

Operational policy

Visitor Management

Administering outstanding returns and fees for commercial activity permits and agreements

Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of Environment and Science. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.

Policy Issue

This policy details the key issues, policy statements and procedures to be adopted when the holders of commercial activity permits (CAPs) and commercial activity agreements (CAAs) fail to submit returns of operations and/or pay the required fees.

Background

Commercial activities conducted on QPWS-managed areas may be authorised under a CAP or CAA and both types of authority will, on most occasions, require the holder to submit a return of operations (including a 'nil' return where applicable) and pay fees associated with the authorised commercial activity. CAPs, CAAs and MPPs are granted / entered into in accordance with provisions of relevant legislation administered by QPWS which includes:

- s10 and s83 of the Nature Conservation (Administration) Regulation 2017
- s34 and s69 of the *Recreation Areas Management Act 2006*
- s56 of the *Forestry Act 1959*, and
- s8 and s 52 of the Marine Parks Regulation 2017*

* Note: This policy does not apply to joint Commonwealth and state authorities issued for the Great Barrier Reef World Heritage Area (GBRWHA). Returns and payments relating to joint GBRWHA authorities are followed up according to joint agency procedures.

Definitions

For the purposes of this policy, the following definitions and abbreviations apply:

Calendar month	means any of the 12 months of the year
Calendar quarter	means the periods 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December
Chief executive	includes a person who has been delegated the powers of the chief executive under a statutory instrument

Administering outstanding returns and fees for commercial activity permits and agreements

Commercial activity agreement (CAA)	means an agreement entered into with a legal entity by the state authorising the person to conduct a commercial activity in a protected area, recreation area, State forest or forest reserve or marine park under s83 of the NC Admin Reg, s69 of the <i>RAM Act</i> , s56 of the <i>FA</i> and s52 of the MP Reg
Commercial activity permit (CAP)	means a permit issued by the chief executive authorising the conduct of a commercial activity in a protected area, recreation area, State forest or forest reserve under s10 of the NC Admin Reg, s34 of the <i>RAM Act</i> , s56 of the <i>FA</i> .
FA	abbreviation for <i>Forestry Act 1959</i>
MPA	abbreviation for <i>Marine Parks Act 2004</i>
MPP	means a permit authorising the conducting of a tourism program under s8 of the MP Reg
MP Reg	abbreviation for Marine Parks Regulation 2017
NCA	abbreviation for <i>Nature Conservation Act 1992</i>
NC Admin Reg	abbreviation for Nature Conservation (Administration) Regulation 2017
NC PAM Reg	abbreviation for Nature Conservation (Protected Areas Management) Regulation 2017
Operator	means the legal entity authorised by the chief executive to conduct the commercial activity under a CAA
Permission holder	means the holder of a permit issued under the <i>MPA</i>
Prescribed period	for a CAP means the period stated in a notice given by the chief executive for the submission of a return of operations to the chief executive
Principal holder	means the holder of a CAP issued under the <i>NCA</i> , <i>RAM Act</i> and <i>FA</i>
QPWS managed areas	(for the purposes of this operational policy) include the following areas: <ul style="list-style-type: none"> • protected areas (State land) dedicated under the <i>NCA</i> including areas of national park and conservation park; • State forests and other lands managed under the <i>FA</i>; • recreation areas under the <i>RAM Act</i>; • marine parks under the <i>Marine Parks Act 2004</i>; and • other areas where QPWS has control, trusteeship or otherwise manages the land
RAM Act	abbreviation for <i>Recreation Areas Management Act 2006</i>
RAM Reg	abbreviation for <i>Recreation Areas Management Regulation 2017</i>
Return of operations	means the return provided by the principal holder or operator to the Department in accordance with the provisions of relevant legislation or under a condition of a CAA
Suspension / cancellation action	for the purposes of this operational policy means action commenced

Administering outstanding returns and fees for commercial activity permits and agreements

	<ul style="list-style-type: none"> • for CAPs - under s64 of the NC Admin Reg, s65(1)(c) of the <i>RAM Act</i> or s58 of the <i>FA</i>; and • for CAA's - under 107 of the NC Admin Reg, s92 of the <i>RAM Act</i>, s58 of the <i>FA</i> or s80 of the MP Reg. • for MPPs - under section 32 of the MP Reg. <p>to suspend or cancel a CAP, CAA or MPP.</p>
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Legislation

