

# **Cape York Peninsula Heritage Bill 2007**

## **Explanatory Notes**

### **General Outline**

#### **Objective of the Legislation**

The objectives of the legislation are to identify significant natural and cultural values of Cape York Peninsula, to provide for cooperative management, protection and ecologically sustainable use of land, including pastoral land, in Cape York Peninsula, to recognise the economic, social and cultural needs and aspirations of indigenous communities on Cape York Peninsula in relation to land use, and to recognise the contribution of the pastoral industry in the Cape York Peninsula to the economy and land management.

The Bill only applies to Cape York Peninsula as it has outstanding natural and cultural values and Indigenous communities in the region have an ongoing, strong attachment to their land and culture. The Bill addresses these matters by allowing for the continued return of homelands to traditional owners and provides opportunities for them to develop a sustainable economic, cultural and social future.

#### **Means of Achieving Policy Objectives**

The Bill achieves the objectives by providing for:

- the declaration of areas of international conservation significance;
- the cooperative involvement of landholders in the management of the natural and cultural values of Cape York Peninsula;
- the continuance of an environmentally sustainable pastoral industry as a form of land use in Cape York Peninsula;
- the declaration of indigenous community use areas in which indigenous communities may undertake appropriate economic activities; and
- the establishment of committees to provide advice on the implementation of the Cape York Peninsula Heritage Act.

**Alternative Means of Achieving Policy Objectives**

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

**Estimated Cost for Government Implementation**

There is likely to be administrative costs to Government associated with implementation of some aspects of this Bill. It is expected that the extension of the current tenure resolution program to include the existing national park estate on Cape York Peninsula will result in additional costs to Government including the implementation of Indigenous Land Use Agreements through committees, employment and training, and contracts. It is also expected that there will be costs associated with the new advisory committee structure that will provide advice on the implementation of the Act.

**Consistency with Fundamental Legislative Principles**

The proposed Bill is consistent with fundamental legislative principles.

**Consultation conducted in development of the Bill**

The Environmental Protection Agency, the Department of Natural Resources and Water and Office of the Queensland Parliamentary Counsel have been consulted.

**Notes on Provisions****Part 1                      Preliminary****Division 1                Introduction and objects of Act**

Clause 1 specifies the short title of the Bill.

Clause 2 provides for the commencement of the Bill on a day to be fixed by proclamation.

Clause 3 sets out the objectives of the Bill. The object is to identify significant natural and cultural values of Cape York Peninsula, to provide for the cooperative management, protection and ecologically sustainable use of land, including pastoral land, in the Cape York Peninsula Region, to recognise the economic, social and cultural needs and aspirations of indigenous communities in relation to land use in the Cape York Peninsula Region, and to recognise the contribution of the pastoral industry in the Cape York Peninsula Region to the economy and land management in the region.

Clause 4 sets out the way the Bill will achieve the objectives by providing for:

- the declaration of areas of international conservation significance;
- the cooperative involvement of landholders in the management of the natural and cultural values of Cape York Peninsula;
- the continuance of an environmentally sustainable pastoral industry as a form of land use in Cape York Peninsula;
- the declaration of indigenous community use areas in which indigenous communities may undertake appropriate economic activities; and
- the establishment of committees to provide advice on the implementation of the Bill.

Clause 5 clarifies that all persons are bound by the Bill to the extent that the legislative power of the Parliament permits.

## **Division 2            Interpretation**

Clause 6 provides that definitions of particular words used in the Bill are contained in the schedule. These definitions are necessary to complement the Bill.

Clause 7 defines the Cape York Peninsula Region. The Region generally follows the Cape York Peninsula Land Use Study boundary, but does not include the lands subject to the Yalanji Indigenous Land Use Agreement (ILUA). The south-west boundary includes the Kowanyama lands. The

exact location of the boundary of the Region is available digitally from the natural resources department.

## **Part 2                    Areas of International Conservation Significance**

### **Division 1            Preliminary**

Clause 8 sets out that the purpose of Part 2 is to provide of the declaration of areas of international conservation significance in Cape York Peninsula.

### **Division 2            Declaration of areas of international conservation significance**

Clause 9 explains that a regulation may declare an area of international conservation significance, and specifies that the regulation must define the area to be declared, and state the significant natural or cultural values for which the area is declared.

