-based industries, primary producers, government agencies (Commonwealth, State and local), conservation groups, and educational and scientific interests. Some interests include more than one of the above categories, for example, people involved in rehabilitating sick, injured or orphaned native animals may have interests in wildlife keeping, conservation, education and science.

The stakeholders affected by the proposed regulations are the same stakeholders affected by the current Regulations.

12.1 Indigenous people

Indigenous people have a fundamental interest in the conservation and management of protected areas and native plants and animals, including use for traditional and customary purposes. The proposed regulations will continue the current regulatory framework to conserve and use

protected areas and wildlife, to ensure that their values are protected for future generations.

The proposed regulation will continue to provide for Aboriginal tradition authorities and Island custom authorities to take, use, keep or interfere with a cultural or natural resource of a protected area, or to take, keep or use protected wildlife under Aboriginal tradition or Island custom.

Section 13A of the Acts Interpretation Act 1954 provides that an Act (including a Regulation under an Act) does not affect native title rights, unless the Act specifically provides that native title is affected. The proposed regulations will not contain any such provisions and so will not affect native title in relation to protected areas or wildlife.

12.2 Recreational protected area visitors

Recreational users of national parks and other protected areas undertake a wide range of activities, involving a range of different needs and potential conflicts. These activities can have significant environmental impact. Recreational use therefore needs to be managed, while providing for reasonable access and opportunities. The proposed regulation continues the existing permit requirements and permit fees, and restrictions on certain conduct and activities. At the same time, the proposed regulation will deliver, in part through the use of permit fees, substantial benefits in the form of facilities and services, as well as enhanced environmental protection and visitor safety.

Additional safety measures proposed include:

- a requirement for a person to wear a helmet if riding a three-wheeled or four-wheeled motorbike-style vehicle ('trike' or 'quad') in a protected area, consistent with requirements that already apply to riders of bicycles and motorbikes in these areas; and
- addition of 'parachute' to the definition of 'recreational craft', so that a person cannot use a parachute in a protected area (including 'base-jumping') without a recreational craft permit.

12.3 Protected area tourism and commercial interests

These interests include providers of accommodation, tours and transport and persons who conduct other activities for gain, such as commercial filming and photography.

Currently, commercial activities within protected areas must be conducted under a permit or an agreement. Fees scheduled in the Regulation apply under a permit, while negotiated fees apply under an agreement. However, the current legislation does not contain any further guidance about how such 'commercial activity agreements' are to operate.

Tourism management in protected areas, including the use of commercial activity agreements, has been the subject of extensive consultation with the tourism industry over the past few years through the 'Tourism in Protected Areas' Initiative (TIPA). The proposed regulation will implement measures agreed in this process.

Legislative provisions supported by the necessary policies and procedures will allow commercial activity agreements to operate as follows:

- Commercial activity agreements could apply to tours and other guided activities, generally in high demand sites and/or sites with limited capacity.
- Commercial activity agreements could also apply to commercial activities unsuited to 'standard' scheduled fees, e.g. mobile food-vending or equipment hire operations.
- The Chief Executive could designate sites or specific activities at those sites which would be subject to management under a 'commercial activity agreement' rather than a 'commercial activity permit'. The Chief Executive could also establish capacity limits to apply to such sites or activities. This will recognise both the recreational and environmental value of these sites.
- Traditional owners, the tourism industry, the local community and other non-commercial interests will be consulted when setting capacities for sites. The process for determining the level of

capacity to allocate to commercial tour operators would incorporate consideration of the needs of the community and of others such as educational and recreational groups. The process for determining the level of capacity to allocate to commercial tour operators would incorporate consideration of the needs of the community and of others such as educational and recreational groups.

- Terms and conditions of commercial activity agreements, including fee arrangements, would be negotiated. As the commercial value of business opportunities under commercial activity agreements will vary from location to location or activity to activity, it is neither possible nor desirable to schedule fees. However, it is intended that there be no reduction in the net revenue generated under Commercial Activity Agreements as compared with scheduled fees under Commercial Activity Permits. It is anticipated that commercial tour operators would be prepared to pay fees that are reflective of market demand for the opportunity to access sites. While the fees will be subject to negotiation and agreement on a case-by-case basis, a conceptual framework is being developed that will guide negotiations with operators to ensure that fees are equitable.
- Commercial activity agreements could be issued for periods of up to ten years with provision for annual renewals (subject to satisfactory reviews), to maintain a ten-year operating horizon. This would provide greater business certainty for operators. A major review and reassessment would occur at least every five years, with annual minor reviews. Commercial activity agreements could be varied, suspended or terminated under specified circumstances, such as environmental degradation, emergent public health and safety issues, a native title determination, or the development of an Indigenous Land Use Agreement. These measures are intended to provide long-term security of access for commercial operators subject to other Government obligations.





- The Chief Executive could specify a reasonable fee for assessing applications for capacity under commercial activity agreements. As the complexity of assessment will vary significantly in different cases it is not considered possible or desirable to schedule fees for assessing applications.
- Holders of commercial activity agreements would be permitted to transfer or sell all of their agreed capacity, provided that the new operator meets applicable 'appropriate person' criteria. A reasonable administrative fee could be charged for assessment of transfer applications.
- Holders of commercial activity agreements would be permitted to subcontract some of their agreed capacity. No administrative fee will apply.
- Enforcement provisions will need to be made to ensure that operators comply with agreement conditions.
- At sites that become subject to commercial activity agreements, any existing commercial activity permits for the relevant activity will be phased out through conversion to commercial activity agreements or by non-renewal on expiry. Negotiated fees would be phased in during the transitional period when both commercial activity permits and commercial activity agreements may be in place at the same site.
- Existing appeals provisions contained in Chapter 1 Part 3 of the Regulation could be extended to cover decisions to condition, vary, suspend, or terminate commercial activity agreements. A decision not to enter into a commercial activity agreement could be subject to appeal under the Judicial Review Act 1991.

The proposed regulation will include changes to benefit commercial activity permit holders, including a requirement for permit returns and fees to be submitted every three months rather than monthly, abolition of the need to pay fees for clients under 5 years old, and the abolition of the charge for record books required to be kept under these permits.

12.4 Commercial users of protected area resources

Permits can be issued for the commercial use of protected area resources, involving such activities as stock grazing, bee keeping, seed collecting or water extraction²⁴. The proposed regulation will continue to provide for permits relating to these matters.

12.5 Protected area neighbours and local communities

Protected area managers work with neighbours over matters of common concern, such as fire management, boundary fencing, feral animal control and straying stock. Most of these matters are dealt with under the Queensland Parks and Wildlife Service's *Good neighbour policy*.

Protected areas are also important to local communities, and in many instances they generate significant local income through recreation, tourism, and money spent on their conservation and management.

The proposed regulation will not significantly change existing policies or provisions relevant to neighbours and local communities, except in regard to the time for which unclaimed stock mustered off a protected area must be held before disposal. The Regulation provides for the seizure of stray stock and for the conduct of a general muster on a protected area, including notification of neighbours and their presence and participation in a general muster. Currently, 'seized property', which includes unclaimed stock, must be held for at least two months. While this may be appropriate for inanimate property, the retention of stock for two months is impracticable and uneconomic. It is proposed that the minimum time for unclaimed stock to be held be changed to two weeks, with a minimum notice of one week to be given before the stock can be sold. The Regulation provides for the proceeds of sale, less expenses, to be paid to the owner (assuming the owner can be identified). A shorter holding period would reduce the amount of expenses that would be deducted. (See item 29 in Appendix 4).

²⁴ These activities are generally not allowed in national park or national park (recovery) apart from special cases under sections 35 to 37 of the Act, including phase-out arrangements.

12.6 Recreational wildlife interests

Recreational wildlife interests include people keeping protected animals such as native reptiles, birds and amphibians, and people cultivating protected plants. The relevant provisions of the current Regulation were recently reviewed with extensive consultation, as previously discussed. The proposed regulation will continue the current arrangements.

12.7 Wildlife-based industries

Wildlife-based industries include native plant growers, sellers and exporters, wildlife parks and zoos, the kangaroo skin and meat industry, crocodile farms, emu farms, whale watching, and pet shops dealing in protected animals. As with recreational wildlife, the relevant regulations were subject to the recent wildlife management review, and the proposed regulation will continue the current arrangements.

12.8 Primary producers

Primary producers may have an interest as protected area neighbours (see above) or their production activities may be affected by native wildlife, such as birds feeding on crops. The proposed regulation is intended to continue to give effect to current provisions related to damage mitigation permits.

As with other wildlife-related provisions, these damage mitigation provisions were updated following the wildlife regulation review and took effect on 1 March 2004.

12.9 Government (Commonwealth, State and local)

Governments have various interests in the management of protected areas and wildlife. These interests occur in a wider context of environmental, social and economic responsibilities to their communities, with a range of obligations including those relating to biodiversity conservation, fair competition, financial administration, health and safety and native title rights.

The Commonwealth Government has relevant obligations under international conventions, for example the World Heritage Convention, Convention on International Trade in Endangered Species, and the Biodiversity Convention. Subject to relevant Commonwealth law, the State has responsibility for the management of protected areas and wildlife within its area of jurisdiction, as well as responsibility for other matters such as tourism and primary industries that affect and are affected by protected areas and wildlife. Local government has an interest in areas within its boundaries and how management impacts on local industries and communities.

12.10 Conservation groups

Conservation groups have an obvious direct interest in the effectiveness of the legislation in achieving the object of the Act – the conservation of nature. To be effective in this regard, the legislation operates at different scales, from protection of representative ecosystems through protected area declaration, and overall protection of native wildlife, down to individual authorisations that may involve a single animal.

12.11 Educational and scientific interests

Access to protected areas and wildlife is important to educators and researchers. Research and education provides significant community benefits, including enhancing our understanding of conservation threats and needs. However, the use of protected areas and wildlife for education and science needs to be managed to ensure that the relevant activities comply with required standards and do not cause unsustainable impacts.

12.12 Protected area users generally

Proposed new measures that may affect users of protected areas in general, rather than any particular interest sector, are discussed below.

It is proposed that a conservation officer would be able to direct a person to move camp to another camping site.





These 'direction to move camp' powers would only be able to be used in specific circumstances and only when the officer considers it reasonably necessary (see item 15 in Appendix 4). For example, a camper could be directed to move camp where there is a need to protect ground-nesting birds from disturbance, where there is a risk from wildfire, or where there is a need to reduce disturbance to others from the camper's use of a generator. Another applicable circumstance where a camper could be directed to move is where a 'standing camp' is kept in place for an extended period, thereby denying other campers the opportunity to use that particular camping site. This is particularly relevant where equivalent sites are not readily available and where camping permits that follow on from each other are obtained by more than one person associated with the camp. While this power would rarely need to be exercised, it provides an alternative to cancelling or suspending the camping permit.

These 'direction to move camp' provisions would complement those under s.89(3) and (4) of the current Regulation that relate to directing a person to leave a protected area or part of a protected area in the event of danger or emergency.

It is proposed to provide that, if the grant of an application for a permit or other approval involving a protected area may substantially restrict the reasonable use or enjoyment of the area, or part of the area, by other people, on a frequent or extended basis, the Chief Executive may require the applicant to give public notice of the application and to invite interested persons to make submissions (see item 3 in Appendix 4). This will allow the Chief Executive to consider the views of any people who might be significantly affected by the proposed activity

The provision could apply, for instance, to activities under a commercial activity permit, a group activity permit, or a permit to take, use, keep or interfere with cultural or natural resources – but only if the proposed activities involve frequent or extended, substantial restrictions on the reasonable use or enjoyment of the area. An activity requiring a

group activity permit (because it is likely to interfere with general public use of an area) would not necessarily trigger the proposed provision. In order to do so, the group activity would also have to satisfy the more stringent criteria underlined above. Examples of activities that may trigger a public notice process (depending on the scale of the activity and the proposed location) include ongoing commercial operations that involve exclusive use of a site or the erection of semi-permanent facilities, a sequence of concerts, or a sequence of major sporting events.

13 Cost-benefit assessment

Costs and benefits under the three evaluated options cannot be readily quantified, that is, expressed in dollar terms. This particularly applies to ecological costs and benefits. However, the close similarities between the proposed regulation and the current Regulation allows some estimate of the direct impact of the proposed regulation, for example, the likely numbers of licences and permits issued, and revenue to be obtained from fees.

Licence and permit statistics under the Regulation for 2003-04 are included in the tables in Appendix 2. Revenue figures listed below do not include revenue collected under the Recreation Areas Management Act 1988 for national parks in recreation areas on Fraser Island and Moreton Island. The collection of such revenue is unaffected by the proposed regulation.

In addition to the assessment presented in this RIS, information obtained from the RIS consultation process will be taken into account in the preparation of a final Public Benefit Test Report that will be used in formulating proposals to Government.

13.1 Protected area revenue

In 2003-04, revenue of approximately \$1.5 million came from camping permits for protected areas issued under the Nature Conservation Regulation 1994. Camping fees are \$4.00 per person (over the age of 5) per night, or \$2.25 per night if the camping is part of an approved educational tour or camp.

A further \$1.4 million dollars (approximately) was raised in 2002-03 from other protected area user charges. This came mainly from permits for commercial tours (including commercial camping), and permits for commercial filming or photography. A commercial tour operator pays daily fees of \$1.30 per client for an activity lasting less than 3 hours, or \$2.50 per client for an activity lasting 3 hours or more, and \$4.00 per night per client for camping.

13.2 Wildlife revenue

In 2003-04, revenue of more than \$875,000 came from wildlife licences and permits, predominantly from:

- recreational wildlife licences (\$333,000);
- commercial wildlife harvesting licences (\$161,000);
- commercial wildlife licences (\$150,000);
- wildlife movement permits and advices (\$113,000); and
- wildlife exhibitor licences and wildlife demonstrator licences (\$50,000).

These amounts, while large in total, are spread across a large number of licence and permit holders. For example, there are more than 5,000 recreational wildlife licence holders. Recreational wildlife licence fees range from a standard fee of \$50 per year to around \$200 per year (for a person keeping restricted animals). Commercial wildlife licences range from \$100 per year (spiders and scorpions only) to around \$1530 (birds, reptiles, spiders and scorpions).

13.3 Assumptions

For assessment purposes, assumptions were made about the three options as follows:

The 'proposed regulation' option will apply the same fee levels and management practices as at present, so it was assumed that, under this option:

- Protected area use and requirements for use of wildlife will start at the current level.
- Funds for visitor management of protected areas and the management of wildlife licensing systems, raised from fees and charges, will be at or slightly above current levels and will be spent in a

similar manner. (Some additional revenue may arise from the wider use of commercial activity agreements with negotiated fees).