Submission of returns / payment of fees

Various legislative and regulatory provisions associated with the submission of returns of operation and payment of fees apply to the holder of a CAP. In addition, legislation and regulations provide for an offence where the holder of a CAP fails to comply with a requirement to submit returns and / or pay fees. These provisions include the following:

Legislation	Section
NC Admin Reg	s143 When return of operations must be given and the period for which they must be given
NC PAM Reg	s67 Giving return of operations for particular permits
RAM Act	s219 Records and other information to be kept
RAM Reg	s47 Giving information for commercial activity or relevant organised event permits
	s48 Fees to accompany information for commercial activity or relevant organised event permit
	s49 Holder of commercial activity permit to pay fees when invoiced
MPA	s49 Non-compliance with conditions of an authority
FA	s60 Failure to comply with provisions of lease etc.

Suspension / cancellation provisions for a CAP / CAA

Failure to:

- give the chief executive a return of operations within the period during which the return must be given; and/or;
- pay a prescribed fee required to be given under the Act for the authority, by the date the fee must be paid,

are grounds for the commencement of action to suspend or cancel the authority.

The following legislative provisions apply where the holder of a CAP or operator of a CAA has failed to comply with the above requirements of the authority. Prior to any action being taken, the chief executive will provide notice to the holder of a CAP or operator of a CAA of any failure to meet these requirements.

Administering outstanding returns and fees for commercial activity permits and agreements

Legislation	Section	
NC Admin Reg	s63 Immediate amendment or suspension for failure to pay fee or royalty or give return	
	s64 Non-immediate suspension or cancellation of relevant authority—grounds	
	s65 Non-immediate suspension or cancellation of relevant authority—procedure	
	s107 Non-immediate amendment of agreement—grounds	
	s108 Non-immediate amendment of agreement—procedure	
	s109 Non-immediate cancellation of agreement or suspension of authorisation under agreement—grounds	
	s110 Non-immediate cancellation of agreement or suspension of authorisation under agreement—procedure	
	RAM Act	s65 Cancelling a permit or suspending a permit (other than immediately)
		s91 Amending commercial activity agreements (other than immediately)
		s92 Cancelling commercial activity agreements or suspending authorisations under agreements (other than immediately)
s93 Process for cancelling or suspending under s92		
FA	s58 Power to cancel, suspend, permit, licence etc.	
MP Reg	s32 Non-immediate suspension or cancellation	
	s33 Procedures for non-immediate suspension or cancellation	
	s77 Non-immediate amendment	
	s78 Procedure for non-immediate amendment	
	s80 Non-immediate suspension or cancellation	
	s81 Procedure for non-immediate suspension or cancellation	

Return of operations for a CAP / CAA

In most circumstances, the holders of CAPs and CAAs are required to submit a Return of operations associated with the activities conducted under their authority. Returns are to be submitted within 20 business days of the end of the relevant prescribed period for the authority i.e. at the end of each calendar month or calendar quarter. When requested, an invoice for any additional daily fee payable for the CAP / CAA for the period to which the return relates must be provided to the authority holder. The invoice must state the due date for payment.

The authority holder must then, by the due date, pay to the chief executive the fees payable under the Act for the period to which the return relates. Returns can be submitted via the following online link:

<https://forms.business.gov.au/aba/landing.htm?formCode=2017-18-ROO>

Variations to these requirements allowing the submission of returns in other format/s may only be approved with the prior approval of the relevant Assessments and Approvals (A&A) delegate.

Administering outstanding returns and fees for commercial activity permits and agreements

The chief executive may also commence action to suspend or cancel a CAP or CAA where a principal holder / operator:

- fails to submit a return of operations or pay the relevant fees, and
- has been notified of their failure to comply with a legislative provision or condition of the agreement, and
- still fails to submit outstanding returns and fees as required.