Clause 10 describes that before a declaration of an area of international conservation significance is made, the environment Minister must publish a notice about the area intended to be declared, and to invite submissions about the proposal. Submissions may be given in the way the Minister considers appropriate. This is to allow the capacity for the Minister to consider verbal or digitally presented submissions, if appropriate. The Minister must consider the submissions and consult with the Cape York Peninsula Regional Advisory Committee and the Scientific and Cultural Advisory Committee prior to the declaration proceeding. The Minister may also consult with any other entities or persons considered appropriate.

Clause 11 states that a regulation may declare an area of international conservation significance only if the environment Minister complies with the consultation requirements outlined in Clause 10, and is satisfied that the area proposed for declaration meets one or more of the World Heritage criteria listed by the International Union for Conservation of Nature.

Clause 12 states that a regulation may be made to make minor amendments to the boundary of an area of international conservation significance. The full consultation process is not required. However, the Minister must consult with persons who are considered to be included or excluded from the area of international conservation significance under the relevant proposed amendment.

## **Part 3                    Indigenous Community Use Areas**

### **Division 1            Preliminary**

Clause 13 sets out that the purpose of Part 3 is to provide for the declaration of indigenous community use areas in Cape York Peninsula.

### **Division 2            Declaration of indigenous community use areas**

Clause 14 explains that the Governor in Council may, by gazette notice, declare an indigenous community use area on Aboriginal land, DOGIT land or Aurukun Shire lease land, and specifies that the notice must define the area to be declared. The purpose of the declaration is to identify an area that would be suitable for use for agriculture, aquaculture or grazing purposes, without significantly impacting on the natural and cultural values of the area to be declared.

Clause 15 describes that before part of the region is declared to be an indigenous community use area, the vegetation management Minister must consult with the Cape York Peninsula Regional Advisory Committee and the Scientific and Cultural Advisory Committee prior to the declaration proceeding. The Minister may also consult with any other entities or persons considered appropriate.

Clause 16 states that the Governor in Council may make the declaration only if the landholder of the land that is subject to the declaration has requested that the Minister make the declaration, and the Minister has undertaken the consultation requirements outlined in Clause 15 and is satisfied that the land proposed is suitable for agriculture, animal husbandry, aquaculture or grazing activities.

## **Part 4**                    **Matters about Particular Development in Cape York Peninsula Region**

### **Division 1**            **Preliminary**

Clause 17 sets out that the purpose of Part 4 is to describe how the Minister may be satisfied that development under a vegetation clearing application under section 22A (2AA) of the *Vegetation Management Act 1999* is considered to be for a special indigenous purpose.

### **Division 2**            **Development for a special indigenous purpose**

Clause 18 states that the vegetation Minister may be satisfied that an application is for a special indigenous purpose if the proposed development is on Aboriginal land, Aurukun Shire lease land or DOGIT land in Cape York Peninsula, and the clearing is of a minor nature and will not have a significant impact on the natural values of the area. The area proposed to be cleared cannot be an endangered or of concern regional ecosystem, nor can the purpose for clearing be for planting plantations for export wood chips or planting invasive species. When considering the application, the vegetation management Minister must also consider any other clearing that has been approved on the land to ensure that incremental clearing over a large area does not occur.

Clause 19 describes what must be included in an application for proposed development in an indigenous community use area, where the application being considered is for a special indigenous purpose. The application must be accompanied by a property development plan that includes particulars of the development, including a business plan showing the viability of the proposed project. The clause also describes that the Minister must be satisfied that a number of additional criteria have been met, before making a decision to accept that an application to clear vegetation is for a special indigenous purpose.

## **Part 5                      Committees**

### **Division 1                      Cape York Peninsula Regional Advisory Committee**

Clause 20 states that the environment Minister and natural resources Minister must establish the Cape York Peninsula Regional Advisory Committee to advise on matters relating to the declaration of areas of international conservation significance, indigenous community use areas, and other matters considered appropriate, having regard to the objects of the Act.

Clause 21 states that the Ministers may decide the membership of the committee, and that the vegetation minister is to appoint the chairperson of the committee. At least half of the membership must be representatives of the indigenous people of Cape York Peninsula. Other members of the committee must include at least two representatives of conservation interests and pastoralists from the region, and at least one representative of tourism activities, mining activities in the region, and local governments in the region.

