Nature Conservation and Other Legislation Amendment Bill 2012

Explanatory Notes

Short title

The short title of the Bill is the *Nature Conservation and Other Legislation Amendment Bill 2012*.

Policy objectives and the reasons for them

The objectives of the Bill are:

- To amend the *Nature Conservation Act 1992* (NC Act) to enable authorisation of privately operated ecotourism facilities in national park, national park (recovery), including indigenous joint management areas, and in national park (Cape York Peninsula Aboriginal land).

  These amendments will provide for greater ecotourism access to Queensland's national parks, consistent with commitments under the DestinationQ Partnership Agreement between the Queensland Government and the Queensland Tourism Industry Council, entered into on 26 June 2012, and its associated 12 Month Key Action Plan.

  The tourism industry has identified demand for privately funded, purpose built, 'low impact' infrastructure ecotourism projects, on and adjacent to national parks, to provide new and unique opportunities to attract both domestic and international visitors to Queensland.

  Feedback from tourism proponents, and a review of arrangements in other jurisdictions, has identified three elements as essential to facilitating ecotourism development:
  - the ability to acquire an interest in land against which finance could be obtained;

- for the interest to be granted for a period of time that was reflective of the level of investment and modelled returns; and
- the ability to develop permanent ecotourism infrastructure on national parks.

The current framework in the NC Act does not allow for privately funded and operated ecotourism infrastructure on national park tenures.

The Bill amends the NC Act to enable the Chief Executive, together with the indigenous landholder where the park includes Aboriginal land, to authorise ecotourism facilities in national park, national park (recovery) and national park (Cape York Peninsula Aboriginal land). The amendments in the Bill include environmental and public interest requirements as outlined in the next section (Achievement of policy objectives).

- To amend the NC Act to provide a simplified process to authorise 'service facility' infrastructure (such as telecommunication towers, powerlines and water pipelines) within national park, national park (recovery) or national park (Cape York Peninsula Aboriginal land) in cases where the infrastructure was already present when the land was dedicated as the relevant tenure under the NC Act.

  Service facilities on land tenures under the NC Act (whether pre-existing infrastructure or new proposals) require authorisation to allow for the use. These authorisations ensure that appropriate conditions are applied, rental arrangements are in place and the State is indemnified against claims resulting from the infrastructure's operation.

  However, under the current provisions in the NC Act, pre-existing service facility infrastructure on a national park tenure can only be authorised through an involved process designed for new service facility proposals.

  The simplified authorisation process provided in the Bill eliminates approval steps that are of limited use when service facility infrastructure is already in place.

- To amend the *Forestry Act 1959* (Forestry Act) to improve permit administration by removing the 7 year maximum term and 10 hectare

maximum area limits on the grant of a permit to occupy (occupation permit).

Infrastructure works on State Forests are typically managed using occupation permits under section 35(1)(a) of the Forestry Act. Currently these permits can only be granted for up to a maximum of 7 years and over a maximum area of 10 hectares.

In recent years there has been an increase in infrastructure development on State forests. This is mainly a result of the expanding coal seam gas (CSG) industry, however other sectors such telecommunications, electricity transmission and initiatives such as the national broadband network also currently occupy State forest lands, or are expected to in the future. This infrastructure is characterised by having a long 'life', and often exceeds 10 hectares in area, particularly linear infrastructure such as pipelines and powerlines.

The need for an improved approach is demonstrated by a recent example where, due to the 10 hectare maximum limit, a coal seam gas proponent was issued with 18 separate occupation permits for linear infrastructure through a State forest. This is both inefficient and time consuming for both the proponent and the administering department.

- To clarify that pipeline licence holders may obtain and register easements over State forest lands through an authority issued under the *Petroleum and Gas (Production and Safety) Act 2004.*

  Section 26(1A) of the *Forestry Act 1959* states that land in a State forest can only be dealt with under authority of or in accordance with the provisions of the Act. However, under recent amendments made to the *Petroleum and Gas (Production and Safety) Act 2004*, an easement may be created for a pipeline licence holder, despite section 26(1A) of the Forestry Act.

  To ensure clarity and avoid any uncertainty for industry, the Bill will insert a cross-referencing provision in section 26(1A) of the Forestry Act, noting that the *Petroleum and Gas (Production and Safety) Act 2004* allows for an easement to be created over a State forest for a pipeline licence holder.

- To repeal the *Brisbane Forest Park Act 1977*.