Policy

Outstanding returns and fees – CAP / CAA

In circumstances where the principal holder of a CAP or operator of a CAA fails to submit a return of operations and / or pay relevant fees to the chief executive within the prescribed period, the following policy and procedures will apply:

Outstanding Returns of operation

1. Where a return of operations is not submitted by the due date, A&A will issue a first and final reminder letter via email (where possible) to the principal holder / operator advising them of their legal obligations to comply with relevant statutory / agreement provisions, affording them a further **10 business days** in which to submit the outstanding returns.
2. If the return of operations is not submitted at the expiration of the 10 business day extension, relevant action (**'suspension / cancellation action'** – see definitions) may be commenced inviting the authority holder to make written representations within 20 business days why their CAP / CAA should not be suspended until such time as the outstanding returns have been submitted.
3. If the chief executive commences the above-mentioned action, the holder of the authority must be given a notice stating the following:
 - the proposed action;
 - the ground for the proposed action;
 - an outline of the facts and circumstances forming the basis for the ground;
 - if the proposed action is to suspend the authority, the proposed suspension period;
 - an invitation to make written representations within a stated period (at least 20 business days) why the proposed action should not be taken.
4. In the event the principal holder / operator fails to make satisfactory written representations within 20 business days why their CAP / CAA should not be suspended, the CAP / CAA may be suspended until such time as the outstanding returns are submitted.
5. Where returns of operation remain outstanding after a CAP / CAA has been suspended for a period of at least 30 business days, the chief executive may consider commencing relevant action (**'suspension / cancellation'** – see definitions) to cancel the CAP / CAA.
6. Where a principal holder / operator has failed to submit returns on two separate occasions resulting in action being taken to suspend their authority, consideration may be given by the Executive Director Permissions Management (PM), to invite the authority holder to make written representations as to why their authority should not be cancelled.

Any action to suspend or cancel a CAP or CAA requires approval by the Executive Director PM.

Outstanding Invoices

1. Where an invoice remains unpaid beyond the initial due date for payment, that is, after seven ordinary days, Queensland Shared Services (QSS) will forward a dunning (reminder) letter to the client requesting payment within **14 ordinary days** (10 business days).
2. Where the invoice remains unpaid beyond 21 days of the initial due date for payment, QSS will forward a second dunning letter requesting payment within a further seven ordinary days.
3. If the invoice remains unpaid beyond 28 ordinary days of the initial due date for payment, QSS will continue with normal debt recovery processes in accordance with relevant QSS guidelines to acquire payment. In circumstances where QSS either exhaust all attempts to acquire payment or receives a request to repay the debt by instalments, the matter is then to be referred to QPWS Finance and the relevant A&A Team Leader.
4. Where all attempts by QSS to acquire payment have failed, the A&A Team Leader may immediately commence relevant action (**'suspension / cancellation action'** – see definitions) inviting the principal holder / operator to make written representations within 20 **business days as to** why their CAP / CAA should not be suspended until the outstanding invoice has been paid.
5. If the chief executive commences the above-mentioned action, the holder of the authority must be given a notice stating the following:
 - the proposed action;
 - the ground for the proposed action;
 - an outline of the facts and circumstances forming the basis for the ground;
 - if the proposed action is to suspend the authority, the proposed suspension period;
 - an invitation to make written representations within a stated period (at least 20 business days) why the proposed action should not be taken.
6. Where a request has been received to repay the debt by instalments, the request must include sufficient information to allow a formal decision concerning the application to be made by the Executive Director PM subject to endorsement by the Chief Finance Officer (CFO). At a minimum, the information must include:
 - an outline of the reasons for the current state of financial hardship;
 - the remedies proposed by the customer to rectify the situation; and
 - the proposed instalment payments for repayment of the outstanding debt.
7. In the event the principal holder / operator fails to make satisfactory written representations within 20 **business days** as to why their CAP / CAA should not be suspended, the CAP / CAA may be suspended until such time as the outstanding invoice has been paid.
8. Where a principal holder / operator makes written representations indicating financial hardship, any request to approve payment of the outstanding debt by instalments is to be referred to the Executive Director PM as delegate for decision, who will then seek endorsement from the CFO. In circumstances where the Executive Director PM approves payment of the debt through an Instalment Agreement, the prescribed period for submission of future returns of operation will revert to a monthly basis.
9. Where an invoice remains outstanding after a CAP / CAA has been suspended for a period of at least **30 business days**, the chief executive may commence relevant action to cancel the CAP / CAA.

Administering outstanding returns and fees for commercial activity permits and agreements

10. Where a principal holder / operator has failed to pay fees on more than two separate occasions resulting in action being taken to suspend their authority, consideration may be given by the Executive Director PM inviting the authority holder to make written representations why their authority should not be cancelled.
11. Following the commencement of action to cancel a CAP or CAA for non-payment of an invoice, A&A Team Leaders will refer the matter to the Executive Director PM with a recommendation for QPWS Finance to commence action (s 4.8.4 – ‘Bad and Doubtful Debts’ of the Financial Management Practices Manual) to recover the outstanding debt.