### **Division 2                      Scientific and cultural advisory committee**

Clause 22 states that the environment Minister and vegetation management Minister must establish a Cape York Peninsula Region Scientific and Cultural Advisory Committee to advise on matters relating to the natural and cultural values of the land proposed to be an area of international conservation significance and an indigenous community use area, and other matters considered appropriate, having regard to the objects of the Act.

Clause 23 states that the Ministers may make a decision on the membership of the committee. However, the membership must comprise at least one representative with expertise in environmental matters, at least one representative with expertise in cultural heritage matters, and at least one representative with expertise in matters relating to the economy.

## **Part 6                      Miscellaneous**

Clause 24 applies to a scientific purposes permit, granted to the Edward River Crocodile Farm, for taking, keeping or using estuarine crocodile eggs under a research project relating to assessing the viability of the wild harvest of estuarine crocodile eggs from Cape York Peninsula. This enables the holder of the permit to use any progeny from the estuarine crocodile eggs for commercial purposes.

Clause 25 states that the minister responsible for the *Land Act 1994* must consider the effect the surrender of a pastoral lease has on the pastoral industry in Cape York Peninsula. The Minister must take into consideration any regional or local planning strategies and policies, and must consult with the Minister responsible for administering the *Stock Act 1915*. This does not limit any provisions under the Land Act about the surrender of leases.

Clause 26 states that the Governor-in-Council may declare Aboriginal land to be an area of high nature conservation value only if the landholder has asked the vegetation management Minister for the declaration to be made.

Clause 27 states that a wild river declaration or water resource plan in the Cape York Peninsula Region must provide for a reserve of water in the area under the declaration or plan for the purpose of helping indigenous communities in the area achieve economic and social aspirations. In determining the reserve, the Minister administering the relevant Act must take into consideration the purposes of the *Wild Rivers Act 2005* (for a wild river declaration) or the *Water Act 2000* (for a water resource plan).

Clause 28 states that a Minister may delegate their powers under the Act.

Clause 29 states that the Governor in Council may make regulations under the Act

## **Part 7                      Amendment of Acts**

### **Division 1                Aboriginal Land Act 1991**

Clause 30 states that this division amends the *Aboriginal Land Act 1991*.



Clause 31 updates section 3 – ‘Definitions’ to include terms not previously used in the Aboriginal Land Act.

Clause 32 amends section 12 by inserting a new subsection that allows claimable land that has not been heard by the Land Tribunal and particular national parks to be transferable land.

Clause 33 changes division to part in section 28(6).

Clause 34 amends section 39(2), inserting new subsections (7), (8), and (9) that state that the grantees of transferred land that is proposed to become national park (Cape York Peninsula Aboriginal land) must enter into an indigenous management agreement with the State. This clause also provides that the grantees of transferred land that is a national park (Cape York Peninsula Aboriginal land) may surrender all or any part of the land to the State and, subject to the *Nature Conservation Act 1992*, must not transfer, grant or otherwise create any other interest in the land.

Clause 35 changes division to part in section 65(4).

Clause 36 amends section 76 by inserting several new subsections to allow the grantees of granted land that is proposed to become a national park (Cape York Peninsula Aboriginal land) to enter into an indigenous management agreement about the management of the land. This clause also enables the grantees to surrender all or any part of the land to the State but prevents grantees from transferring or consenting to the creation of any other interest in the land.

Clause 37 amends section 83 and states for that section that the term national park does not include a national park in Cape York Peninsula.

Clause 38 inserts new parts 5A to 5C.

Under Part 5A – ‘Provisions about particular land trusts’, a land trust may be established, by gazette notice, before land in Cape York Peninsula is granted under the Aboriginal Land Act. It also provides the details that must be included in the gazette notice, the consultation requirements before establishing the land trust, and states that the land trust is established on the day the notice is gazetted. Additional requirements are stated for establishing a land trust for transferable land and for claimable land. The purpose of the land trust is to provide for a legal entity to enter into an indigenous management agreement with the State. A land trust must enter into an indigenous management agreement about the proposed management of the national park (Cape York Peninsula Aboriginal land) before the land is granted. If the land trust, established in relation to particular land, has not entered into an indigenous management agreement

for the land within two years of it being established, or a further period approved by the Minister, the land trust may be dissolved, by gazette notice. The land trust will be dissolved on the day the notice is gazetted.