- The proposed regulations will enable the use of protected areas and wildlife to be managed within ecologically sustainable limits.

Under the 'no legislative intervention' option, there is some variability in the possible scenarios, but likely consequences for protected areas and wildlife management have been identified in section 10 above.

Under the 'co-regulation' option, consistent with the discussion in section 10 above, likely consequences are:

- For the identified co-regulatory measures, implementation processes involving the development of policies and procedures, negotiations over commercial activity agreements and other measures would be costly and would take years to achieve.
- During this lengthy 'pre-implementation' period, the situation would be the same as the 'no legislative intervention' option, with its serious environmental, economic and social consequences.
- Even in the 'post-implementation' period, the co-regulation option would deliver most of the same undesirable consequences as the 'no legislative intervention' option.

13.4 Impacts of the proposed regulations

The impacts on Government, business and the community of the proposed regulations are outlined below. The proposed regulations will have generally the same effect as the existing Regulations, therefore implementation and compliance costs will be significantly less than if completely 'new' regulations were proposed.

13.4.1 Costs and benefits to Government

In this assessment, 'Government' means the Queensland Government. However, impacts on the Commonwealth Government and local governments were also considered.





The proposed regulations will impose costs on Government for implementation, and for undertaking ongoing protected area and wildlife management. Implementing the proposed regulations will incur costs such as printing new copies of the legislation and some administrative adjustment to take account of minor changes. Most other implementation costs will be minimal, given that the existing management regime already in place would be continued. However, there will be additional costs associated with negotiating and managing commercial activity agreements, including assessing and allocating capacities, and undertaking monitoring and reviews. These extra costs will be offset by revenue from use of these agreements.

Management of the use of protected areas and wildlife will be delivered by Government, but these costs will be partially offset by user-pays revenue, as indicated above, to approximately the same extent as under the current legislation.

Government will benefit from the proposed regulations in terms of meeting obligations and community expectations for the conservation of protected areas and wildlife. The changes to current provisions to be given effect in the proposed regulation (see Appendix 4) will benefit Government in terms of more effective operation of the legislation and in greater clarity and administrative efficiency. The wider use of commercial activity agreements may generate revenue in excess of management costs which can be reinvested in protected area management.

13.4.2 Costs and benefits to business

Protected area management

Commercial uses of protected areas include commercial tours, commercial filming and photography, visitor services such as food vending or equipment hire, and commercial resource uses, such as bee keeping, stock grazing or seed collecting. The largest commercial use of protected areas is by commercial tour operators.

The proposed regulations will provide substantial benefits to businesses using protected areas by ensuring protection of the resource base on which such business depends, as well as maintaining and improving access, facilities and services, sustainable commercial opportunities, client safety, and quality of client experiences.

These benefits will be delivered by a regulatory regime that will impose some restrictions on access and activities in the interests of environmental protection and maintaining sustainable, high-quality recreation experiences, and through the application of revenue derived from user charges.

Revenue from fees for protected area commercial activities contributes to the cost of administering the permit system, and provides a return to the State for the opportunity to use protected areas for commercial gain. Scheduled fees for protected area commercial activities will remain at the same level as those under the current Regulation (subject to any CPI based adjustments to take account of inflation). The proposed regulation will also clarify that the Chief Executive can set reasonable rentals, royalties or other charges for:

- a lease or other authority under sections 34 to 38 of the Act²⁵;
- commercial activity agreements authorising commercial activities in protected areas²⁶;
- grazing of stock in protected areas under a stock grazing permit or travelling stock permit; and
- natural resources taken from a protected area for a commercial purpose (e.g. seeds harvested on a conservation park or resources reserve).

The use of commercial activity agreements for commercial activities under 'TIPA' arrangements could involve the negotiated payment of higher fees than fees payable under a commercial activity permit (see 'Protected area tourism and commercial interests' in section 12.3 above).

²⁵ This could include a fee in relation to assessment of applications. The fee would be calculated by applying the relevant elements of the 'Full Cost Pricing Policy' for pricing 'fee for service' developed as a response to National Competition Policy and the Queensland Government's Financial Management Standards.

Such commercial activity agreements would apply to high demand sites and sites with restricted tourism opportunities, and any higher fees could be subject to a phase-in period. Higher fee costs may be passed on to clients, but increased costs to clients are not expected to be large, given that commercial activity fees are only a small component of overall client charges. (Current scheduled daily fees are \$1.30 per client for an activity of less than 3 hours, and \$2.50 for 3 hours or more). Benefits to tour operators from commercial activity agreements the will include greater business security and tradeable capacity.

The proposed regulation will clarify that 'daily fees' payable by commercial tour operators are payable for each calendar day. Some operators have been calculating daily fees on the basis of 'a 24-hour period' starting from when they arrive in a protected area, and these operators may be subject to an additional fee amount when using the calendar day calculation (see item 43 in Appendix 4).

Some administrative benefits will be delivered to commercial tour operators, for example returns of operations will be required three-monthly rather than monthly, and approvals may be given for electronic lodgement of returns.

It is proposed to allow the chief executive to determine circumstances in which a commercial activity permit or commercial activity agreement is not required for coverage of genuine news events or current affairs in protected areas. This is a practical approach that recognises that a permit might not be able to be issued quickly enough for a news team to cover an unexpected news event. However, filming or photography for a feature such as a lifestyle segment or program would still require a permit or agreement.

A new provision is proposed that would allow the Chief Executive to require an applicant for a protected area permit or other approval, subject to specific criteria (see item 3 of Appendix 4), to give notice of the application

and invite submissions to be made to the Chief Executive about the application. This would only apply to activities with a frequent or extended, substantial impact on other use of the area. Such applications would be rare and notification costs would be relatively small. There is potential advantage to the applicant through the Chief Executive making a permit decision taking account of submissions. For example the proposal may be able to be adjusted to minimise any conflict.

Fees paid by commercial tour operators using protected areas are heavily outweighed by the economic benefit derived by the operators, and the associated economic and social benefits (including employment) to local communities and the community at large. For example, a 2002 study²⁷ estimated a total direct and indirect financial value of \$395.6 million annually from tourism and recreation in the Daintree area, mostly related to the appeal of areas in the Daintree National Park. The same study estimated that upward of 3,489 jobs are generated in the far north Queensland region from tourism and recreation in the Daintree area.

Wildlife management

Wildlife-based businesses include native plant growers, sellers and exporters, wildlife parks and zoos, the kangaroo skin and meat industry, crocodile farms, emu farms, whale watching businesses and pet shops. The economic value of these businesses has not been specifically calculated, but totals thousands of million dollars per year²⁸.

The proposed regulations will provide substantial benefits to wildlife-based businesses by ensuring use of wildlife is ecologically sustainable, and by providing a system to authorise commercial use of wildlife that could otherwise be unlawful under the Act. The same licensing system allows such businesses to be deemed to meet any necessary Commonwealth Government requirements, for example, in relation to export and import of native wildlife including plants.

²⁶ Commercial activity agreements could be subject to a fee in relation to assessment of applications including EOLs. The fee would be calculated by applying the relevant elements of the 'Full Cost Pricing Policy' for pricing 'fee for service' developed as a response to National Competition Policy and the Queensland Government's Financial Management Standards.

²⁷ Tourism & Recreation Values of the Daintree & Fraser Island, Kleinhardt-FGI, March 2002.





Fees payable by wildlife-based business for licences and permits, and associated fees for movement advices, tags and implants and record books, contribute to the cost of administration of the licence system and may provide some additional return to the State. Scheduled fees will remain at the same level as those under the current Regulation (subject to any CPI based adjustments to take account of inflation).

The proposed regulation allows for the issue, at no cost, of damage mitigation permits to primary producers suffering significant damage from the actions of protected wildlife.

The economic value of wildlife-based industries heavily outweighs the fees and charges involved. Such industries and their associated benefits depend on sustainable management of their resource base. Additionally, wildlife 'niche' businesses, such as the growing birdwatching tourism industry, depend on the overall maintenance of wildlife diversity and abundance. The proposed regulations provide the means to ensure the continuation of sustainable, wildlife-based industries and business opportunities.

13.4.1 Costs and benefits to the community

Protected area management

Under the proposed regulation, the community will derive significant benefits in terms of conservation and management of protected areas with regard to environmental protection, access, facilities, services, sustainable recreation opportunities, public safety, and quality of recreational experiences. The proposed regulation will also help to secure sustainable economic benefits for local communities adjacent to protected areas.

Some restrictions will apply to access and activities within protected areas in the interests of conservation and maintaining sustainable, high-quality recreation experiences.

For non-commercial visitors, fees will apply for camping and for group activities that may interfere with general public use. These fees will remain the same as those under the current Regulation (subject to any CPI based

adjustments to take account of inflation). All other non-commercial permits and approvals for protected areas are free of charge. Revenue collected from user-pays fees contributes to the cost of visitor management, including facilities.

Minor additional costs may be imposed on a small number of protected area users through the proposed new requirement for riders of trikes or quads to wear a helmet. The cost of a helmet is low relative to the cost of the machine and will provide a direct safety benefit to the rider.

It is intended to correct the present anomaly whereby unattended camps can be left in place in protected areas without fees being payable. A \$4 per night charge, equivalent to a camping fee for one person, would be payable. This is a small charge that will affect few people. (See item 39 in Appendix 4).

The Regulation will clarify that a person who undertakes an overnight activity in a protected area that does not involve camping or the use of camping equipment will not require a camping permit (e.g. a person fishing or rogaining overnight).

Wildlife management

The proposed regulations will provide community benefits through the protection of wildlife, for which there is strong community support, while allowing for recreational keeping and use of wildlife.

Restrictions apply to activities that may impact on the sustainability of wildlife, or that have safety implications (such as feeding dangerous animals).

Fees apply to licences and permits for recreational wildlife harvesting and wildlife keeping, with some associated fees related to movement advices, tags and implants and record books. These fees will remain the same as those under the current Regulation (subject to any CPI based adjustments to take account of inflation). Licences or permits are not required for some non-commercial wildlife keeping²⁹, and some non-commercial permits and approvals are free of charge. Revenue collected from licence fees contributes to meeting the cost of the licensing system.

²⁸ See for example, the 1998 Senate report, *Commercial Utilisation of Australian Native Wildlife*, available at http://www.aph.gov.au/Senate/committee/rat_ctte/wild/report/index.htm

13.5 Justification for proceeding with the proposed regulations

The 'no legislative intervention' options are unsatisfactory because they have a range of serious, highly undesirable environmental, economic and social consequences, as indicated in sections 10 and 11 above, including:

- protected areas and wildlife would not be conserved;
- wildlife-based businesses would be constrained or could not lawfully operate;
- obligations under the Act would not be fulfilled; and
- Queensland would be perceived as out of step with internationally and nationally recognised practices and standards.

The 'co-regulation' option for management of protected areas and wildlife does not represent a viable alternative means of achieving the desired objective. The consequences of this option would be generally the same as the 'no legislative intervention' option; at the very least this option would be costly and slow to implement, with serious management problems occurring in the meantime, and therefore high potential for criticism from Australian and international stakeholders.

There are considerable net benefits to Government, business and community under the proposed legislation options due to the continuation of the necessary regulatory and revenue arrangements. These benefits are greater than under the alternative options. The proposed regulations provide better outcomes in terms of:

- the level and standard of access, facilities and services in protected areas;
- quality of protected area visitor experiences;
- sustainable commercial and recreational opportunities, in relation to both protected areas and wildlife;
- environmental protection;
- public safety; and

- sustainable economic benefits for local communities from the use of protected areas and from local wildlife-based businesses.

14 Fundamental legislative principles

The proposed options are consistent with fundamental legislative principles. Fundamental legislative principles are set out in the Legislative Standards Act 1992 to ensure that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The proposed regulation will impose some restrictions on business and the community through permit requirements and other obligations, which generally reflect those currently in place under the existing Regulation as follows:

- Permits or other approvals will be required for specified activities in protected areas that need to be managed in order to protect the environment and provide for public safety and well-being. For example, the camping permit system will match camping levels to the capacity of the environment and facilities. Applicants for, and holders of, permits other than camping permits, will have formal avenues for appeal over permit decisions.
- Restrictions and prohibitions will apply to certain actions or behaviour in protected areas in order to protect the environment and to provide for public safety and the rights of other visitors. These restrictions are similar to, and no more demanding than, those that apply in most public places. They include prohibitions on pollution and littering, and restrictions relating to noise, use of fires, use of facilities, and the driving and parking of vehicles.
- Licences, permits and other approvals will be required for specified activities relating to taking, keeping or using wildlife outside of protected areas, in order to protect wild populations and in order to be able to verify legitimate origins of captive wildlife. Applicants for, and holders of, licences and permits will have formal avenues for appeal over decisions relating to those licences and permits.

²⁹ For example, 'exempt animals' in schedule 9 of the Regulation.





- Restrictions and prohibitions will apply to some activities involving interference with, or disturbance of, wildlife. These restrictions are justified on conservation and public safety grounds and involve activities such as using a poison in a way that may harm a protected animal, interfering with a breeding place being used by a protected animal, and feeding a dangerous or venomous animal.
- The proposed regulation will continue existing specific powers conferred on conservation officers for environmental and safety purposes, consistent with powers under the Act, for example, the power to seize stray stock or illegal structures in protected areas, or to direct persons to leave a protected area in a dangerous or emergency situation.
- It is also intended to insert a provision that would allow a conservation officer, in particular circumstances, to direct a person camping in a protected area to move camp, provided another campsite is available (see item 15 in Appendix 4). This provides an alternative to the only enforceable measures currently available – suspending or cancelling the camping permit, or directing the person to leave the area.
- Penalties will apply for non-compliance with requirements of the legislation (Appendix 3 lists current offences and penalties). Existing penalty levels are generally considered appropriate, but will be reviewed in finalising the proposed regulation to take account of fundamental legislative principles.

It is also proposed that camping permits will not be subject to appeal provisions and complex amendment procedures that currently apply to all licences and permits. At present, the Regulation requires the Chief Executive, in every case of refusal of a licence, or granting a licence with conditions, to provide a statement of reasons, together with a notice that the person may appeal to a magistrate within 28 days. (In this context, 'licence' includes a camping permit). Notification and appeal processes also apply to amendment, suspension or cancellation of camping permits. Amendments can involve the use of 'show cause notices', and minimum timeframes of up to 28 days.