Note: Any action to suspend or cancel a CAP or CAA requires approval by the Executive Director PM.

Note: Copies of all suspension / cancellation letters issued are to be forwarded to relevant Regional Directors.

Process for suspending or cancelling authorities

Where the chief executive decides to suspend or cancel a CAP, CAA or MPP, the chief executive must give the principal holder / Operator / permission holder, an ‘information notice’ about the decision (for permits issued under the NC Admin Reg see schedule 6, for permits issued under the *RAM Act*, see schedule ‘*Dictionary*’ section 3 and for a permit issued under the MP Reg. see schedule 6).

Accordingly, such decisions are ‘reviewable decisions’ and information notices must contain information concerning review and appeal provisions as provided for under the relevant legislation. Decisions made under the FA may be subject to judicial review.

Service of documents

Sections 39 and 39A of the *Acts Interpretation Act 1954* provide for the service of documents when required to do so under an Act. These provisions have relevance to the service of documents as required under provisions of the NC Admin Reg, RAM Act and MP Reg relating to procedures associated with the suspension or cancellation of a permit or agreement.

Section 39 provides that if an Act requires or permits a document to be served on a person, the document may be served personally or by leaving it at, or by sending it by post, telex, facsimile or similar facility to, the address of the place of residence or business of the person last known to the person serving the document. In the case of a body corporate, documents may be served by leaving it at, or sending it by post, telex, facsimile or similar facility to, the head office, a registered office or a principal office of the body corporate.

Section 39A defines the meaning of service by post. If an Act requires or permits a document to be served by post, service may be effected by properly addressing, prepaying and posting the document as a letter and is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

For the purposes of this policy, where there is a requirement to ‘notify’ or ‘give’ a person written notification of either a proposed action or of a decision to suspend or cancel a permit or agreement, the preferred method of service is by registered or certified mail wherever possible. Where this is not available, regular post is acceptable; however, additional service by electronic communication (email or fax) must also be given.

Where prior consent has been given, it is also permissible under the provisions of s12 of the *Electronic Transactions (Queensland) Act 2001* to effect service of a document on a person by means of electronic communication. In these instances it is recommended that a read and delivery receipt be included.

Accordingly, it may also be considered appropriate to effect service of documents by both ordinary mail and electronic communication.

Applications to amend, purchase, surrender, sub-contract, renew or transfer a permit or agreement

On receipt of an application from a principal holder, operator and/or permission holder to amend, surrender, renew, continue or transfer (for CAA's and marine park permissions only) a CAP or CAA, A&A administration officers will confirm whether there are any outstanding fees and / or returns of operation.

In circumstances where returns / fees are outstanding, CAP / CAA holders are to be advised that their application will not be progressed until such times as all outstanding returns of operation / invoices are submitted and paid. It is preferable that applicants be notified via a formal information request to provide evidence that all outstanding returns of operation / invoices have been submitted and paid by a specified date (minimum 20 business days) or their application will be considered withdrawn. Once received and / or paid, normal assessment of a new application (accompanied by the relevant application fee) may proceed.

Applicant suitability

The decision by a delegate to suspend or cancel a commercial activity permit or agreement can impact upon whether an applicant for a CAP or CAA is considered a suitable person when apply for the continuation of a relevant authority or new a new authority. Accordingly, where an applicant responds in the affirmative to the following applicant suitability question,

“In the last 3 years, have you or an associate:

- held or been a party to any of the following permits or authorities which has been suspended or cancelled;
 - a commercial activity agreement or similar agreement in Qld or another state or country,
 - a protected area authority including a commercial activity permit?”

the delegate should give appropriate consideration as to whether the applicant is in fact a suitable person to hold the applied for authority.

Reference materials

Operational Policy: Commercial activities in QPWS managed areas

Compliance Support Manual: Penalty Infringement Notice (PIN)

Guideline: Financial hardship considerations – commercial tour operators

DES Enforcement Guidelines

Authorities

Acts Interpretation Act 1954

Electronic Transactions (Queensland) Act 2001

Forestry Act 1959

Marine Parks Act 2004

Nature Conservation (Administration) Regulation 2017

Marine Parks Regulation 2017

Recreation Areas Management Act 2006

Administering outstanding returns and fees for commercial activity permits and agreements

Disclaimer

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Approved By

Geoff Clare

Signature

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Date

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