Part 5B – ‘Indigenous management agreements, and national parks in Cape York Peninsula Region’, clarifies matter relating to indigenous management agreements.

Division 1 sets out the particulars of an indigenous management agreement and states that the indigenous management agreement about land that is to become a national park, must not result in a decrease in public rights of access to the national park. An indigenous management agreement may be amended with the agreement of the environment Minister and the land trust. Division 1 also sets out the requirements for giving notice and keeping records of each agreement and confirms that all parties who are grantees of the land, or who have an interest in the land, are bound by the agreement.

Division 2 refers to national parks in the Cape York Peninsula Region. It states that for transferable land, or land for which the Land Tribunal has made a recommendation to the Minister, that is part of a national park, the grant of the national park is subject to two conditions. These conditions are that the national park land must become national park (Cape York Peninsula Aboriginal land) and the land trust must enter into an indigenous management agreement with the State for the land. Division 2 also confirms specific national parks in the Cape York Peninsula Region that are taken to be transferable land.

Part 5C - ‘Provision about particular claimable land’, states that claimable land in the Cape York Peninsula Region other than claimable land that is transferred land, or claimable land for which the Land Tribunal has made a recommendation, is taken to be transferable land and ceases to be claimable land.

## **Division 2                    Land and Other Legislation Amendment Act 2007**

Clause 39 states that this division amends the *Land and Other Legislation Amendment Act 2007*.

Clause 40 amends section 67(2) and inserts a new section 155(5) and 155(6). The new 155(5) states that a term lease may be issued for 50 years if the Minister considers that the land is in good condition, that all or part of

the land is subject to a conservation agreement and, if appropriate, an indigenous use and access agreement. The new 155(6) states that a term lease for rural leasehold land that is in an area of international conservation significance under the Cape York Peninsula Heritage Act 2007 may be issued for a term of no more than 75 years. In determining whether this term is relevant, the Minister must consider three criteria: the condition of the lease land (it must be in good condition); whether a conservation agreement has been entered into for the part of the lease that falls within the area of international conservation significance and the agreement manages the World Heritage values of this land; and whether an ILUA has been negotiated with the Traditional Owners and the ILUA has been registered.

Extensions are not available for term leases of 75 years. All other provisions of the Land and Other Legislation Amendment Act 2007 including renewal provisions will apply to term leases in Cape York Peninsula.

Clause 41 amends the definition of rural leasehold land.

### **Division 3            Nature Conservation Act 1994**

Clause 42 states that this division amends the *Nature Conservation Act 1992*.

Clause 43 inserts national parks (Cape York Peninsula Aboriginal land) as a class of protected area to which the Nature Conservation Act applies.

Clause 44 renumbers section 15(1)(b)(iii) and (iv) and states that national park (Cape York Peninsula Aboriginal land) is to be managed in accordance with any ILUA and the indigenous management agreement for the area.

Clause 45 states that a national park (Cape York Peninsula Aboriginal land) is to be managed as a national park, and is to be managed, as far as practicable, in a way consistent with any Aboriginal tradition applicable to the area, including any tradition relating to the area.

Clause 46 inserts a new section to extend the limitation on mining to include a national park (Cape York Peninsula Aboriginal land).

Clause 47 inserts Subdivision 1 for national parks (Aboriginal land) and national parks (Torres Strait Islander land).

Clause 48 clarifies that the section does not apply to national parks (Cape York Peninsula Aboriginal land).

Clause 49 inserts a new subdivision 2, for national parks (Cape York Peninsula Aboriginal land). The section applies to a national park or part of national park if the national park is in the Cape York Peninsula Region and becomes Aboriginal land, and the Minister is satisfied that the Aboriginal land is to be managed under an indigenous management agreement. On the land becoming Aboriginal land, the Minister must recommend to the Governor in Council that the land be dedicated by regulation as a national park (Cape York Peninsula Aboriginal land).

Where Aboriginal land is not a national park, the Minister must recommend to the Governor in Council that the land is dedicated, by regulation, as a national park (Cape York Peninsula Aboriginal land) if the grantees of the land have entered into an indigenous management agreement for the land, and the Minister and the grantees agree on the land being managed as a national park (Cape York Peninsula Aboriginal land).

