

29 June 2018

Our ref WD: P&E

Conservation and Biodiversity Policy
Department of Environment and Science
GPO Box 2454
Brisbane QLD 4001

By email: NC.Act@des.qld.gov.au

Dear Review Team

Review of protected animals management framework

Thank you for the opportunity to provide comments on the Review of protected animals management framework. The Queensland Law Society appreciates the opportunity to comment on this important legislation.

This response has been compiled with the assistance of the Planning & Environmental Law Committee who have substantial expertise in this area.

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote nearly 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise government on improvements to laws affecting Queenslanders and working to improve their access to the law.

QLS makes the following comments in relation to the management framework.

Clarification of regulatory framework for animal management – clarify link between primary Act and reduce division across a number of regulations

There is little linkage between the headline provisions of the *Nature Conservation Act 1992* (the **Act**) and the underlying provisions (in regulations) dealing with how and for what authorities, permits and licences are granted.

For example, it is an offence to take a protected animal unless the person is an authorised person or the taking is authorised under section 88(2) of the Act.

The relevant provisions as to authorities that would authorise the taking of a protected animal are then split between the:

1. *Nature Conservation (Administration) Regulation 2006* (types of authorities that may be granted, term of authorities, decision making rules and fees);
2. *Nature Conservation (Wildlife Management) Regulation 2006* (**Wildlife Management Regulation**) (further rules in relation to authorities); and

Review of protected animals management framework

3. *Nature Conservation (Wildlife) Regulation 2006* (in relation to the conservation classification of animals).

In addition, reference must be had to relevant conservation plans for particular animals.

QLS notes that the proposal is to consolidate the underlying regulations. QLS supports this approach as this will help consolidate the regulatory framework in one part of the regulation book.

Scope of “take” of an animal and defence provision under section 88 of the Act

For the purposes of the offence under section 88 of the Act, a “take” of an animal includes catching it. For construction works, this raises doubts over what type of authority can authorise the catching of an animal by a spotter catcher.

In a practical sense, we understand that this is often resolved by the issue of a damage mitigation permit. Strictly, however, a damage mitigation permit is available only if the relevant animal:

1. is causing, or may cause, damage or loss; or
2. represents a threat to human health or wellbeing.

Attachment 5 of the RIS refers to the ability for spotter catchers to be issued with a rehabilitation permit or a damage mitigation permit. A rehabilitation permit can be issued to a spotter catcher to allow a person to care for and rehabilitate a sick, injured or orphaned protected animal or animal or to care for and rehabilitate a protected animal whose habitat has been, or will be destroyed by human activity or a natural disaster.

However, neither a rehabilitation permit nor a damage mitigation permit adequately deal with the situation where an animal is to be caught but the criteria set out above are not met. It would be useful to take the opportunity to clearly provide for a “take” in these circumstances.

There is also a defence to the offence under section 88 of the Act (and 332 of the Wildlife Management Regulation) where it can be proved that the taking:

1. happened in the course of a lawful activity that was not directed towards the taking; and
2. could not have been reasonably avoided.

What constitutes an activity that is not directed to the taking has been the subject of a number of cases and is somewhat confusing and unclear for those in the development industry. It would warrant further, very careful, consideration and clarification.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Principal Policy Solicitor, Wendy Devine, by phone on (07) 3842 5896 or by email to w.devine@qls.com.au.

Yours faithfully



Ken Taylor
President