It is impracticable and unreasonable that these notification requirements and appeal processes apply to camping permits given that:

- Camping permit applications are usually informal (often verbal). As well, many locations are now subject to 'self-issued' permits via the internet or on-site 'self-registration'.
- Permits are rarely refused, because information in advance allows applicants to achieve a successful application (e.g. a campground has available capacity on certain dates). For example, in 2003-2004, some 120,000 camping permits were issued and no camping permits were refused, suspended or cancelled.
- Conditions imposed on camping permits are unlikely to be regarded as unreasonable or unacceptable to the permit holder.
- The short-term nature of camping permits (and in many cases, short notice) is unsuited to a court appeal process, complex procedures and specified timeframes.

The impositions of restrictions on protected area users under the proposed regulation are heavily outweighed by a demonstrated benefit, in that they facilitate sustainable environmental management and the provision of facilities and services, and enhance public safety and enjoyment. Persons likely to be most adversely affected are those who fail to comply with the legislation, and are therefore those most likely to cause detriment to the protected area environment and other visitors.

Similarly, impositions on people interacting with wildlife are heavily outweighed by the protection of native wildlife abundance and diversity, the sustainable management of wildlife-based industries, and the associated economic and social benefits that follow. Again, persons likely to be most adversely affected are those who fail to comply with the legislation, and are therefore those most likely to cause detriment to native wildlife.

15 National competition policy

National Competition Policy (NCP) requires that laws should not place restrictions on competition not justified by public interest. The proposed regulation will impose some restrictions on protected areas, and on the use of wildlife, as outlined above under the heading 'Fundamental Legislative Principles'.

Protected area restrictions are consistent with those that apply in similar situations, such as state forests or marine parks, and are allowable under National Competition Policy on the basis of public interest considerations – including matters relating to ecological sustainability, public and workplace health and safety, community standards, access and equity, and efficient allocation of resources.

The proposed regulation will provide a consistent approach across all declared protected areas in the State. It will apply consistent rules, uniformly and without discrimination to commercial, educational and recreational users, and to all persons conducting specified activities, for example persons conducting commercial activities.

Commercial activities at designated high-demand sites in protected areas may be subject to negotiated commercial activity agreements, rather than standard commercial activity permits. These arrangements were negotiated with the tourism industry and are considered to provide benefits to the industry and to the relevant protected areas. NCP principles allow for such measures provided that they are in the public interest and the benefits outweigh the costs.

The proposed regulation also provides a consistent approach to the management of protected wildlife. The wildlife management review, as previously discussed, resulted in improved wildlife licensing arrangements, including those applying to wildlife-based industries. These measures will be continued under the proposed regulation. Restrictions on the taking, keeping and use of wildlife, including captive wildlife, are consistent with related restrictions in other States, and are justified on public interest grounds, as indicated in relation to protected areas above.

15.1 Public Benefit Test process

The Public Benefit Test is proposed to take the form of a 'minor' (reduced) assessment, in accord with Treasury PBT guidelines³⁰, taking into account that:

- the proposed measures will affect relatively few stakeholder groups and the impact on competition will be relatively low;
- the complexity of the issues is low, with a low degree of uncertainty of the impact on stakeholders;
- overall community concern is expected to be low; and
- most proposed measures reflect those already in place, or have been developed in consultation with industry.

A 'Departmental Review' process is to be used, with the Review to be conducted by staff of the Environmental Protection Agency (EPA). This is considered an appropriate review model, given that the proposed restrictions on competition are primarily of a minor nature and can be justified on public interest grounds.

As well, the scope of the legislation lies squarely within the Environment portfolio, and stakeholder interests are reasonably well known due to the operation of the current legislation and previous consultative processes. The review will be funded from within the EPA's operating budget.

Extensive consultation with the tourism industry on proposed tourism management arrangements has occurred, and wildlife-based industries were consulted during the recent wildlife management review. Submissions on the RIS/draft PBT are being invited from stakeholders, other interested parties and the broader community. Further consultation may be undertaken following receipt of these submissions, depending on comments received.

A National Competition Policy Review Report, including recommendations, will be prepared within three months of the close of public comments on the RIS/draft PBT and submitted for Government consideration.

³⁰ The guidelines are available at: <http://www.treasury.qld.gov.au/office/knowledge/docs/ncp/public-benefit-test-guidelines.pdf>



16 Risk assessment

The Nature Conservation Regulation 1994 has been in operation for almost 10 years and risks are generally well known, with a range of whole of Government and Environmental Protection Agency risk management strategies in place.

In this context, a general risk assessment of the proposed regulation was conducted. The assessment concluded that:

- The proposed regulation will contain provisions as effective or more effective than the present Regulation, and will maintain a high level of consistency with related legislation, such as the Forestry Act 1959.
- Implementation of the proposed regulation will result in better management of risk than would apply if the existing Regulation continued to operate.
- Implementation of the proposed regulation will result in far better management of risk than would apply if the existing Regulation expires without replacement.

The proposed regulation contains provisions that target the areas of greatest risk – including risks of potential harm to protected areas and people using protected areas, and to wildlife, wildlife habitats and people interacting with wildlife. Significant penalties apply to ‘high risk’ offences, for example those involving the use of fire in protected areas (in recognition of the safety and environmental risks associated with wildfire) whereas lower penalties apply in cases of lesser risk, such as littering in protected areas. Regulations for keeping and use of captive wildlife recognise the need to verify its origin and movements, in order to ensure it has not been unlawfully taken from the wild. See Appendix 3 for a list of current offences and maximum penalties.

17 Employment impact statement

The remaking of the Nature Conservation Regulation 1994 with the additions and changes proposed is not expected to have adverse impacts on employment levels, because the existing management regime will remain substantially unchanged.

Existing and future employment opportunities will be protected through sustainable management of the protected areas and native wildlife on which business depends. For further detail see section 13.4 above.

Appendix 1

Measures to be included in the proposed Nature Conservation Regulation 2005

This appendix lists measures to be included in the proposed regulation in regard to:

- protected areas, including wildlife within protected areas;
- wildlife outside of protected areas; and
- general matters (relating to both protected areas and wildlife).

It is intended that the proposed regulation will generally reflect the effect of the provisions of the regulation which it is to replace – the Nature Conservation Regulation 1994 . However, some changes and new provisions are proposed, so this appendix should also be read with other parts of this RIS, especially Appendix 4. Particular reference should also be made to the current Nature Conservation Regulation 1994 , together with the Act and other subordinate legislation under the Act.

Section numbers and schedules of existing provisions in the Nature Conservation Regulation 1994 are given in brackets for general reference. However, the proposed regulation will not necessarily retain the particular wording, structure or section numbering of the current Regulation.

Protected area matters

The Act (section 14) creates 12 classes of protected area. Protected areas in each class are listed in the Nature Conservation (Protected Areas) Regulation 1994.

Protected area permits, authorities and approvals

- (1) Authority and permit types, durations, and insurance requirements will be specified (ss.28, 35, 37 to 39A).
- (2) Authorities, permits or written approvals can be required to do the following in protected areas³⁴:
 - take, use, keep or interfere with cultural or natural resources under Aboriginal tradition or Island custom (ss.28 to 36)
 - camp (ss.40 to 46)
 - enter or carry out activities in a restricted access area (ss.47 to 49)

- take, use, keep or interfere with cultural or natural resources (ss.50, 51)
- graze stock, muster stock and travel stock (ss.52 to 61)
- enter a national park (scientific) (s.62)
- conduct a commercial activity, (ss.63, 63A), proposed new provisions clarifying how commercial activity agreements will operate
- solicit donations or information (s.64)
- conduct a group activity (s.65, see definition of 'group activity' in schedule 1)
- use a recreational craft (s.66)
- conduct a special activity (s.67, see definition of 'special activity' in schedule 1)
- erect a structure or undertake work (ss.71, 72)
- obtain authorisation in regard to traffic control sign (s.73)
- use a vehicle other than on a road (s.74)
- bring in, possess or use appliances (e.g. weapons, traps) (s.77)
- bring in a plant (s.78)
- cordon off or claim exclusive use of an area or facility (s.79)
- use a herbicide or pesticide (s.81)
- land an aircraft or recreational craft (s.82)
- bring in a live animal or have a live animal under a person's control (s.86)
- feed a dangerous or venomous animal (s.87)
- disturb a dangerous or venomous native animal (s.87B)
- use a generator or compressor (s.88)
- eradicate or control non-native wildlife (weeds and feral animals) (s.91).

Use of regulatory notices and signs in protected areas

- (3) Regulatory notices and associated information notices may be used for specified matters, and must contain particular information (ss.91A to 91D).
- (4) Persons can be required to comply with Regulatory notices and signs in regard to:
 - taking fish, invertebrate bait or mudcrabs (s.27)
 - prohibited camping (s.41)
 - restricted access (s.47)

³⁴ Approvals for related activities may be combined in a single permit, for example a camping permit may authorise use of a generator.





- special activities (s.67)
 - prohibited access (s.68)
 - prohibited fires (s.69A)
 - driving, riding, parking, standing and use of vehicles, boats, and recreational craft (ss.73, 74)
 - bringing in plants (s.78)
 - human waste disposal (s.79)
 - litter (s.83)
 - horse riding in a conservation park or resources reserve (s.86)
 - bringing dogs into specified conservation parks and resources reserves (proposed new provision)
 - feeding native animals, keeping food safe from native animals (ss. 87, 87A)
 - using generators or compressors (s.88)
 - public health and safety (s.89A).
- direction to put out a fire or reduce a fire's intensity (s.70)
 - seizure and removal of structures or works undertaken without approval, including direction to remove a structure or work or to stabilise or rehabilitate a work (s.72)
 - direction relating to the use of vehicles, boats or recreational craft (s.75)
 - seizure and removal of vehicles, boats, recreational craft, aircraft and appliances (ss.76, 90)
 - direction to leave an area (s.89)
 - direction to move camp to another available site (proposed new provision).

Conduct in protected areas:

- (5) Restrictions and prohibitions can apply to the following matters:
- lighting fires (ss.69 to 70)
 - use of vehicles, boats and recreational craft (ss.74, 75)
 - disorderly behaviour (s.79)
 - damage or interfere with signs, fences, gates, buildings or structures. (s.79)
 - pollution or misuse of water (s.80)
 - offensive or harmful substances, litter, dumping or leaving materials (ss.81, 83 to 85)
 - flying below restricted height (s.82, schedule 5)
 - control of dogs (proposed new provisions)
 - noise control regarding use of radios or other sound systems (s.88)
 - matters also subject to regulation by permits or signs (see other subheadings above).

Compliance and enforcement in protected areas³²

- (6) Provisions can apply to various matters relating to environmental protection, safety, protection of life and property, or disturbance of persons, including the following:
- seizure of stock on protected areas (ss.60, 61)

Other protected area provisions

- (7) The proposed regulation can also contain measures related to the management of particular protected areas, or parts of those areas, including:
- application of the regulations to particular tenures within protected areas (ss.23 to 25)
 - powers allocated to trustees appointed to manage conservation parks and resources reserves (s.26, schedule 1)
 - protected areas in which fish, invertebrate bait and mudcrabs may be caught, and the conditions that apply (s.27, schedule 2)
 - specific permitted uses of national park or national park (recovery) that are inconsistent with the management principles (ss.27A, 27B, schedules 3, 4).

Management of wildlife outside protected areas³³

The Act (section 71) defines three main classes of wildlife – protected wildlife, international wildlife and prohibited wildlife. Protected wildlife is, in turn, made up of five classes (presumed extinct wildlife, endangered wildlife, vulnerable wildlife, rare wildlife and common wildlife)³⁴. Wildlife in each class is listed in the Nature Conservation (Wildlife) Regulation 1994.

Wildlife includes animals and plants (including freshwater, marine and terrestrial).

³² See also investigation and enforcement provisions in Part 9 of the Act.

General provisions – licences, permits and other approvals

- (8) The proposed regulation will include a system of licences, permits and other authorities required to take, use, keep or move wildlife, subject to specific requirements and exemptions.
- (9) Types and durations of licences, permits and other authorities, and the details these must include, will be specified (ss.112 to 115, 138 to 142, 170, 275, 324, 356 to 358).
- (10) Authorities can be required to take, keep or use protected animals or plants under Aboriginal tradition or Island custom (ss.141, 324 to 329, 358, 388 to 390).
- (11) Restrictions will apply to the grant of licences, permits or other authorities, including provisions related to:
- minimum age limits (ss.108, 277)
 - need to be satisfied that activities will not adversely affect the ecological sustainability of wildlife (s.109)
 - need to be satisfied that captive wildlife is of lawful origin (s.109)
 - lawful use of substances such as regulated poisons (s.110)
- (12) Restrictions or requirements will apply to licences, permits or other authorities, including provisions related to:
- carrying or display of the relevant authority, and carrying and production on request of personal identification (ss.129 to 131)
 - inspection, sampling and implanting of animals (s.132, 135, 137)
 - wildlife to be bought from and sold to authorised persons only (ss.133,134)
 - disposal of dead animals (s.135, 136)

Licences, permits and other approvals – animals

- (13) Licences, permits or other approvals can be required to take, use, keep or move protected, international and prohibited animals, and in particular, to:
- allow a veterinary surgeon to keep and use an international or prohibited animal (s.166)
 - keep a dead international animal (s.167)

Licences, permits and other approvals – plants

- (14) Licences, permits or other approvals can be required to take, use, keep and move protected plants³⁵, and in particular, to:
- use protected plants for a commercial purpose (ss.360 to 364)

- interact with wildlife for a commercial purpose (ss.171 to 177)
- keep and use protected or international animals for a commercial purpose (ss.178 to 191, schedule 9, part 3)
- keep and use protected or international animals for a recreational purpose (ss.192 to 203, schedule 9)
- harvest protected animals for a commercial purpose (ss.204 to 213)
- harvest protected animals for a recreational purpose (ss.214 to 222)
- keep and use animals for a temporary display (ss.223 to 232)
- keep and use animals for a display in an exhibit (ss.233 to 248)
- farm protected animals (ss.249 to 261)
- for a Commonwealth or State museum to take, keep and use protected, international or prohibited animals (ss.262 to 274)
- take, keep and use protected animals that may cause damage or threaten human health or well-being (ss.278 to 284)
- take, use or keep protected animals for an educational purpose (ss.285 to 289)
- keep a protected animal for a limited specified purpose (ss.290 to 302)
- care for and rehabilitate protected animals (ss.303 to 312)
- take, use or keep protected animals for a scientific research purpose (ss.313 to 319)
- observe or interact with a whale for a commercial purpose ('whalewatching') in areas other than protected areas or marine parks (ss.320 to 323)
- keep a collection of dead protected wildlife (s.330)
- take, keep and use a common animal for Australian Defence Force military training purposes (ss.331 to 335).

³³ The management of wildlife within protected areas will be covered under protected area provisions.

