

NATURE CONSERVATION AMENDMENT BILL 1994

EXPLANATORY NOTES

General Outline

1. Objectives of the legislation

The objectives of the legislation are to amend the *Nature Conservation Act 1992* to give effect to the *Legislative Standards Act 1992* and the *Statutory Instruments Act 1992* and to provide changes to the existing legislation to simplify and enhance its operation.

2. Reasons for Bill

The need for this legislation is—

The proclamation of the *Legislative Standards Act 1992* and the *Statutory Instruments Act 1992*; and

Discussions within and between the Department and the Office of the Queensland Parliamentary Counsel have indicated a requirement to clarify a number of provisions of the current legislation. There were also oversights in the principal Act and suggestions for change made by the Litigation Reform Commission and Parliamentary Counsel.

3. Consultation

A copy of the draft Bill was distributed to peak industry organisations, community and other interest groups. Consultations were held with representatives of a total of 15 of these organisations.

All Government Departments with an interest in this legislation were consulted in relation to the implications of this Bill.

NOTES ON PROVISIONS

This is a Bill for an Act to amend the *Nature Conservation Act 1992*.

Clause 1 provides the short title to this legislation.

Clause 2 states that the *Nature Conservation Act 1992* is the principal legislation being amended by this Act.

Clause 3 provides for the recognition of the interests of Aborigines and Torres Strait Islanders in relation to protected areas and native wildlife and their cooperative involvement in the conservation of nature. This is in line with the *Legislative Standards Act 1992*. The amendment also provides for the recognition of the cooperative involvement of land-holders in nature conservation.

Clause 4 amends a number of definitions contained in section 7 of the principal Act and inserts the additional definitions of “appliance”, “conviction”, “fee”, “official name”, “procaryote” and “protista”.

Clause 5 amends the management principles relating to a National Park (Scientific) and a National Park.

The key amendment to section 16 (Management principles of National Parks (Scientific)) is contained in new subsection 16(2) which will now provide for more effective management of a National Park (Scientific) that contains threatened wildlife. Sometimes it is necessary to manipulate either the habitat or the numbers of other wildlife in order to assist in the long term survival of a threatened species and this amendment will allow this to occur if necessary.

Section 17 (Management principles of National Parks) has been amended to provide for a single cardinal principle. Reference to protection of the area’s cultural resources and values has been removed from the existing second cardinal principle and placed in the new single cardinal principle.

Overall, the contents of the three management principles remain totally unchanged. The substance of the amendment has been to give cardinal principle status only to the preservation and protection aspects of natural and cultural resources, while the presentation of these resources now has the same status as the principle requiring that the only use of the area be nature-based and ecologically sustainable.

Clause 6 amends section 31 of the Act to clarify the responsibilities of trustees of Conservation Parks and Resources Reserves.

Clause 7 amends section 34 of the Act and inserts three new sections (34A, 34B and 34C) which provide for permitted uses on a National Park that do not comply with one of the management principles for National Parks (subsection 17(1)(c)).

Section 34 has been amended to provide for the granting of a lease, agreement, licence, permit or other authority over certain classes of protected areas and to establish who may issue such authorities. Subsection 34(3) has been omitted and incorporated into section 165.

Section 34A provides a capacity for the chief executive to issue a lease, agreement, licence, permit or other authority over a National Park for a use that is not nature-based. The use must be permitted by a regulation. The chief executive must also be satisfied that there is no reasonably practicable alternative to granting the authority, and the use (a) will be in the public interest, (b) complies with the cardinal principle for the management of National Parks to the greatest possible extent (section 17), and (c) is ecologically sustainable.

An authority under section 34A could provide for a communication tower, a ship or aircraft navigation aid, or a water supply pipeline. These uses are presently precluded under subsection 17(1)(c). Section 34A could not allow an authority for grazing on a National Park.

Section 34B relates to certain authorities that may exist over land of high conservation value that is sought as National Park. In order to secure an area of land for dedication as a National Park, it is often necessary to allow for certain existing permitted uses on the area to continue on the National Park either in a phase-out capacity or for a period equivalent to the unexpired term of the existing authority. In the event that such a use is inconsistent with the management principles for National Parks (section 17), section 34B provides a capacity for the chief executive to issue an authority to allow for the continuation of that use after the area is dedicated as a National Park.

If the use is for apiary purposes or stock grazing under an existing authority under the *Forestry Act 1959* or *Land Act 1962*, the new authority (under the *Nature Conservation Act 1992*) may be permitted for a period that does not exceed the unexpired term of the existing authority. In the event of another use, the authority may not be issued for a period greater than three years. Such authorities may not be renewed beyond these periods.