  The *Brisbane Forest Park Act 1977* (BFP Act) is no longer required to fulfil the coordinating function for which it was established and the Bill repeals the Act.

  The BFP Act was created in 1977 to coordinate recreation and conservation across forested land to Brisbane's west, including Brisbane City Council (BCC) land, water reserve land, State forest and national park.

  In recent years, as a result of changes in administrative arrangements and land tenure, use of the BFP Act has ceased. The majority of the relevant land is in the expanded D'Aguilar National Park, and BCC has indicated a preference to work cooperatively using less formal, non-statutory arrangements.

Achievement of policy objectives

- The Bill allows for the authorisation of ecotourism facilities in national park, national park (recovery), including indigenous joint management areas, and in national park (Cape York Peninsula Aboriginal land). The provisions have been drafted to ensure that the policy intent is clearly reflected in the legislation.

  'Ecotourism facility' is defined as a facility with its primary purpose being to facilitate the presentation, appreciation and conservation of the land's natural condition and cultural resources and values. The definition also provides that the facility cannot allow for an activity that is inconsistent with this primary purpose and that would require significant change to the land's natural condition or would adversely affect the conservation of the land's cultural resources and values. Examples of such inconsistent use are the construction of a golf course, amusement park or casino.

  The amendments also provide that the Chief Executive, together with the indigenous landholder where the park includes Aboriginal land, cannot authorise an ecotourism facility unless satisfied that the use is in the public interest, is ecologically sustainable, and will provide to the

greatest possible extent for the preservation of the land's natural condition and protection of its cultural resources and values.

Additionally, authorisation cannot be given unless a specific regulation is made designating the use as a permitted use for the area. This is consistent with the current requirement in relation to authorising a service facility on national park.

These ecotourism facility amendments are to commence by proclamation. Prior to their commencement, a supporting policy framework and associated procedures will be developed to ensure that any proposed ecotourism infrastructure is appropriately assessed and evaluated.

Assessment processes will be established to ensure that a proposal complies with the definition of an ecotourism facility, and to consider its overall environmental sustainability, its particular impact on the land's natural condition and cultural resources and values, and whether the proposed use is in the public interest.

Public interest considerations will include, for example, assessment of the need that is to be served by the proposed facility, its impact on the amenity of the area, its effect on general community access and on other recreational and commercial opportunities in the park and adjacent areas, its long-term economic viability and the level of direct commercial return to the State (e.g. lease rental payments).

Ecotourism development in national parks will also need to satisfy requirements under other relevant legislation, including the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and State and Commonwealth Native Title legislation.

- The Bill amends the NC Act to allow a simplified authorisation process for existing service facilities on national park, national park (recovery) or national park (Cape York Peninsula Aboriginal land).

  An 'existing service facility' is defined to mean a service facility that was in existence on the land immediately before the land was dedicated as the relevant national park tenure under the NC Act. This definition covers pre-existing cases, but will also be applicable to cases that may

arise in future, for example if a new national park is dedicated on land with a service facility in place.

The simplified authorisation process provided in the Bill eliminates the approval steps that are of limited use when service facility infrastructure already exists on the land. For example, under the simplified process, it will not be necessary to make a prior regulation allowing for the particular use on the land, or to be satisfied that the use will be in the public interest, or to be satisfied that there is no reasonably practicable alternative. However, the requirement to be satisfied that the use is ecologically sustainable will remain.

The amendments also provide that the simplified authorisation process cannot be used to authorise substantial improvements to pre-existing infrastructure. Any such improvements will require assessment and authorisation under the more involved process that applies to new proposals.

- The Bill removes both the limits on area and time (10 hectares and 7 years) from the occupation permit provisions in the Forestry Act as a red tape reduction measure. This will deliver significant benefits to both Government and industry by simplifying the way permits are administered and managed by allowing one permit to be issued over the extent of a project through a whole State forest if necessary, and for the life of the project.

  The change will not alter a company's obligations to address the rights of other users of the forest such as graziers, or impact on the current requirements to reach agreement with the Department of Agriculture, Fisheries and Forestry or HQ Plantations Pty Ltd in relation to any impacts infrastructure development may have on commercial timber production. It will also not affect current revenue, as rental is calculated on the area of forest occupied rather than the number of permits issued.

- The Bill inserts a note in the Forestry Act to indicate that pipeline licence holders may obtain and register easements over State forest lands through an authority issued under the *Petroleum and Gas (Production and Safety) Act 2004.*

This will provide clarity by directing users of the Forestry Act to the relevant provision under the *Petroleum and Gas (Production and Safety) Act 2004.*

- The Bill repeals the *Brisbane Forest Park Act 1977* which is no longer required to fulfil the coordinating function for which it was established.