³⁴ The Queensland Parliament has passed amendments to change these five protected wildlife classes to six. The six classes will be:— extinct in the wild wildlife, endangered wildlife, vulnerable wildlife, rare wildlife, near threatened wildlife, and least concern wildlife. At the date of publication of this RIS, the change to these six classes was not yet in effect.





- use protected plants for a recreational (non-commercial) purpose (ss.365 to 368)
- take and use protected plants for a commercial purpose (s.369)
- take and use protected plants for a recreational (non-commercial) purpose (s.370)
- take and use protected plants for Commonwealth or State herbarium purposes (ss.371, 372)
- take protected plants under a clearing permit (s.373)
- take and use protected plants that may cause damage or threaten human health or well-being (ss.374 to 379)
- take and use protected plants for an educational purpose (ss.380 to 83)
- take and use protected plants for a scientific research purpose (ss.384 to 387)
- be approved as an authorised cultivator or propagator for protected plants (ss.391 to 396).
- the Chief Executive of the Environmental Protection Agency – for specific official purposes (s.144)
- veterinary surgeons – to take, keep and use protected animals (s.145)
- specified officials – to move and dispose of dead protected animals (s.146, see also s.169)
- Australian Defence Force members – to take and keep a common animal from Commonwealth land for survival training purposes (s. 147)
- taking and use of dugong or marine turtle under Aboriginal tradition or Island custom if the person holds a permit granted under Commonwealth or State marine parks laws (s.148)
- interactions with protected animals, including under marine park laws (s.159)
- the official shark control program (s.148A)
- ‘exempt animals’ (s.149, schedule 9, part 10), ‘controlled animals’ (ss.150, 151, schedule 9, part 2), specified fish (s.154), scorpions and spiders (s.155)
- particular reptiles and common amphibians (ss. 152, 153)
- scientific or educational use of animal parts (s.156)
- sick, injured or orphaned animals (ss.157, 158)
- wholesalers moving skins, carcasses or meat into the state (s.160)
- specific movements of animals kept under an exemption (ss.161 to 164)
- taking specified reptiles to feed other reptiles (s.199)
- using protected plants and plant parts, in specified circumstances – e.g. plants subject to plant breeder’s rights, plants propagated or cultivated by authorised persons, retail sale of specific plants, plant parts for educational or scientific purposes (ss. 341 to 355)
- designated processed products made from protected wildlife are excluded from definition of protected animal or protected plant (ss.404 to 408, schedule 6).

Movement permits and other approvals

- (15) Permits or other approvals can be required to move protected, international or prohibited wildlife, including within, into and out of the State, as follows
- Movement permits can be required (ss.397 to 403, 418)
 - Written authorisations can be given for particular movements (ss.168, 169)
 - Specific wildlife movement can be exempt from a movement permit (e.g. moving an animal to where it will be kept, or to a veterinary surgeon, or to a temporary display), although in certain cases a ‘movement advice’ must be used (ss.102 to 106, 121 to 128, and also the exemptions listed below).

Licences, permits and approvals – exemptions

- (16) Exemptions, including conditional or partial exemptions, will apply to requirements for permits or other approvals, for example in regard to:

³⁵ These provisions will operate in conjunction with provisions under the Act and the Nature Conservation (Protected Plants) Conservation Plan 2000.

Compliance and enforcement³⁶

- (17) Provisions can apply to matters relating to the protection of native wildlife and human well-being, including the following:
- seizure of particular vehicles or appliances (s.419)
 - ‘stop action’ orders (s.430 to 432).

Other wildlife-related provisions

- (18) The proposed regulation will also contain measures relating to:
- using a dog or other animal to take protected animals (s.96)
 - housing and care of protected animals (s.97)
 - protected animals that are not self-sufficient (s.98)
 - reporting the theft of captive wildlife (s.99)
 - containers used to move protected animals (ss.100, 101)
 - verification of a wildlife buyer’s identity (s.107)
 - using poisons or adhesive substances to take protected animals (s.409)
 - interfering with animal breeding places (s.410)
 - feeding native animals, including dangerous animals, disturbing dangerous native animals (ss.411 to 413)
 - procedures related to taking marine mammals, marine turtles and protected sharks (ss.414, 414A)
 - release of animals into the wild (s.415)
 - release of reproductive parts of non-native plants into the wild (s.416)
 - secure housing of certain domestic birds and animals other than domestic or protected animals (s.417, schedule 8)
 - conservation value payable for protected wildlife for section 95 of the Act (ss.426 to 429)
 - use of tags for wildlife identification or to designate a processed product (ss.420 to 425).
- (19) Definitions of terms, and other interpretations relating to the operation of wildlife provisions will be included as necessary (e.g. ss.93 to 95, 116 to 119, also schedule 10).

Provisions applying to both protected areas and wildlife

- (20) Procedures will be specified for licences, permits and other authorities (s.3C), in regard to:
- applications (ss.4, 4A)
 - decisions to grant or refuse applications (s.5)
 - conditions, and compliance with conditions (s.6),
 - transfer, suspension, cancellation, renewal and amendment (ss.7 to 16)
 - appeal of decisions (ss.17 to 22)
 - records and return of information (ss.441 to 459).
- (21) Fees relating to licences, permits and other matters will be specified (ss.461 to 472, schedule 7).
- (22) General provisions, including compliance and enforcement provisions, will include matters relating to:
- how to deal with particular seized property (ss.433 to 439)
 - accumulation of demerit points for particular offences (ss.440).
 - keeping of records and documents (ss.441 to 451, 473)
 - return of licence of permit information (ss.452 to 460)
 - requirement to notify change of name or address (s.474)
 - prescribed class of officer – conservation officer (s.475)
 - approved forms (s.475).
- (23) Penalties will be specified for contravention of particular provisions. See Appendix 3 for a list of current offence provisions under the Nature Conservation Regulation 1994 .
- (24) Definitions and other matters of interpretation will be included as necessary (schedule 10, and definitions that apply to specific parts of the legislation, e.g. ss.93 to 95).
- (25) Transitional clauses will provide for continuity between the Nature Conservation Regulation 1994 and the proposed regulation.

³⁶ See also investigation and enforcement provisions in Part 9 of the Act.



Appendix 2

Statistics for licences and permits under the Nature Conservation Regulation 1994

The following information is mostly from the Environmental Protection Agency's Annual Report 2003-04

Protected area authorities/permits granted and suspended/cancelled, and applications refused in the year to 30 June 2004

Category of permit or other approval	No. granted	No. refused	No. suspended/cancelled
Aboriginal Tradition Authority	0	0	0
Island Custom Authority	0	0	0
Camping ³⁷	134,828	0	0
Restricted access area	1	0	0
Stock grazing	9	0	0
Stock mustering	32	0	0
Travelling stock	1	0	0
Entering a national park scientific	38	0	0
Commercial activity permits ³⁸	438	7	8
Commercial activity agreements	21	0	0
Soliciting donations or information	0	0	0
Group activity	306	3	4
Using recreational craft	1	0	0
Special activities	5	0	0
Taking, using, keeping or interfering with cultural or natural resources, for:			
• apiary location	0	0	0
• taking of water	0	0	0
• scientific purposes	215	0	0
• another purpose (educational).	19	0	0

Licences for the taking and use of wildlife granted, suspended or cancelled and applications refused in the year to 30 June 2004

Category	No. issued	No. refused	No. suspended/ cancelled
Commercial wildlife	148	4	0
Recreational wildlife	6232	3	37
Recreational wildlife (specialist)	269	0	2
International wildlife	239	0	0
Commercial wildlife harvesting	36	0	0
Recreational wildlife harvesting	14	0	0
Wildlife demonstrator	28	0	0
Wildlife exhibitor	54	0	0
Wildlife farming	15	0	0
Museum	0	0	0
Herbarium	1	0	0

Permits for the taking and use of wildlife granted, suspended or cancelled and applications refused in the year to 30 June 2004

Category	No. issued	No. refused	No. suspended/ cancelled
Educational purposes	29	0	0
Keep protected wildlife	8	0	0
Keep prohibited wildlife	0	0	0
Rescue/rehabilitation	1027	0	0
Scientific purposes	263	0	0
Wildlife movement	629	0	0
Commercial whale watching ³⁹	0	0	0
Clearing	16	0	0

Authorities for the taking and use of wildlife granted, suspended or cancelled and applications refused in the year to 30 June 2004

Category	No. issued	No. refused	No. suspended/ cancelled
Aboriginal Tradition Authority	0	0	0
Island Custom Authority	0	0	0
Collection Authority	0	0	0



Appendix 3

Current offences and penalties under the Nature Conservation Regulation 1994.

These offence provisions and maximum penalties are intended to be retained under the proposed regulation, except for changes indicated in Appendix 4. However, the section numbers and wording of 'replacement provisions' may differ from existing provisions, even though the effect may be the same.

<i>Nature Conservation Regulation 1994</i> – section numbers of offence provisions	Offence	Maximum penalty in penalty units (1 penalty unit = \$75)
General – licences etc		
6	Fail to comply with condition on licence/permit/authority	80
11(1)	Fail to return suspended/cancelled licence/permit/authority within 14 days	20
15(3)	Fail to comply with notice to return licence/permit/authority within required stated time	20
Protected areas		
27(4)	Take permitted animal from prescribed area in contravention of restriction/prohibition	165
27(5)	Remove live permitted animal from prescribed area	165
36	Fail to ensure person under Aboriginal tradition/Island custom authority undertakes authorized activity in way consistent with Aboriginal tradition/Island custom	165
40(a)	Camp in protected area without permit	20
40(b)	Number of persons camping protected area exceeds that in permit	10
41	Camp in protected area whilst prohibited under regulation/regulatory notice/camping permit.	80
42(1)	Allow more people to camp than stated	20
42(2)	Fail to comply with conditions of camping permit	10
45(1)	Fail to display camping permit	2
45(3)	Fail to take reasonable steps to ensure display of permit/tag	2
46(2)	Remove camping permit on display	20
48(1)	Enter/remain within restricted area without permit	80
49	Enter restricted access area for unauthorised purpose	80
52(1)	Graze stock without permit	165
52(2)	Graze animals other than specified	165
55(1)	Muster stock without permit	120
56(2)	Fail to restrain animal used to muster stock	120
57(1)	Travel stock without permit	120
57(3)	Travel animals other than specified	120
59	Allow stock to stray into protected area	165
62	Enter/remain within a national park (scientific) without a permit	165
63(1)	Conduct commercial activity without authority	165
63(2)	Fail carry permit/copy while conducting commercial activity	50
63(3)	Fail maintain record book as prescribed	50

Nature Conservation Regulation 1994 – section numbers of offence provisions	Offence	Maximum penalty in penalty units (1 penalty unit = \$75)
63A(1)	Fail to submit return of operations in approved form	120
63A(2)	Fail to pay outstanding fees	120
64(1)	Solicit donations/information without authority	20
64(3)	Solicit donations/information in a way that causes a disturbance to others	20
65	Conduct group activity without authorisation	50
66	Use recreational craft without permit	80
67	Conduct special activity without permit	80
68(1)	Enter protected area prohibited by regulatory notice	120
68(2)	Enter/remain in protected area prohibited by notice	120
69A(1)	Light fire when prohibited by notice/permit	165
69A(2)	Light/keep/use fire in unauthorised place/manner	165
69B(1)	Deposit lit/burning/smouldering etc substance/material in a protected area	165
69C(1)	Fail to put out fire	165
70(2)	Fail to control fire as directed	165
71(1)	Erect structure (other than camping structure under camping permit)/carry out work without/in contravention of written approval	165
71(2)	Allow structure/work to remain in area longer than approved	165
72(6)	Fail to comply with direction to stabilize or rehabilitate work	165
73(3)	Fail to control vehicle / boat / recreational craft in compliance with sign	20
73(4)	Fail to comply with authorisation for vehicle /boat/recreational craft	20
74(1)(a)	Drive/ride a vehicle/boat while unlicensed	20
74(1)(b)	Drive/ride a unregistered vehicle/boat	20
74(1)(c)	Carry more than one passenger on motor cycle	20
74(1)(d)	Drive/ride vehicle/boat in way causing/may cause vehicle/boat to swerve/veer/turn violently	20
74(1)(e)	Drive/ride vehicle/boat/recreational craft at speed/in way causing/may cause danger to person/danger/fear to other person /damage to area	20
74(1)(f)	Ride/travel in moving vehicle in manner not permitted	20
74(1)(g)	Use vehicle/boat/recreational craft in disruptive manner	20
74(1)(h)	Drive/ride/attempt to drive/ride vehicle on surface other than specified	20
74(1)(i)	Park/stand vehicle/boat in manner obstructing/preventing free passage	20
74(1)(j)	Drive/ride vehicle fitted with seat belts not properly fastened around person	20
74(1)(k)	Drive vehicle while seat belts/child restraints not properly fastened around child	20
74(1)(l)	Ride motor cycle/bicycle without a helmet	20
75(4)	Fail to comply with direction regarding control of vehicle	50





Nature Conservation Regulation 1994 – section numbers of offence provisions	Offence	Maximum penalty in penalty units (1 penalty unit = \$75)
77(1)	Bring/possess/use appliance without approval	120
78(1)	Bring plant into protected area without approval	50
79(1)(a)	Disorderly/create a disturbance	50
79(1)(b)	Cordon off part of area/barbecue/table/other facility	50
79(1)(c)	Claim to have exclusive right to use part of area/barbecue/table/other facility	50
79(1)(d)	Defecate within 10m/greater distance stated in notice of lake/watercourse/walking track	50
79(1)(e)	Bury human wastes within 10m/greater distance stated in notice of lake/water course/occupied or established campsite/site designated by regulatory notice as campsite/ walking track/ other public facility	50
79(1)(f)	Leave human wastes unburied	50
79(1)(g)	Destroy/damage/mark deface interfere with sign/notice/fence/gate/building/structure	50
80(1)	Pollute lake/watercourse	50
80(2)(a)	Interfere with/damage water supply/water storage facility	50
80(2)(b)	Allow water from tap to run to waste	50
80(2)(c)	Wash vehicle/clothing/cooking utensils/anything else in lake/watercourse	50
80(2)(d)	Allow animal in lake/watercourse	50
81(1)	Bury / leave noxious / harmful substance / offal / carcass / skeleton in protected area	120
81(2)	Use herbicide/pesticide without approval	120
82(1)	Fly over at lower height than specified	120
82(2)	Land aircraft/recreational craft without approval	120
83(1)	Deposit litter in prohibited manner	20
83(2)	Deposit litter brought into area	20
83(4)	Fail to remove litter as directed	20
84	Dump/leave/abandon a vehicle/boat	120
85	Dump/leave used/waste materials	120
86(1)	Take/control animal without authority	20
87(1)(a)	Feed native animal that is dangerous / venomous / capable of injuring a person in a protected area	40
87(1)(b)	Feed native animal in protected area when prohibited by regulatory notice	20
87A(1)(a)	Fail to ensure food is kept safe from native animal in protected area	40
87A(1)(b)	Fail to keep food safe from native animal in protected area in way stated in regulatory notice	40
87B(1)	Disturb native animal that is dangerous / venomous/capable of injuring a person in protected area	40
88(1)	Use generator/compressor/similar motor without authority	50
88(2)	Use radio/tape recorder/sound system causing unreasonable disturbance to person/native animal	50