Section 34C relates to existing authorities issued on National Parks under the provisions of the *National Parks and Wildlife Act 1975*. These authorities will remain in force until they expire or are terminated at an earlier date under section 165. Because some of these authorities are for uses that do not comply with the management principles for National Parks, they could not be renewed, and part of the park would have to be excised in order to allow the use to continue. Section 34C provides for such an authority, other than one for stock grazing or for apiary purposes, to be renewed if the use is permitted under a regulation.

Clause 8 amends section 35 to ensure that any special lease granted under the *Land Act 1962* must be consistent with the management principles and the management plan for the protected area. All other clauses relating to leases, licences and authorities on protected areas are qualified by (i) a reference to the management principles or (ii) another clause which relates them to those principles.

Clause 9 inserts a new provision that makes it clear that an interest in land in a protected area can only be created in accordance with this Act.

Clause 10 clarifies the meaning of “private land” and inserts new provisions relating to the liability of the State on areas of land that are the subject of a conservation agreement or which have been declared as a Nature Refuge, Coordinated Conservation Area or Wilderness Area.

Clause 11 amends section 57 of the Act in relation to taking, or interference with, the cultural or natural resources of a protected area. Further, this amendment inserts a new subsection (4) which provides that recreational fishing may be permitted in some National Parks (that are prescribed in a regulation) until the end of 1999.

Clause 12 amends section 61 of the Act to take into account the amendment of the term “conservation plan” for protected areas to “management plan”. (Refer to clause 22 of the Bill).

Clause 13 amends the provisions relating to the payment of compensation when a protected area is declared. This amendment reflects the policy of the Government concerning such legislative provisions.

Clause 14 provides a new subsection to ensure that a person does not falsely call an area a protected area or a protected area of a different class.

Clause 15 inserts the transitional provisions presently contained in Division 3 of Part 13 of the principal legislation into Division 3 of Part 5 of

the Act. The new section 79B provides for the protection of existing property rights in protected animals and plants.

Clause 16 enables an exemption to be given under a regulation concerning the taking, keeping and use of protected animals.

Clause 17 enables an exemption to be given under a regulation concerning the taking, keeping and use of protected plants.

Clause 18 will enable the Department of Environment and Heritage to monitor and control the use of protected plants that are prescribed as threatened or rare under the Act or that are prescribed under a conservation plan.

Clause 19 sets out the time period within which an application for compensation must be made.

Clause 20 broadens and clarifies the meaning of the term “land-holder” in Part 7 of the Act.

Clause 21 inserts additional provisions that provide for the preparation of a management plan over of a group of protected areas that may be aggregated for the purposes of planning and management. This amendment also provides for an existing management plan to be recognised as the approved plan for a protected area following an addition to that area or its amalgamation with another area.

Clause 22 amends the provisions of section 103 of the Act to take account of the difference between a management plan for protected areas and a conservation plan for wildlife.

Clause 23 provides amendments to section 106 by omitting the requirement for a fee for a draft plan to be prescribed by regulation. This amendment inserts provisions which provide restrictions on the level of fee that may be charged by the chief executive. Reference to Aborigines and Torres Strait Islander people is also inserted.

Clause 24 amends the existing provisions of section 107 of the Act to take account of management plans for protected areas and conservation plans for wildlife. The clause ensures that the plan—(a) is consistent with the management principles for the class of protected area, and (b) if the area is a Nature Refuge, Coordinated Conservation Area or Wilderness Area, is consistent with any conservation agreement or covenant. This section also enables zoning of a protected area.

Clause 25 amends the existing provisions of section 108 of the Act to take account of management plans for protected areas and conservation plans for wildlife and omits the requirement for a fee for a final plan.

Clause 26 provides for a conservation plan to be a statutory instrument made by the Minister, for the purposes of the *Statutory Instruments Act 1992*.

Clause 27 amends section 111 of the Act to ensure that (i) a management plan for a Coordinated Conservation Area or Wilderness Area replaces the interim or declared management intent, and (ii) a conservation plan relating to wildlife does not replace the declared management intent in all cases.

Clause 28 establishes that the provisions of a conservation plan or a regulation giving effect to a management plan take precedence over any planning scheme that may be provided by local government. This amendment also inserts a new provision which ensures that development decisions of a local authority are not inconsistent with a conservation plan or a regulation giving effect to a management plan.

Clause 29 replaces the existing provisions relating to the preparation of management or conservation plans by allowing for any necessary or prescribed modifications.

Clause 30 amends the compensation provisions to reflect the policy of the Government concerning such legislative provisions.

Clause 31 makes it clear that a member of the Queensland Police Service is a conservation officer with the same powers as are provided by the Act.