The new section 42AC applies to other land where an agreement has been reached to become national park where the grantees of the land have entered into an indigenous management agreement about the management of the land, and the Minister and the grantees agree on the land being managed as a national park (Cape York Peninsula Aboriginal land). If the land becomes Aboriginal land, the grant of the land is subject to the land becoming national park (Cape York Peninsula Aboriginal land) and the Minister must recommend to the Governor in Council that the land is dedicated, by regulation, as a national park (Cape York Peninsula Aboriginal land).

A lease, agreement, licence, permit or other authority over land in a national park (Cape York Peninsula) can only be granted by the chief executive with consent of the land trust, or by the land trust with consent of the chief executive. The lease must be consistent with the management principles for the national park (Cape York Peninsula Aboriginal land), any ILUA, the indigenous management agreement and the management plan.

Further, the chief executive and the land trust may only permit authorities for service facilities for specific uses if the use is prescribed under a regulation, and both the chief executive and land trust are satisfied that the use is in the public interest, it is ecologically sustainable, and there is no reasonable practicable alternative.

Clause 50 renumbers section 111(a)(iii) to (v) and inserts that the Minister must prepare a management plan as soon as practicable after the dedication

of a national park (Cape York Peninsula Aboriginal land). The management plan for a national park (Cape York Peninsula Aboriginal land) must be prepared jointly with the land trust for the area and be consistent with any ILUA and the indigenous management agreement for the area.

Clause 51 inserts a new section 120(1) and sets out that for a national park (Cape York Peninsula Aboriginal land), the land trust for the area and the chief executive must give effect to the management plan.

Clause 52 inserts a new section 132A that states that the Minister may establish committees to advise about matters relating to protected areas in the Cape York Peninsula Region, such as preparing and implementing management plans. These committees must consist of representatives of Indigenous people that have an interest in the relevant protected area. Further, the Minister must establish a committee (the Regional Protected Area Management Committee) to advise the Minister on strategic issues such as management plans, indigenous employment and training opportunities, and resourcing for the management of the protected areas. The Regional Protected Area Management Committee is to consist of indigenous people who have an interest in one or more protected areas in the region and may be representatives of the advisory committees mentioned above or an indigenous regional organisation.

Clause 53 amends section 133(1)(a) to include that leases issued under section 42AD and 42AE must be kept on a register.

Clause 54 sets out that the chief executive may not delegate powers under section 42AD or 42AE.

Clause 55 updates the dictionary to include terms not previously used in the Nature Conservation Act.

## **Division 4            Vegetation Management Act 1999**

Clause 56 states that this division amends the *Vegetation Management Act 1999*.

Clause 57 inserts a new division titled 'Code for clearing vegetation for special indigenous purpose' (the special clearing code). The division allows the Minister to prepare a code for clearing vegetation, when the clearing is for a special indigenous purpose under the Cape York Peninsula Heritage Act. Any application for clearing for a special indigenous

purpose will be assessed against the code. Before preparing the code, the Minister must undertake consultation with relevant landholders and the Cape York Peninsula Regional Advisory Committee. Once prepared, the code can be amended with the agreement of these same parties. However, the code may be amended without consultation with these parties if it is to correct a minor error in the code or the code allows an amendment under this section. If a code does not exist under clause 62 and there is a declared area code for the clearing, the declared area code will apply or otherwise, the existing regional vegetation management code for the area will apply.

Clause 58 states that the special clearing code is a code for IDAS and inserts new subsections to section 20 to state that a declared area code prevails over a special clearing code. It also states that if a special clearing code inconsistent with an existing regional vegetation management code for the same area, the special clearing code prevails.

Clause 59 inserts a new subsection to section 20B(a)(vi) allowing for the making of a property map of assessable vegetation for an area where the Minister is satisfied that the development is for a special indigenous purpose.

Clause 60 inserts a new subsection 2AA to section 22A that states that a vegetation clearing application is for a relevant purpose if the development applied for is for a special indigenous purpose. This means that an application that is for a special indigenous purpose can be assessed under the *Integrated Planning Act 1997*.

Clause 61 updates the dictionary to include terms not previously used in the Vegetation Management Act.

## **Division 5            Wild Rivers Act 2005**

Clause 62 states that this division amends the *Wild Rivers Act 2005*.

Clause 63 inserts new subsections to clarify that the wild rivers declaration or a wild rivers code does not limit native title rights.

Clause 64 clarifies the meaning of Aurukun project.

## **Schedule**

The dictionary contains definitions of particular terms used in the Act.