Nature Conservation Regulation 1994 – section numbers of offence provisions	Offence	Maximum penalty in penalty units (1 penalty unit = \$75)
89(2)	Re-enter area within 24 hours/without relevant permit after being directed to leave	80
89(5)	Fail to leave area when directed	80
89A(3)	Fail to comply with notice (public health & safety) in protected area	50
Wildlife (outside of protected areas)		
Keeping and using plants and animals		
General requirement about taking, keeping and use of protected wildlife		
96(2)	Use dog/other animal to take protected animal	120
97(1)(a)	Fail to keep protected animal in secure cage/enclosure to prevent escape/protect it from predators	20
97(1)(b)	Fail to supply protected animal with sufficient shelter/ventilation/water/food	20
97(1)(c)	Fail to provide protected animal with opportunity for exercise	20
97(3)	Fail to comply with notice as required	20
98(2)	Buy/accept/sell/give away/send/move animal without Chief Executive's approval	20
99(2)(a)	Fail to notify police/conservation officer about theft of protected wildlife	20
99(2)(b)	Fail to keep copy of police report/produce copy of police report to conservation officer	20
99(3)	Fail to record theft in a record book as prescribed	20
Containers for moving animals		
100(2)	Fail to ensure container in which animal is transported is able to keep the animal stable in ordinary transportation conditions/prevent the animals escape/protect the animal from predators/prevent interference by other persons	20
101(2)	Fail to attach label specifying name, address and licence number of sender and receiver/name of animal/number of animals/that animal is dangerous or venomous to container in transport	20
Movement of plants and animals		
General provisions about movement advices		
103	Make more than 1 movement under a movement advice	50
104(2)	Fail to give part 1 of movement advice to Chief Executive within 7 days	50
104(3)	Fail to give part 3 of movement advice to Chief Executive within 7 days	50
105(2)	Fail to keep copy of movement advice in secure place for prescribed time	50
105(3)	Fail to produce movement advice for inspection	50
106(1)	Interfere with a completed movement advice	50





Nature Conservation Regulation 1994 – section numbers of offence provisions	Offence	Maximum penalty in penalty units (1 penalty unit = \$75)
Identification and information requirement		
107(1)	Sell protected/international/prohibited wildlife without verifying buyer's identity/inspecting buyer's authority/recording prescribed information	80
107(2)	Buy protected/international/prohibited wildlife without verifying seller's identity/inspecting seller's authority/recording prescribed information	20
General authorized movements – animals		
121(4)	Fail to complete movement advice (to move wild-taken animal to another state)	50
122(3)	Fail to complete movement advice (to move animal to authorised buyer)	50
123(3)	Fail to complete movement advice (move animal from interstate seller)	50
126(3)	Fail to complete movement advice (move animal interstate for display)	50
General authorised movements – plants		
127(2)	Fail to complete movement advice (move whole protected plant into or out of the State)	50
128(3)	Fail to complete movement advice (move plant part into or out of the state for bioprospecting)	50
Requirements relating to licences, permits and authorities		
129(2)	Fail to carry authority/copy of authority/photo identification while taking/using wildlife	50
130(2)	Fail to produce identification upon request by conservation officer	20
131(2)	Fail to display authority/copy of authority while displaying wildlife	50
132(3)	Fail to comply with notice to take and register biological tissue sample/insert electromagnetic implant	165
133(2)	Sell/give wildlife to unauthorised person	120
134(2)	Buy/accept/keep wildlife from unauthorised person	120
135(2)	Fail to give biological tissue sample/electromagnetic implant/written report/frozen animal to Chief Executive within 14 days after animal dies	120
136(2)	Fail to dispose of dead animal in prescribed way	50
136(4)	Fail to complete movement advice (sell or give away dead animal)	50
137(1)	Fail to allow/help officer to inspect/photograph/obtain or check biological tissue sample/check identification code/insert electromagnetic implant	165
139(3)	Fail to apply for amendment for change in licensed premises	10
140(2)	Fail to apply for amendment to licence for change in person-in-charge	10

Nature Conservation Regulation 1994 – section numbers of offence provisions	Offence	Maximum penalty in penalty units (1 penalty unit = \$75)
Taking, keeping, using and moving animals		
Keeping wildlife under an exemption		
149(3)	Fail to apply/pay prescribed fee for record book	10
149(4)	Fail to keep record book	120
150(3)	Fail to provide conservation officer information about the person from whom controlled animal was bought or accepted	165
150(4)(a)	Dispose of animal within 6 months of acquiring it (controlled animal)	20
150(4)(b)(i)	Buy controlled animal from unauthorised person	20
150(4)(b)(ii)	Acquire/dispose of more than 10 controlled animals for the same class in a twelve month period	20
150(4)(b)(iii)	Display controlled animal for a commercial purpose	20
151(3)	Fail to complete movement advice for movement of controlled animal	50
153(3)(a)	Keep common amphibian at unauthorised place/for unauthorised purpose	20
153(3)(b)	Keep more than 2 common amphibians of the same species/8 common amphibians	20
153(4)	Fail to release progeny of amphibian within prescribed period	80
154(3)	Fail to provide conservation officer information about the person from whom protected fish was bought or accepted	165
157(4)	Fail to give notice of possession of/comply with officers direction concerning sick/injured mammal/turtle	20
158(4)	Fail to give animal to a holder of a rehabilitation permit/notify a conservation officer about possession of sick/injured/orphaned protected animal within 72 hours	20
158(5)	Fail to comply with direction regarding sick/injured/orphaned protected animal	20
160(3)	Fail to complete movement advice for movement of wildlife by wholesaler	50
164(3)	Fail to complete movement advice (movement of dead wildlife to premises stated in commercial wildlife licence)	50
Commercial wildlife licence (wildlife interaction)		
176	Fail to comply with approved interaction plan	20
177(1)	Fail to keep activity report	20
177(3)	Fail to keep report as prescribed/produce report for inspection	20
Commercial wildlife licence		
188(1)	Fail to keep and use animal in a way that minimises likelihood of escape/ill health/injury	80
189	Fail to identify dead wildlife in approved way	80
190	Fail to keep record/record and return book	120
191	Fail to submit return of operations in approved form	120





Nature Conservation Regulation 1994 – section numbers of offence provisions	Offence	Maximum penalty in penalty units (1 penalty unit = \$75)
Recreational wildlife licence		
201(1)	Fail to keep and use animal in a way that minimises likelihood of escape/ill health/injury	80
202(1)	Dispose of animal within 6 months of acquiring it (recreational wildlife licence)	80
203	Fail to keep record book	120
Commercial wildlife harvesting licence		
210(1)(a)	Take animal from location visible to others	120
210(1)(b)	Take animal in way that causes damage/disturbance to wildlife environment	120
210(1)(c)	Take animal other than by approved method	120
210(1)(d)	Kill animal other than in a humane way	120
211(1)	Fail to keep carcass of dead animal in way that enables it to be identified	120
212	Fail to keep record/record and return book	120
213	Fail to submit return of operations in approved form	120
Recreational wildlife harvesting licence		
219(4)	Fail to complete movement advice (move dead macropods for processing)	50
220(1)(a)	Take animal from location visible to others	120
220(1)(b)	Take animal in way that causes damage/disturbance to wildlife environment	120
220(1)(c)	Take animal other than by approved method	120
220(1)(d)	Kill animal other than in a humane way	120
221(1)	Fail to keep carcass of dead animal in way that ensures it can be identified	120
222	Fail to submit return of operations in approved form	120
Wildlife Demonstrator licence		
225(1)	Keep more than 30 self-sufficient animals of the same species	165
226(2)	Fail to display animals at least once each month/keep record of each display as prescribed	80
226(3)	Fail to provide evidence of display if requested	80
227(1)	Fail to display animal in way that ensures the likelihood of escape of animal/injury to person/ ill-health or injury to animal is minimized	80
227(3)	Display animal that has visible signs of illness or injury	80
228(2)	Fail to ensure animal is supervised whilst being displayed	80
229(2)	Require animal to do act it would not normally do in the wild	80
230	Allow person other than trained employee to handle dangerous/ venomous animal	80
231	Fail to keep record book	120
232	Fail to submit return of operations in approved form	120

Nature Conservation Regulation 1994 – section numbers of offence provisions	Offence	Maximum penalty in penalty units (1 penalty unit = \$75)
Wildlife exhibitor licence		
241(1)	Fail to display animal in way that ensures the likelihood of escape of animal/injury to person/ill-health or injury to animal is minimized	80
241(3)	Display animal that has visible signs of illness or injury	80
242(2)	Fail to ensure animal is supervised whilst being displayed	80
243(2)	Require animal to do act it would not normally do in the wild	80
244	Allow person other than trained employee to handle dangerous/venomous animal	80
245(2)	Fail to comply with interaction plan	20
246(2)	Fail to keep activity report	20
246(4)	Fail to keep activity report as prescribed/make records available for inspection	20
247	Fail to keep record book	120
248	Fail to submit return of operations in approved form	120
Wildlife farming licence		
253(2)	Fail to identify wild-taken animal in prescribed way	80
254(2)	Fail to provide biological tissue sample/insert approved electromagnetic implant as required	165
255(1)	Fail to comply with crocodile code in relation to farm crocodile	80
255(2)	Fail to comply with emu code in relation to farm emu	80
256(1)	Fail to display animal in way ensures that the likelihood of escape of animal/injury to person/ ill-health or injury to animal is minimized	80
256(3)	Display animal that has visible signs of illness or injury	80
257(2)	Fail to ensure animal is supervised whilst being displayed	80
258(2)	Require animal to do act it would not normally do in the wild	80
259	Allow person other than trained employee to handle dangerous/venomous animal	80
260	Fail to keep record book	120
261	Fail to submit return of operations in approved form	120
Museum licences		
268	Fail to display animal in permanent enclosures	80
269(1)	Fail to display animal in way that ensures the likelihood of escape of animal/injury to person/ ill-health or injury to animals is minimized	80
269(3)	Display animal that has visible signs of illness or injury	80
270(2)	Fail to ensure animal is supervised whilst being displayed	80
271(2)	Require animal to do act it would not normally do in the wild	80
272	Allow person other than trained employee to handle dangerous/venomous animal	80
273	Fail to keep record book	120
274	Fail to submit return of operations in approved form	120



Nature Conservation Regulation 1994 – section numbers of offence provisions	Offence	Maximum penalty in penalty units (1 penalty unit = \$75)
Damage mitigation permits		
284	Fail to submit return of operations in approved form	120
Educational purposes permit		
289	Fail to submit return of operations in approved form	120
Permit to keep protected wildlife		
300(1)	Allow animal kept under permit to breed without approval	165
300(2)	Fail to provide certificate from veterinary surgeon as required	20
301(2)	Fail to keep record book	120
302(2)	Fail to submit return of operations in approved form	120
Rehabilitation Permit		
311(1)	Fail to keep animal under rehabilitation permit in a way that will/ is likely to rehabilitate animal	80
312(1)	Fail to return animal to appropriate natural habitat as required	80
Scientific purposes permit		
319	Fail to submit return of operations in approved form	120
Collection authority		
335	Fail to submit return of operations in approved form	120
Taking and using protected plants		
General restrictions about using protected plants		
338	Use/move common plant without lawful authority	165
339	Use/move whole protected plant for commercial purpose without lawful authority	165
340	Use/move protected plant part for commercial purpose without lawful authority	165
Exemptions for using whole protected plants (incl. Propagators)		
342(2)	Fail to produce evidence of that plant breeder's right has been granted	80
345(5)	Fail to provide details about source of/date of acquisition of reproductive or propagating material used in propagation if required	165
Exemptions for using protected plant parts (incl. Cultivators)		
350(3)	Fail to provide details about the source of reproductive/ propagating material used for cultivation if required	165
Commercial wildlife licence		
361	Sell/give away protected plant not obtained from prescribed source	165
362(2)	Fail to possess tag for each whole type A restricted plant sold by wholesaler /attach tag to type A restricted plant sold by retailer/ ensure type A restricted plant is currently labelled	120
362(3)	Fail to ensure tag is attached or accompanies type A restricted plant sold by wholesale	120
363	Fail to keep record book	120
364	Fail to submit return of operations in approved form	120

Nature Conservation Regulation 1994 – section numbers of offence provisions	Offence	Maximum penalty in penalty units (1 penalty unit = \$75)
Recreational wildlife licence		
368(1)	Sell type B restricted plant raised from seed or propagating material taken in the wild	
Damage mitigation permit		
379	Fail to submit return of operations in approved form	120
Educational purposes permit		
383	Fail to submit return of operations in approved form	120
Scientific purposes permit		
387	Fail to submit return of operations in approved form	120
Authorised propagator and authorised cultivator		
394	Fail to keep written record/ invoice as required	80
395	Fail to help officer inspect plant/obtain or check records	120
396(2)	Fail to give written notice to Chief Executive about change of address within 14 days	10
Processed products		
408(2)	Fail to produce evidence of source of material from which processed product was derived	165
General offences		
409(1)	Use/Direct another person to use a poison/adhesive substance in a way that may result in the taking of a protected animal without lawful authority	165
410(1)	Interfere with protected animal breeding place	165
411(2)	Feed native animal in way that threatens human health/safety	165
412(1)	Feed native animal in the wild that is dangerous/ venomous/ capable of injuring a person	40
413(1)	Disturb native animal in the wild that is dangerous/ venomous/ capable of injuring a person	40
414(2)	Fail to notify officer about taking marine mammal/turtle/comply with officers direction about animal/ return animal to water	120
414A(2)	Fail to notify officer about taking protected shark/comply with officers direction about animal/ return animal to water	120
415(1)	Release an animal bred or kept in captivity/ into an area where the animal does not normally live	165
416(2)	Release productive material of non-native plant in the wild without authorisation	165
417(2)	Fail to keep animal in secure enclosure that prevents the animal's escape	20
418(2)	Move/send live bird/ reptile/ animal/ amphibian into Qld without lawful authority	165