Clause 32 enables the chief executive to make enquiries as to the suitability of a person before they are appointed a conservation officer or a honorary protector.

Clause 33 defines the meaning of the term “registrable conservation agreement” in this section and takes account of management plans for protected areas and conservation plans for wildlife.

Clause 34 amends section 124 of the Act to take account of the provisions inserted by clause 32.

Clause 35 inserts a new provision that exempts a conservation officer who is carrying out official duties from being liable for prosecution for an offence against this Act.

Clauses 36, 37, 38 and 39 amend the current provisions of the Act to meet the fundamental legislative principles of the Government.

Clause 40 inserts a new provision requiring executive officers of a body corporate to ensure that the corporation complies with the Act.

Clause 41 inserts new provisions relating to the instigating of proceedings against persons for offences under the Act.

Clause 42 is a legislative change to reflect the current use of types of subordinate legislation.

Clause 43 broadens and clarifies the regulation-making power of the Act to include a power to make regulations dealing with the use of land in protected areas and for the impounding, removal and disposal of appliances found abandoned on land generally.

Clause 44 enables the preparation of a management plan for a protected area prior to the commencement of the Act in whole.

Clause 45 amends section 165 to allow for any existing lease, agreement, permit or other authority issued under section 33 or 35 of the *National Parks and Wildlife Act 1975* to continue in force until it expires or is earlier terminated. The provisions of that Act will continue to apply to the authority. Clause 8 (section 34C) provides for renewal of that authority.

Clause 46 inserts a transitional provision for fauna refuges under the *Fauna Conservation Act 1974*.

Clause 47 inserts a transitional provision in relation to a newly prohibited animal.

Clause 48 ensures that a reference to a conservation plan for a protected area in any other Act, regulation or conservation agreement coming into effect before the commencement of this section is to be read as a reference to a management plan prepared under Part 7 of the principal Act. The clause also inserts provisions relating to the reprinting of the Act and the expiry of the savings and transitional provisions contained in Part 13 of the Act.

SCHEDULE

This Schedule provides a number of minor and consequential amendments to the Principal Act and to other legislation.

1.-3. Amends various sections in the Act and in Schedule 2 to the Act (relating to the *Aboriginal Land Act 1992* and the *Torres Strait Land Act 1992*) to give effect to management plans for protected areas and conservation plans for wildlife.

4. On the advice of Parliamentary Counsel, the references to “Order in Council” throughout the Act have been replaced by “regulation”. This is in line with the *Statutory Instruments Act 1992*.

5.-6. Amends the principal Act to give effect to management plans for protected areas and conservation plans for wildlife.

7. Inserts reference to Aborigines and Torres Strait Islanders in section 6 of the Act.

8.-10. Provides minor amendments to several definitions in section 7 of the Act.

11. Omits the requirement for an interim management intent for a National Park (Scientific), National Park, Conservation Park or Resources Reserve. Matters needing regulatory status which were to have been included in interim management intents will be addressed in the Nature Conservation Regulation, or may be included in a management plan and a regulation giving effect to that plan.

12. Will require the interim or declared management intent for a Nature Refuge, Wilderness Area or Coordinated Conservation Area to contain a statement of proposed uses as well as proposed management intent.

13. The Act currently does not authorise the presentation of a Conservation Park; for example, for the purposes of public education. The amendment will correct this oversight.

14. The amendment removes reference to interim management intent in line with clause 11 in this Schedule.

15. Replaces “order” with “declaration”.

16. By omitting the words “any neighbouring area” it will no longer be possible to establish a coordinated management area around a listed World Heritage Area. This implements an undertaking given to rural producer

groups by the Government that buffer zones would not be declared around World Heritage Areas.

17.-19. Provide minor grammatical and drafting corrections to the existing Act.

20. Replaces “conservation plan” with “a regulation giving effect to the management plan”.

21.-22. Takes account of new sections 79A and 79B inserted by *Clause 15* of this Bill.

23.-26. Provides minor amendments to sections 84, 97 and 99 of the Act.

27. Gives effect to management plans for protected areas and conservation plans for wildlife.

28. Inserts a reference to Aborigines and Torres Strait Islanders in section 104 of the Act.

29. Requires the chief executive, the trustees or the board of management to give effect to an approved management plan.

30. Changes the level of penalty.

31.-42. Provide minor grammatical and drafting corrections to the existing Act.

43. Inserts a consequential amendment to the *Acquisition of Land Act 1967*.

44. Provides a number of consequential amendments to the *Deer Farming Act 1985*.

45. Provides a consequential amendment to the *Liquor Act 1992*.

46. Omits the amendments to *Transport Infrastructure (Roads) Act 1991* as the relevant Part of that Act is to be repealed in the near future.