  All relevant arrangements under the BFP Act have been wound up ahead of the Act's repeal. The *Brisbane Forest Park Regulation 1998* and *Brisbane Forest Park Regulation 1999* have now expired. The Brisbane Forest Park Advisory Planning Board is no longer in place (memberships expired and were not renewed). Revenue is no longer collected under the Act. All previously collected revenue has been expended for the purposes of the Act.

Alternative ways of achieving policy objectives

Authorisation of ecotourism facilities on national park tenures

Consideration has previously been given to providing opportunities for the private sector to establish nature-based ecotourism accommodation, on or adjacent to national parks.

A pilot project was undertaken in 2009, in which an expression of interest process was initiated for a number of potential sites. Accommodation was required to be low-impact and semi-permanent (removable), built by investors, with ownership retained by the State. This was to be authorised under 15 year Commercial Activity Agreements with a possible extension of 15 years.

Such 'semi-permanent' arrangements can be authorised under existing provisions in the *Nature Conservation Act 1992*.

Although the expression of interest process under the pilot project provided evidence of investor interest, it did not result in any proponents willing to submit a full proposal, with concerns expressed around commercial viability and the length of tenure.

Subsequent analysis, including examining the outcomes of approaches in other jurisdictions, found that commercial viability would be significantly

improved by allowing for sustainable permanent ecotourism infrastructure authorised under a lease, with a lease term matched to the level of investment, risk profile and capacity for return on investment.

Based on the experience of the pilot project and the resulting analysis, semi-permanent ecotourism development is unlikely to be a commercially viable alternative to permanent ecotourism facilities. The amendments in the Bill will allow permanent low-key ecotourism development to be authorised, provided that appropriate environmental and public interest requirements can be met.

Simplified authorisation of existing service facility infrastructure on national park tenures

The proposed simplified process dispenses with processes that have limited relevance to service facility infrastructure that already exists (such as assessment of whether there is any reasonably practical alternative). However, the amendment maintains the requirement to grant an authority for each facility.

Consideration was given to making an amendment that provided 'deemed' authorisation for all pre-existing service facility infrastructure, so that individual authorities would not be required. This option was rejected on various grounds.

For example, such a deeming provision would not allow implementation, on a case by case basis, of appropriate conditions for access, operation and maintenance of the relevant facility.

Additionally, the duration to be allowed under any amendment providing for deemed authorisation would be problematic. For instance:

- all existing facilities could be deemed to be authorised for a specified timeframe – in which case individual authorities would still need to be granted at some stage within or at the end of that timeframe;
- alternatively, all existing facilities could be deemed to be authorised for the 'operating life' of each facility – in which case a range of complications arise in terms of differentiating between maintenance and upgrading, with associated definitional and verification issues.

Removing 7 year and 10 hectare limits on occupation permits under the Forestry Act

The amendment to remove the current 7 year and 10 hectare maximum limits on occupation permits under the Forestry Act will not affect decisions about whether a project receives approval or not. However, it will reduce red tape associated with unnecessarily issuing multiple permits for the one project.

Consideration was given to retaining a designated maximum term and maximum area, by increasing the designated limits above 7 years and 10 hectares. This option was rejected, because, in order to achieve the policy objective (reducing the need for multiple permits for a single project), any new maximum limits would need to be able to cater for projects of a significant size and duration. Unless large enough to meet every foreseeable need, the designated maximums could still be inadequate for some large projects, while at the same time having no limiting effect on, and therefore no relevance to, the grant of permits for smaller and shorter projects.

A policy framework and associated procedures will be developed to ensure that the area and time-frame provided under the permit is allocated on a case-by-case basis, and is appropriate to the nature of the project and forest management considerations. As previously indicated, permit revenue (rental) is payable based on total area occupied, not the number of permits, and so will be unaffected.

Inserting a note in the Forestry Act about easements over State forest lands

The amendment inserts a note in the Forestry Act to clarify that pipeline licence holders may obtain and register easements over State forest lands through an authority issued under the *Petroleum and Gas (Production and Safety) Act 2004*.

Inserting this cross reference is the simplest and most effective way to improve transparency about dealings with State forest lands.

Repeal of the Brisbane Forest Park Act

The *Brisbane Forest Park Act 1977* is no longer required for its original coordinating purpose and should be repealed. No alternative is appropriate.