Nature Conservation Regulation 1994 – section numbers of offence provisions	Offence	Maximum penalty in penalty units (1 penalty unit = \$75)
Miscellaneous provisions – tags		
422(3)	Fail to comply with notice to return tags	50
423	Attach tag to species other than species for which tag was supplied	165
424(1)	Possess/attach tag without lawful authority	165
425(1)	Interfere with tag attached to wildlife without lawful authority	80
Stop action orders		
432	Fail to comply with stop action order	20
General provisions - protected areas and wildlife		
Record books and returns of operations		
444(1)	Fail to keep record book at prescribed place/for prescribed period	120
444(2)	Fail to keep record book in possession during display	120
445(a)	Fail to include relevant record particulars in record book (commercial activity permit)	50
445(b)	Fail to record relevant particulars in record book (authority other than commercial activity permit)	120
446(1)	Fail to record relevant particular within prescribed time	120
447(2)	Fail to record prescribed information about sick/injured/orphaned animal in record book (wildlife exhibitor licence)	120
448(2)	Fail to ensure information in record book is complete and accurate/legible/completed in ink	100
449(2)(a)	Fail to produce record book for inspection as required	120
449(2)(b)	Fail to surrender record book as required	120
450(2)	Fail to give written notice about lost of/theft of/destruction of/damage to record book	120
451(1)	Interfere with record book	120
455(2)	Fail to submit return of operations for each prescribed period/within prescribed time	120
456(2)	Fail to ensure information in return of operations is complete and accurate/legible/completed in ink	100
457(2)	Fail to keep a copy of a return of operations as prescribed	120
458(2)	Fail to produce copy of return of operations if required	120
459(2)	Fail to give written notice about loss of theft/of/destruction of/damage to return of operations	120
460(1)	Interfere with return of operations	120
474(2)	Fail to notify change of name or address	10

Appendix 4 Additions and changes proposed for the Nature Conservation Regulation 2005

Notes

- The table indicates proposals for additions, and changes in effect, to the current provisions in the Nature Conservation Regulation 1994.
- Section numbers in the Nature Conservation Regulation 1994 are given to indicate the intended change relative to the current provisions. However, 'equivalent' provisions in the proposed legislation will not retain the same section numbers. The structure and wording of 'replacement provisions' may also differ from existing provisions, even though the effect may be the same.
- In the table, the term 'licence' can also include permit or other authority, including a commercial activity agreement.

Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
1.	s.4(3), 4(4)	Payment of application fees	Existing provisions about applications for licences do not state that the application must be accompanied by the relevant application fee. (fees are listed in schedule 7).	Include a requirement for an application to be accompanied by the application fee.
2.	ss 4, 5	Timeframes for considering applications and additional information	Sections 5(2) and 5(3) specify maximum timeframes for considering applications and considering additional information. However, the specified timeframes can be too short for consideration of complex applications.	Remove specified timeframes in the current sections 5(2) and 5(3).
3.	New provision	Power to require public notice of application	If the grant of an application for a permit or other approval involving a protected area may substantially restrict the reasonable use or enjoyment of the area or part of the area on a frequent or extended basis, the Chief Executive should be able to require the applicant to give public notice of the application and to invite interested persons to make submissions to the Chief Executive in relation to the application. (Similar provisions exist in sections 9(6) of the Marine Parks Regulation 1999, and also in the <i>Environmental Protection Act</i> and the Commonwealth's <i>Great Barrier Reef/Marine Park Act</i> .) (Terms such as 'substantially restrict', 'reasonable use' and 'frequent or extended' are to indicate that this can only apply to applications for uses or activities that could have substantial effect).	Provide that if the grant of an application for a permit or other approval involving a protected area may substantially restrict the reasonable use or enjoyment of the area or part of the area on a frequent or extended basis, the Chief Executive may require the applicant to give public notice of the application and to invite interested persons to make submissions to the Chief Executive in relation to the application. Provide that the Chief Executive must consider the submissions when deciding whether to grant or refuse the application.
4.	s.4A	Payment for record books	Existing provisions state that a licence holder required to keep records must ask for a record book and pay the prescribed fee for the book. However, the holder of a commercial activity permit (other than for filming or photography) pays fees for the daily activities recorded in the record book (client numbers and camping) and should not have to pay for the book as well.	Exempt the holder of a commercial activity permit from payment of a fee to obtain a record book. Note also the proposal to allow the Chief Executive to approve a form of record other than a record book (see item 30 below).





Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
5.	s.5	How the Chief Executive may deal with applications for a licence	Stated criteria for consideration in deciding applications in subsections (4) and (5) relate to the appropriateness of a person to hold a licence and whether the applicant has the character, knowledge and ability relevant to the activity. However, other relevant criteria could be listed to promote clarity and consistency, and to help guide both the Chief Executive and applicants.	<p>Include a provision to the effect that the Chief Executive must not grant a licence if satisfied on reasonable grounds that refusal is desirable in the interests of:</p> <ul style="list-style-type: none"> the conservation of natural or cultural resources or a protected area; or the effective administration of protected wildlife; or the effective administration of the Act. <p>Provide that, in determining whether to grant or refuse a licence, the Chief Executive may consider a broad range of matters, including matters related to good governance as well as conservation and environmental impact. These may include, for example:</p> <ol style="list-style-type: none"> the impact on the proposed use or activity on the amenity of any protected area proposed for use, and the amenity of adjacent areas; the cumulative effect of the proposed use or activity and other uses or activities relating to a protected area or wildlife; the orderly and proper management of uses and activities relating to protected areas or wildlife; fair and equitable access to nature (taking into account sustainability and intergenerational equity); the contribution that the applicant proposes to make to the conservation and management of a protected area or wildlife; any relevant Australian or international protocol, standard, code or intergovernmental agreement or instrument; the precautionary principle; public safety; and the public interest.
6.	s.5(7)	When a licence application must be refused	Section 5(7) lists circumstances in which a licence application must be refused. These generally relate to previous offences, or licence suspension or cancellation in the previous 2 to 3 years, including an equivalent licence suspended or cancelled in another State. However, this provision does not provide any discretion to take account for example of the seriousness of an offence and any extenuating circumstances. Also, the current wording could include cases where a licence holder was not at fault, e.g. suspension of a protected area licence because of high fire danger.	<p>Provide that the Chief Executive 'must refuse' to grant the licence in the circumstances listed in s.5(7)</p> <p>However, also provide that, despite the current subsections (7)(c) and 7(e), the chief executive may grant the licence if the equivalent licence was suspended or cancelled for reasons unrelated to the suitability of the applicant (e.g. for reasons of environmental protection or general public safety).</p> <p>As well provide that, despite the current subsection (7)(d), the chief executive may grant the licence if the relevant offence was, in the opinion of the chief executive:</p> <ul style="list-style-type: none"> of a trivial nature; or of a type not relevant to assessing the character of the applicant in relation to the activity for which the application is made. <p>Ensure that the same provisions as in the two paragraphs above can apply in relation to grounds to suspend, cancel or refuse to renew a licence (s.8).</p>

Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
7.	New provision	Breach of code of practice	Under section 17(4) of the Act, the Chief Executive may approve or make codes of practice for protected areas and protected wildlife. Codes of practice must be tabled in Parliament and may be 'disallowed' by Parliament. While some sections of the Regulation refer to specific codes of practice, there is no provision that constitutes a general requirement to comply with a mandatory provision of a code of practice. (In comparison, section 6 of the Regulation provides a general requirement to comply with a condition of a licence.)	Provide that a person who is required by a regulation to comply with a code of practice must comply with a provision of the code to the extent required by the code. Maximum penalty – 80 penalty units.
8.	s.8	Grounds for suspension, cancellation or refusal to renew a licence	Section 8 lists several grounds for suspension or cancellation of, or refusal to renew, a licence, including that the licensee has committed an offence (s.8(1)(c)). The listed grounds do not include failure to pay specified fees or lodge returns within the required period, which, being offences, are included by virtue of s.8(1)(c). However, s.8(1)(c) might not apply until an offence is proven before a court. It may not be desirable to take a licence holder to court in the case of a relatively minor transgression that could be dealt with by infringement notice (e.g. a minor offence under s.69A(2)). On the other hand, there is no provision to discourage continuation of the offence, i.e. a penalty that applies for each day the payment or return remains outstanding. It is therefore reasonable that action could be taken to suspend, cancel or refuse to renew the licence until such time as the outstanding payment or return is submitted. Also, the provision needs to indicate that the grounds can also include relevant matters in considering applications for a licence, including the conservation of nature, or public safety. Section 10 of the Nature Conservation Regulation 1994 already lists the conservation of nature, and public safety, as grounds for urgent suspension or cancellation.	Grounds for suspension or cancellation of, or refusal to renew, a licence are also to include: <ul style="list-style-type: none"> failure to pay outstanding fees or lodge outstanding returns; and relevant matters that may be taken into account in considering an application for a licence (see item 5 above), including the conservation of nature, or interests of public safety.
9.	s.10	Procedure for urgent suspension or cancellation of licence	The Chief Executive may suspend a licence if satisfied that urgent action is required for the conservation of nature or in the interests of public safety or a protected area, native wildlife or members of the public may be harmed if urgent action is not taken. However there is no requirement for the suspension to be lifted when the action is no longer necessary, in particular circumstances, it may be necessary to partially suspend the operation of a licence to a lesser extent than indicated by s.10(6), for example it may be suspended for only some areas or locations within a protected area.	Include a provision to the effect that that the suspension must be lifted when the chief executive is satisfied that the circumstances requiring the urgent suspension no longer apply. Clarify the effect of s.10(6) by providing that a suspension may apply to a licence in whole or in part, for example in relation to a particular area or part of an area, or particular protected wildlife or particular activities under the licence.
10.	S.11	Return of licence	The holder of a suspended or cancelled licence is required to return it within 14 days of the decision taking effect unless the person has a reasonable excuse for not returning it; however the return of a suspended licence may not be required, particularly if the suspension is short or does not relate to any fault on the part of the licence holder.	Provide that the holder of a suspended licence has to return the licence to the Chief Executive only if requested to do so. The Chief Executive would be required to return the licence at the end of the suspension period. Failure to comply with the Chief Executive's request to return a suspended licence would attract the same penalty as currently applies to non-return or a suspended or cancelled licence (20 penalty units).





Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
11.	s.13	Amendment of licences on application	Specified procedures apply to amendment of a licence at the licensee's request. However, it is unreasonable that these procedures apply to amendment of a camping permit (e.g. changing the number of people or camping dates). Specified procedures apply to amendment of a licence without a request from the licensee. However, these procedures would not normally be viable for amendment of a camping permit given the short-term nature and often short notice involved with these permits. In the event of a significant and unexpected change of circumstances, amendment of a camping permit may be preferable to the alternative of cancellation or suspension.	Exempt camping permit amendments from the procedures specified in section 13(2), 13(3) and 13(5).
12.	s.14	Amendment of licences without application		Exempt camping permit amendments from the procedures specified in section 14. Provide that the Chief Executive may only amend a camping permit without application if satisfied on reasonable grounds that the amendment is desirable in the interests of nature conservation, human safety or well-being, or the effective administration of the Act. Provide that if the Chief Executive decides to amend a camping permit without application, the Chief Executive must give the permit holder a notice that states how the permit is amended and the reasons for the amendment.
13.	ss.5, 17 to 21.	Appeals on licence decisions	The Regulation requires the Chief Executive, in every case of refusal of a licence or granting a licence with conditions, to provide a statement of reasons together with a notice that the person may appeal to a magistrate within 28 days. In this context, 'licence' includes a camping permit. Notification and appeal processes also apply to amendment, suspension or cancellation of camping permits, including 'show cause notices' and minimum timeframes for amendments. However, it is impracticable and unreasonable that these requirements and appeal processes apply to camping permit decisions given that: <ul style="list-style-type: none"> • Camping permit applications are usually informal (often verbal). As well, many locations are now subject to 'self-issued' permits via the internet or on-site 'self-registration'. • Permits are rarely refused because information in advance allows applicants to achieve a successful application (e.g. a campground has available capacity (certain dates). In 2003-04, some 126,000 camping permits were issued and no camping permits were refused, suspended or cancelled. • Conditions imposed on camping permits are unlikely to be regarded as unreasonable or unacceptable to the permit holder. • The short-term nature of camping permits (and in many cases, application at short notice) is unsuited to a court appeal process and specified timeframes. See also items 11 and 12 above.	Provide that camping permit applicants and holders are not able to appeal over matters in sections 17(1) and 17(2) (a) to (h) of the Regulation. Exclude camping permits from the application of provisions related to appeal, such as the requirement in ss.5(8) and 5(9) to provide reasons for refusal or conditions.

Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
14.	s.39	Duration of group activity permits	<p>Section 39 establishes maximum durations for which protected area permits may be issued, including 30 days for a group activity permit. While a single group activity is unlikely to be permitted for more than 30 consecutive days, there may be instances where a group wants to hold more than one activity over the course of a year. If such activities are more than 30 days apart, separate permits would be required, and a new application fee would be payable each time. Allowing a group activity permit to be issued for a year would allow a group to pre-plan multiple activities, and save on application fees, with permit processing savings as well. The Chief Executive is not obliged to issue any permit for a longer duration than considered appropriate.</p> <p>A conservation officer needs to be able to direct a person to move camp to another camping site when the officer considers it reasonably necessary. For example, a camper could be directed to move camp where there is a need to protect ground-nesting birds from disturbance, where there is a risk from wildlife, or where there is a need to reduce disturbance to others from the camper's use of a generator.</p> <p>Another applicable circumstance would be where a 'standing camp' is kept in place for an extended period, thereby denying other campers the opportunity to use that particular camping site. This is particularly relevant where equivalent sites are not readily available and where camping permits that follow on from each other are obtained by more than one person associated with the camp. These provisions would complement those under s.89(3) and (4) of the current regulation relating to a direction to leave a protected area or part of a protected area.</p> <p>Being able to give such a direction provides an alternative to the only enforceable measures currently available – suspending or cancelling the camping permit or directing the person to leave the area. (A polite request to move camp would generally be tried as a first option.)</p>	<p>Increase the maximum durations for which a group activity permit may be issued from 30 days to 1 year.</p>
15.	New provision	Camping	<p>Provide that a conservation officer may give the holder of a camping permit a direction to vacate the permit holder's camping site and remove all camping equipment from the site for a necessary:</p> <ul style="list-style-type: none"> • for the protection of the area's cultural resources or natural resources; or • to secure the safety of a person or a person's property; or • to minimise disturbance to persons in a protected area. <p>The direction must be in writing and state the reason or reasons why the direction is being given.</p> <p>The permit holder must comply with the direction, unless the permit holder has a reasonable excuse. Proposed maximum penalty – 50 penalty units.:</p> <p>Provide that a conservation officer may give the holder of a camping permit a direction to vacate the permit holder's camping site and remove all camping equipment from the site for a stated minimum period of time, if the officer believes on reasonable grounds that:</p> <ul style="list-style-type: none"> • the same camp has been in place for 22 days (the maximum duration allowed under the regulation for a camping permit) or more; or • the natural condition of camping site is becoming degraded by the presence of the camp, or • it is necessary to vacate the camping site for health or safety reasons; or • it is necessary or desirable to allow the camping site to become available for use by other persons; and • another camping site is available to which the permit holder could move. <p>The permit holder must comply with the direction, unless the permit holder has a reasonable excuse.</p> <p>In this context, 'the same camp' would mean a camp occupying the same site with the same, or predominantly the same, camping equipment. It is intended that this interpretation should apply even if camping at the site over the relevant period has occurred under two or more camping permits issued to the same person or to different people.</p>	<p>Provide that a conservation officer may give the holder of a camping permit a direction to vacate the permit holder's camping site and remove all camping equipment from the site for a necessary:</p> <ul style="list-style-type: none"> • for the protection of the area's cultural resources or natural resources; or • to secure the safety of a person or a person's property; or • to minimise disturbance to persons in a protected area. <p>The direction must be in writing and state the reason or reasons why the direction is being given.</p> <p>The permit holder must comply with the direction, unless the permit holder has a reasonable excuse. Proposed maximum penalty – 50 penalty units.:</p> <p>Provide that a conservation officer may give the holder of a camping permit a direction to vacate the permit holder's camping site and remove all camping equipment from the site for a stated minimum period of time, if the officer believes on reasonable grounds that:</p> <ul style="list-style-type: none"> • the same camp has been in place for 22 days (the maximum duration allowed under the regulation for a camping permit) or more; or • the natural condition of camping site is becoming degraded by the presence of the camp, or • it is necessary to vacate the camping site for health or safety reasons; or • it is necessary or desirable to allow the camping site to become available for use by other persons; and • another camping site is available to which the permit holder could move. <p>The permit holder must comply with the direction, unless the permit holder has a reasonable excuse.</p> <p>In this context, 'the same camp' would mean a camp occupying the same site with the same, or predominantly the same, camping equipment. It is intended that this interpretation should apply even if camping at the site over the relevant period has occurred under two or more camping permits issued to the same person or to different people.</p>





Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
16.	s.40	Camping permits	<p>A person camping in a protected area must obtain a camping permit or must be covered by a camping permit held by another person. The definition of camp includes 'stay overnight'. It is necessary to clarify that a person who stays overnight in a protected area as a client of a commercial tour operator or who stays overnight within a private campground or resort within a protected area, does not need to obtain a separate camping permit. Also, a person who undertakes an overnight activity not involving camping or the use of camping equipment should not require a camping permit (e.g. a person fishing or roganining overnight).</p> <p>Additionally, it is intended to clarify that written approval to camp may be included in another permit, for example a commercial activity permit for filming or photography.</p>	<p>Provide that a person must not camp in a protected area other than under a camping permit or other written approval. However, that would not apply to specified exceptions, such as a person who stays overnight as a client of a commercial tour operator (in which case the operator pays a camping fee) or to a person who stays overnight within a private campground or resort within a protected area.</p> <p>'Private' in this context could be defined as being operated by a person under a lease, agreement, licence, permit or other authority under sections 34, 36, 37 or 38 of the Act for a purpose consistent with providing accommodation for protected area visitors.</p> <p>Clarify camping provisions to ensure that a person does not need a camping permit for an 'overnight stay' in a protected area if the person does not use camping equipment and undertakes an activity of a nature that would not generally be regarded as camping. (The wording of such a provision will require discussion during the drafting process.)</p>
17.	s.45	Use of camping tags	<p>Section 45 requires display of a 'camping permit' at the person's camp (for permit camping, or self-registration camping a tag is displayed instead). However, camping permits are not issued with a 'camping tag' for display and the only private information in the permit need not be on display. Section 46 provides a person must not interfere with a displayed permit or tag.</p>	<p>Include a requirement for the Chief Executive to issue a 'camping tag' with a camping permit. Replace reference to a camping permit with reference to a camping tag in provisions relating to display of a camping permit, or interfering with a displayed permit.</p>
18.	s.48	Restricted access areas	<p>Under s.48, a person is not allowed to enter or remain in an area declared under a regulatory notice as a restricted access area unless the person holds a permit to enter the area, or enters the area under a commercial activity permit, or with the Chief Executive's written approval.</p> <p>However, the provision does not clearly express the intention that entry under a commercial activity permit would only apply if the commercial activity permit specifically authorises entry to the restricted access area. If a restricted access area is newly created it is not intended that existing commercial activity permit holders would automatically have right of entry.</p>	<p>In the context of section 48, clarify that a 'permit to enter the area' means a restricted access area permit, or a commercial activity permit or commercial activity agreement that specifically authorises entry to the area.</p>

Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
19.	s.63, and definition of commercial activity in schedule 10	Commercial activities conducted under an agreement	<p>Section 63 states that a person must not conduct a commercial activity in a protected area other than under a commercial activity permit, or under an agreement. The current definition of 'commercial activity' in schedule 10 provides an indication of what may constitute such an agreement. However, there are no details in the Regulation indicating when or how such agreements are to operate, or be subject to amendment, suspension or cancellation, for example in circumstances that apply to licences in ss.8 and 10.</p> <p>It is also unclear whether breach of a condition of an agreement is an offence. (Enforcement of an agreement may need to be by a civil action before a court.)</p> <p>An agreement is not a licence and the Chief Executive is not bound to enter into an agreement.</p>	<p>Clarify provisions relating to agreements allowing the conduct of a commercial activity, including:</p> <ul style="list-style-type: none"> the Chief Executive may enter into agreements for this purpose; the Chief Executive may consider relevant matters in relation to entering into an agreement, including those that apply to consideration of a licence application; the same criteria and procedures for suspension and cancellation apply to agreements as apply to licences, unless the agreement provides otherwise. Further detail about how agreements are proposed to operate is provided in section 12.3 of the RIS.
20.	s.63	Commercial news filming/photography in a protected area	<p>A person must not conduct a commercial activity in a protected area other than under a commercial activity permit, or under an agreement. However, a permit might not be able to be issued quickly enough for a news team to cover an unexpected news event in a protected area.</p> <p>A practical approach may be to allow the chief executive to determine circumstances in which a permit or agreement is not required for coverage of genuine news events.</p>	<p>Provide that the chief executive may determine circumstances under which a commercial activity permit or commercial agreement is not required for filming or photography in a protected area for news and current affairs. 'News and current affairs' would need to be defined, for example, as filming/photography that has an event as its subject, is undertaken soon after the event as an urgent response and is expressly for inclusion in a television news bulletin or current affairs program, a newspaper, a news magazine or a similar topical publication. Filming/photography for a feature such as a lifestyle segment or program would not be considered to be filming/photography for news and current affairs.</p> <p>Provide that the chief executive must make any such determination publicly available.</p>
21.	ss.71, 72	Structures and works in a protected area	<p>Section 71 provides that it is an offence to erect a structure (other than a camping structure under a permit) or carry out work in a protected area without the Chief Executive's written approval. Section 72 provides for the removal of structures erected or work carried out without the Chief Executive's approval. However, some structures pre-date the declaration of the protected area, in which case these provisions do not apply. In most such cases, matters of ownership and maintenance of the structures are resolved prior to declaration of the protected area. In those cases where ownership will be retained after declaration, and for various reasons including safety, a person should be required to obtain approval to retain or maintain a structure. It is also reasonable that a structure placed on the area prior to the area's declaration without the consent of the landholder, be subject to removal provisions (for example, "squatters huts" built on State land).</p>	<p>Provide that written approval is required to erect, retain or maintain a structure or work in a protected area, including to retain or maintain a structure or work that predates declaration of the area.</p> <p>Provide for removal provisions to be able to be applied to a structure that pre-dates gazettal of the protected area.</p> <p>(Note that under section 25(4) of the Regulation, these provisions would not apply to structures or works on private land in a protected area, such as a nature refuge, although they could be applied through a specific regulation if necessary, for example, if provided in the conservation agreement with the private landholder).</p>





Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
22.	s.73	Signs to regulate vehicles, boats and recreational craft in protected areas	Section 73 allows signs to be used to regulate use of vehicles, boats and recreational craft. It implies that a sign can be used in regard to specific types of vehicles, boats or recreational craft; for example, no buses past this point' rather than just 'no vehicles past this point'. However, this may need clarification.	Clarify, if necessary, that a sign can apply to vehicles, boats and recreational craft, including classes or types of vehicles, boats or recreational craft.
23.	s.74(t)(h)	Use of vehicles, boats and recreational craft in protected areas	Section 74(t)(h) prohibits the use of vehicles on a road, or on a surface authorised by a regulatory notice or permit for use by vehicles. The use of the word 'surface' in the phrase 'a surface authorised by a regulatory notice or permit' may be too limiting, for example, it could be difficult to specify a designated route by reference to the 'surface' along the route, rather than markers along the route. Also, it is necessary to clarify that, like a sign under section 73, the regulatory notice may apply to specific types of vehicles only, such as 'mountain bikes' and may also include conditions, e.g. requiring one-way use or limiting use to specified times.	In the context of section 74(t)(h), provide that a vehicle may be used on a surface or route designated by regulatory notice. (For example, a route could be mapped or described, and indicated by markers). Provide that the regulatory notice may apply to specific types of vehicles only and may also include conditions.
24.	s.74(t)(l)	Motor cycle and bicycle helmets	This section requires a person riding a motor cycle or bicycle to wear a helmet. However, 'motor cycle' is not defined, therefore a helmet is not necessarily required for three-wheeled or four-wheeled vehicles designed to be ridden (trikes and quads). Such vehicles have generally not been allowed in protected areas, but there is some limited use of trikes and quads, for example in Mowbray Island National Park, stemming from continuation of previous authorisations. Road rules require a helmet on two-wheeled and three-wheeled motorbikes (which can be normally registered). Similar safety issues apply to use of other ridden vehicles such as quads (which can obtain conditional registration). Safety of persons in protected areas is a high-priority matter.	Extend the requirement to wear a helmet to riders of trikes and quads in protected areas.
25.	s.77	Appliances in protected areas	This section prohibits 'appliances' (as defined in the schedule in the Act) unless they are dismantled or securely stowed in a vehicle of boat. However, in some cases it may be reasonable for an unloaded spear gun to be carried on foot through a protected area for use in adjoining waters.	Amend the current appliance provision to allow a person to bring into, or have in, a protected area an unloaded spear gun for use in adjoining waters where its use is not prohibited.

Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
26.	s.78	Taking of plants into protected areas	<p>This section generally prohibits a person from bringing a plant (including part of a plant) into a protected area unless authorised. However, it does not provide for taking in feed for horses and other stock where a stock grazing permit, travelling stock permit or permit to muster is in place. This would need to be done as a written approval in the permit. It is reasonable to provide that it be allowed unless a condition of the licence provides otherwise.</p> <p>Similar considerations apply to horse riding which can be permitted on a conservation park or resources reserve under a regulatory notice. Access in accord with the regulatory notice does not require a written approval, but the taking in of a plant (feed) does. It is reasonable to allow taking in of feed unless the notice provides otherwise.</p> <p>Serious issues relating to the introduction of weeds can be dealt with, if necessary, by restrictions in the stock permit or regulatory notice. This need not occur in every instance – non-regulatory measures encouraging good environmental practices may be adequate in many cases.</p> <p>An exception could also be made for a person who brings a plant into a protected area securely stored in the person's vehicle, for example a person who has bought a plant from a local nursery prior to visiting the protected area.</p>	<p>Provide that the holder of a stock grazing permit, travelling stock permit or permit to muster may bring a plant into the protected area or part of the protected area to which the permit relates for the purpose of feeding horses or stock authorised under the permit. However, also provide (in order to remove any doubt), that this is subject to any condition of the stock grazing permit, travelling stock permit or permit to muster, including a condition that prohibits or restricts the taking of feed into the area.</p> <p>Provide that a person who brings a horse into a conservation park or resources reserve for horse riding activities in accordance with a regulatory notice may bring a plant into the part of the conservation park or resources reserve in which horse riding is permitted for the purpose of feeding a horse used for that activity. However, also provide (in order to remove any doubt), that this is subject to any requirement of the regulatory notice, including a requirement that prohibits or restricts the bringing of feed into the area.</p> <p>Provide that a person may bring a plant into a protected area provided the plant remains securely stored in the vehicle used to enter the area. In this case 'securely stored' would mean in an enclosed part of the vehicle.</p>
27.	s.86	Taking animals into a protected area	<p>Section 86 of the Regulation generally prohibits a person from bringing an animal into a protected area or having an animal under the person's control in the area unless authorised. Subsection 2 provides specific exemptions, such as use of a guide dog, or horse riding in a conservation park or resources reserve if permitted by regulatory notice.</p> <p>It is proposed to be able to allow dog-walking by regulatory notice in areas that become conservation park or resources reserve where dog walking was previously a well-established and permitted activity. However, there is no obligation for the Chief Executive to allow this in every case.</p> <p>conservation reasons, in relation to dog transport, control, and removal of dog faeces. These proposed provisions would apply to all classes of protected area, so that they would apply to a person who lawfully takes a dog into a conservation park or resources reserve and also to a person who unlawfully takes a dog into another protected area.</p>	<p>Provide that a regulatory notice may allow a person to bring a dog into a conservation park or resources reserve where permitted under a regulatory notice. However, provide that the Chief Executive may only erect such a regulatory notice in cases where:</p> <ul style="list-style-type: none"> the exercising of dogs was a well-established and permitted activity prior to the area's dedication as a conservation park or resources reserve; and the Chief Executive is satisfied that allowing dogs in the area will not result in damage to a cultural resource of the area, or significantly interfere with a natural resource of the area. <p>Provide that:</p> <p>A person must not take a dog into a protected area or keep a dog in a protected area unless the dog is under effective control. Proposed maximum penalty – 20 penalty units.</p>





Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
		Taking animals into a protected area. (continued)		<p>A dog is not regarded as being under effective control unless:</p> <ul style="list-style-type: none"> • a person who is physically able to control the dog is holding the dog by a leash; or • the dog is securely tethered to a fixed object and is under the continuous supervision of a person who is physically able to control the dog; or • the dog is being transported in an enclosed vehicle, carry cage or other suitable closed container; or • the dog is being transported on the tray of a vehicle and is securely tethered so as to be confined to the vehicle tray. <p>A person who takes a dog into a protected area must, if the dog defecates in the protected area:</p> <ul style="list-style-type: none"> • immediately collect the faeces deposited by the dog and enclose them in a secure bag or wrapping; and • deposit the enclosed faeces in a bin specifically identified for the purpose, or, if no such bin is provided, remove the faeces from the area. <p>Proposed maximum penalty – 20 penalty units.</p> <p>An authorised officer may give a person in control of a dog in a protected area an oral or written direction to remove the dog from the protected area if the officer believes on reasonable grounds that the dog:</p> <ul style="list-style-type: none"> • is unlawfully in area; or • has been causing a nuisance or disturbance; or • is causing fear or apprehension; or • represents a danger to people, other dogs or wildlife. <p>The person must comply with the direction unless the person has a reasonable excuse.</p> <p>Proposed maximum penalty – 40 penalty units.</p> <p>A person who removes a dog from a protected area in accordance with the direction of an authorised officer must ensure that the dog is not returned to the area within 24 hours of the dog's removal from the area. This will apply even if the person has a written approval to have the dog in the area or if dogs are permitted in the area under a regulatory notice. Proposed maximum penalty – 40 penalty units.</p>
28.	ss.87, 87A, 87B	Feeding native animals, keeping food safe from native animals, disturbing native animals	These sections protect native wildlife and natural resources in protected areas and also address public safety issues. However, the current provisions do not apply to interactions with non-native animals, such as wild dogs or other feral animals, where similar environmental and safety issues apply.	<p>Remove the word 'native' from 'native animal'. However, an exemption should be added allowing a person to feed an animal under the person's control in the protected area provided the animal is lawfully in the area (for example a guide dog, horses or other stock under a permit, animals allowed under a regulatory notice or written approval).</p>

Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
29.	SS-433 to 439	Dealing with seized property (stock)	The Regulation (ss.59-61) provides for the seizure of stray stock and for the conduct of a General Muster on a protected area, including notification of neighbours and their presence and participation in a General Muster. Stock seized or mustered are subject to general provisions about dealing with seized property. Where the property is not claimed, or the Chief Executive is not satisfied that a claimant has a right to the property, the Chief Executive must keep the property for two months, give public notice of the holding of the property and if relevant, the intention to auction the property. While these provisions may be appropriate for inanimate objects such as vehicles, they are unworkable when applied to stock. Stock mustered on protected areas are usually of very low value, often feral by nature and unsuited to close confinement, making their retention for two months impracticable and uneconomic. Usually facilities such as yards or fencing, are non-existent or inadequate on protected areas to contain stock for the two-month period. This therefore requires the payment of significant agistment costs or impoundment fees that are unlikely to be recouped through the sale of the stock.	Provide that seized stock must be retained for a minimum period of two weeks, that the Chief Executive must give one week's public notice of the intention to sell the stock, and that the stock may be removed from the protected area from where it was seized to a secure holding facility. Provisions related to the application of the proceeds of sale are to be retained.
30.	SS-441 to 451	Record books	These sections relate to the keeping of record books, which are supplied by the Chief Executive. However, provided records are accurately and securely kept, it may be appropriate to allow records to be kept in a form other than a record book, for example a computer record.	Provide the Chief Executive with the ability to approve that a licence holder required to keep a record book may keep a record in another form. Requirements equivalent to those applying to record books (when and how to record particulars) are to apply. The Chief Executive is to be able to revoke or cancel the approval by written notice to the licence holder (the licence holder would then need to use a record book). If the approved form or record is a computer record, the licence holder is to be required to keep the record in a secure manner and keep a secure, full and accurate backup copy of the record on a separate storage device.
31.	s.444(i)(a)(i)	Where and for how long a record book must be kept	A commercial activity permit holder required to keep a record book must keep the record book in the vehicle being used for the activity. However, the activity may not involve a vehicle or may involve more than one vehicle going to different places.	Provide that a commercial activity permit holder must keep the record book in a secure manner at the permit holder's address stated in the permit, or at another place authorised in writing by the Chief Executive (which may include a vehicle or boat used for the conduct of the activity).
32.	SS-454, 456	Returns of operations	Under s.454, a return of operations must be 'in the approved form'. Under s.456, returns of operations to be given to the Chief Executive must be 'in ink'. However, it may be appropriate to allow returns from some licence holders to be submitted in a form other than a written or printed form, for example, lodged electronically. The licence holder would be required to keep a secure, full and accurate copy of the return in order to comply with s.457.	Clarify that the Chief Executive can approve the form of a return of operations for a particular licence holder rather than, for example, necessarily having a single format for each type of licence. (A particular format may suit one licence holder but not another). The requirement to complete the return in ink need not apply unless the return is lodged in a written or printed form. The Chief Executive is to be able to notify a change in the approved form by written notice to the licence holder.
33.	s. 457(2)	How a return of operations must be kept	Requires a copy of a return to be kept at the licensed premises. However, the licence may not relate to licensed premises. Also, the provision as it stands can require a copy of a return of operations to be kept in a place different from the record book, even though the copy of the return may be in the record book (s.451(2)).	Provide that a licence holder must keep a copy of the return in a secure manner at the licence holder's address stated in the licence, or at another place authorised in writing by the Chief Executive (which may include a vehicle or boat used for the conduct of the licensed activity).





Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
34.	s.453	Return of operations for commercial activities	The current provision requires that a return of operations in relation to a commercial activity permit be provided on a monthly basis. However, a three-monthly period is proposed following discussions with the tourism industry.	Provide that returns of operations for commercial activities conducted under a permit or agreement are to be lodged on a three-monthly basis (as applies to some wildlife licences – see the current s.453 (C)(f) and (H)). Given the effect of the current section 63A(2), this will also mean that outstanding fees will need to be submitted every three months rather than monthly.
35.	s.461	Fees	This section provides that 'fees payable under the Act are stated in schedule 7'. The Act does not define 'fee' except to indicate that 'fee' includes a tax. It is not clear that some charges such as rentals and royalties are not included in the term 'fee'. It is reasonable that some such charges are set according to individual circumstance, and are not listed in a fee schedule, for example, rentals for leases under sections 34 to 38 of the Act, where the size of the lease area and purposes of the lease will vary, or charges applied to stock grazing under a stock grazing permit, where the grazing quality will vary. Also, payments can be negotiated in 'agreements' under which commercial activities can be undertaken in protected areas.	Provide that fees are payable as listed in the fee schedule, and that the Chief Executive may set rentals, royalties or other charges not listed in the fee schedule in relation to: <ul style="list-style-type: none"> a lease, agreement, licence, permit or other authority under sections 34 to 38 of the Act; commercial activity agreements for protected areas; commercial use of grazing resources in a protected area by stock under a stock grazing permit or travelling stock permit; natural resources taken from a protected area for a commercial purpose (e.g. similar to the process applying under the Forestry Act 1959 for changing for plants and seeds harvested from state forests).
36.	New provision	Refund of licence fees	The current Regulation does not address matters of determining licence fee refunds, or applying any charge to process a refund. This is largely an administrative matter and can be dealt with by EPA policy. However, a provision could be included to confirm the Chief Executive's ability to determine such matters.	Provide that: <ul style="list-style-type: none"> the Chief Executive may determine circumstances in which a licence fee will, or will not, be refunded; and the Chief Executive may apply a reasonable administrative charge for processing a refund; and this processing charge can be deducted from any refunded fees.
37.	New provision	Fees for activities primarily conducted for the purposes of the Act	At times, community members, community groups and other entities (e.g. defence forces) undertake conservation or management related work in protected areas as a community service and/or training project. However, the Regulation has no exemption from fee requirements for activities associated with such voluntary projects, such as camping permit fees. Any such exemptions to be provided need to be safe from recreational abuse. For example, activities that are mainly commercial or recreational in nature, with a small voluntary service element, should not be eligible for fee exemption.	Provide that the Chief Executive may exempt a person in writing from the requirement to pay fees for a licence associated with activities in a protected area that are predominantly directed toward conservation of nature or the conservation of cultural resources (whether on the protected area or not), or the management of the protected area. <p>Provide that the Chief Executive can only grant such an exemption if the Chief Executive is satisfied that:</p> <ul style="list-style-type: none"> the proposed activities will make a significant contribution to the conservation of nature, conservation of cultural resources, or the management of the protected area; and any commercial or recreational aspects of the proposed activities are secondary to this contribution; and the exemption from fees is justified on the basis of this contribution.

Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
		Fees for activities primarily conducted for the purposes of the Act (continued)	A case could be put for granting exemptions from issue of the relevant licences or approvals, as well as granting exemption from fees. However, the approved activities still need to be defined and any necessary conditions specified. The waiving of licences or approvals could lead to compliance difficulties should the person fail to comply with conditions placed on their activities. Even though these activities are generally undertaken in good faith and problems rarely arise, the Queensland Government has a responsibility to maintain accountability.	Provide that an application for a fee exemption must: <ul style="list-style-type: none"> be submitted in writing with or prior to the application for the relevant licence or other approval; contain sufficient detail for the Chief Executive to be able to determine the contribution that the proposed activities will make to the conservation of nature, conservation of cultural resources or the management of the protected area. Provide that a fee exemption must specify the particular licence or approval to which it applies and may include any conditions that the Chief Executive considers reasonably necessary.
38.	Schedule 2, part 1	Taking fish etc in national parks	Some time ago, a commitment was given by the then Minister (Minister Welford) that the lagoons on Bribe Island would be added to the list of areas and parks available for fishing.	Add Bribe Island National Park to the list of parks in column 1 of Part 1 of Schedule 2. Opposite that listing in column 2, add 'First, Second, Mermaid and Welsby Lagoons'.
39.	Schedules 7 and 10	Camping fees and definition of camp	People sometimes leave an 'unattended camp' in place in a protected area, e.g. a tent left standing between weekend visits. Current anomalies in the Regulation in relation to these unattended camps should be corrected, as follows: <ul style="list-style-type: none"> Camping fees should be payable for unattended camps. In 1994, camping fees became payable on a 'per person-per night' basis, rather than the previous 'per site-per night' basis. An unintended consequence of this change was that no fee is payable for an unattended camp, because there are no persons present. The definition of 'camp' should include leaving (as well as placing) a tent, caravan, camping structure or other camping equipment in position. This will ensure that a person is still regarded as camping and therefore still requires a camping permit if the person wishes to leave an unattended camp in place. 	Amend the definition of 'camp' to ensure that a person is still regarded as camping and therefore still requires a camping permit if the person wishes to leave an unattended camp in place. Provide that a fee of \$4.00 is payable for each night a camping structure or camping equipment is left in position overnight in a protected area with no persons present.
40.	Schedule 7, ss.1, 4	Schedule of fees	Under s.1 of schedule 7, no camping fee is payable for children under 5 years of age. However, no such exemption is provided under s.4.(g) and (h) for children under 5 who are clients of the holder of a commercial activity permit.	Exempt commercial tour operators from having to pay daily fees and camping fees for clients under 5 years old.
41.	New provision	Written approvals	Various sections of the current regulation provide that it is an offence to do a specified thing without written approval. However, there is no provision that specifically indicates that the Chief Executive may issue written approvals for such purposes (for example, equivalent to section 37 in regard to protected area permits). Such written approvals can be included in a related licence, as implied by s.17(2)(g) and (h), or be issued alone where no related licence is required. For example, a camping permit could include a written approval to use a generator, or a 'stand alone' written approval could be issued to use a generator for a daytime activity where no camping is involved.	Clarify that the Chief Executive may issue a written approval for a purpose or activity which a provision of the regulation specifies may be subject to a written approval. Clarify that a written approval may be included in a licence.





Item no.	Existing provision or new provision	Subject	Requirement for new provision, or change in existing provision	Suggested provision
42.	Various sections	Special activities	<p>The regulation contains various provisions relating to a 'special activities permit'. For consistency with commercial activity permit and group activity permit, it is proposed to change the name of the permit to 'Special activity permit'.</p>	<p>Change the term 'special activities' to 'special activity' as required, for example, it occurs in the current sections 37 (f), 39 (f), 67 and schedule 1, ss.1, 2, 4, 6, 7, 8, 9.</p>
43.	New provision, Schedule 10	Definition of 'daily' for the purposes of calculating 'daily fees'	<p>'Daily' fees are provided for under commercial activity permits and group activity permits for protected areas. The current Regulation contains no definition of the meaning of 'daily' in this context and therefore its interpretation is currently unclear – in some cases daily fees have been calculated on a 'calendar day' basis and in others on the basis of a period of 24 hours commencing on arrival in a protected area. This inconsistency needs resolution.</p> <p>For example, under the calendar day interpretation, a commercial operator who camps with a tour group in a protected area and departs within 24 hours arrival would pay two daily fees plus a camping fee for each client. However, under the 24-hour period definition, the same operator would pay only one daily fee plus a camping fee for each client.</p> <p>The interpretation of 'daily' based on a calendar day does not inevitably mean more fees would be payable. For example, an operator who arrives with a tour group on the morning of one day, camps one night and departs the afternoon of the second day would pay two daily fees plus a camping fee for each client, regardless of which of the two interpretations of daily is used.</p>	<p>Define 'daily', for the purpose of daily fees, as being based on a calendar day. This will be consistent with uses of 'day' in the legislation, for example in relation to entries in record books.</p>
44.	Schedule 10	Definition of 'recreational craft'	<p>Under s.66, the use of a recreational craft in a protected area requires a permit. A 'recreational craft' is defined to include a hot-air balloon, hang-glider, para glider and an ultralight aircraft. The permit requirement allows management of impacts (e.g. access routes, launch and landing sites, and aircraft noise) as well as public safety. Similar issues and management needs are involved in regard to parachuting in protected areas, including 'base-jumping' from cliff tops.</p>	<p>Add 'parachute' to the definition of recreational craft.</p>
45.	Schedule 10	Definition of 'special activity'	<p>There is unnecessary overlap in definitions of 'recreational craft' and 'special activity'. The definition of 'special activity' includes hang-gliding and hot-air ballooning, and 'recreational craft' includes a hang glider and hot-air balloon. Hang-gliding and hot-air ballooning in a protected area require a permit to use recreational craft' (S.66). Therefore there is no need for hang-gliding and hot-air ballooning to also be a 'special activity' which could require an additional 'special activity permit' to occur in specified areas. If necessary, existing recreational craft permits can be amended to address emerging area-specific concerns.</p>	<p>Remove hang-gliding and hot-air ballooning from the examples in part 2 of the definition of special activity.</p>

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Environmental Protection Agency.