Estimated cost for government implementation

Authorisation of ecotourism facilities on national park tenures

Assessment processes will be established to ensure that a proposal for ecotourism development complies with the definition of an ecotourism facility, and to consider its overall environmental sustainability, its particular impact on the land's natural condition and cultural resources and values, and whether the proposed use is in the public interest. The cost of establishing these processes will be met from existing budgets. Some additional costs will be incurred in maintaining oversight of the establishment and operation of each facility.

These relatively minor costs will be outweighed by the ongoing revenue derived from payments to the State by ecotourism facility operators for the use of the land and the right to operate the facilities.

Simplified authorisation of existing service facility infrastructure on national park tenures

Procedures will be established to verify that relevant service facility infrastructure pre-dates the park's dedication under the NC Act, and a modified version of existing processes will be developed to meet the simplified assessment requirements. The implementation costs will be minimal, and will be offset by ongoing administrative savings.

Removing 7 year and 10 hectare limits on occupation permits under the Forestry Act

The existing policy and procedures will be revised to ensure that the area and time-frame provided under each occupation permit is appropriate to the nature of the project and forest management considerations. This will involve a small initial cost to be met from existing budgets. This cost will be outweighed by long-term administrative cost savings resulting from significant reduction of the number of permits that need to be issued and renewed.

Inserting a note in the Forestry Act about easements over State forest lands

This amendment has no implementation costs.

Repeal of the Brisbane Forest Park Act

The BFP Act is no longer required. Repeal of the Act has no implementation costs.

Consistency with fundamental legislative principles

The Bill has been examined for compliance with the fundamental legislative principles outlined in section 4 the *Legislative Standards Act 1992* and is considered to have sufficient regard to the rights and liberties of individuals and the institution of Parliament. Specifically two potential issues were identified, and the following responses will be implemented to address the relevant principles.

The first issue relates to maintaining community access to national parks. Currently, the general community has existing rights and liberties in relation to the enjoyment of national parks as public land.

Any ecotourism lease granted could potentially provide exclusive access rights to an area that may once have been accessible by the general community as public land. To address this matter it is proposed that a policy framework (including site access criteria) will be developed. The framework will ensure a balance between maintaining community access, whilst also enabling individual lessees to provide opportunities for their guests to enjoy a reasonable expectation of quiet enjoyment and privacy. The policy and assessment framework will ensure these considerations are made as part of the Chief Executive's determination that an ecotourism facility meets the public interest criteria under the new provision.

The second issue relates to removing 7 year and 10 hectare limits on occupation permits under the Forestry Act and ensuring that this meets the principle of ensuring administrative power is only delegated in appropriate cases.

The provision in the Bill will expand the current administrative power by increasing the flexibility for the timeframe and area able to be granted for an occupation permit on State forest.

Policies which currently guide the assessment and grant of permits will be amended to ensure that the area and time-frame provided under the permit is appropriate to the nature of the project and forest management considerations. The policies will be publicly available and sufficiently detailed to ensure decisions are soundly based and consistently applied across the State.

Consultation

Consultation in relation to this Bill was undertaken with relevant Departments. Specific community consultation has been limited in relation to the Bill. However, general discussions have occurred over the last 12 months in relation to the proposal to streamline the process for authorising pre-existing infrastructure on national parks and removing the 7 year and 10 hectare limits from occupation permits under the *Forestry Act 1959* to enable a more flexible framework for granting permits. These discussions were conducted with infrastructure providers such as Powerlink and Ergon Energy in relation to the provision of electricity infrastructure and with a number of coal seam gas industry representatives. HQ Plantations, who manage commercial plantations under licence from the State on a number of State forests were consulted and raised no objections to this provision, provided that a supporting policy framework was implemented.

Consultation in relation to tourism leases has previously occurred with tourism and conservation interests in conjunction with the pilot project for establishing semi-permanent ecotourism infrastructure on national parks (as outlined above in *Alternative ways of achieving the policy objectives).* The tourism industry was supportive of the concept of ecotourism leases, while conservation interests expressed concerns regarding potential tourism impacts on national park values. The government has elected to proceed with tourism leases to facilitate increased tourism opportunities in Queensland within an ecologically sustainable framework, consistent with a number of other Australian States.

Consultation on the repeal of the Brisbane Forest Park Act was undertaken in 2008-09, with the Brisbane Forest Park Advisory Planning Board and the relevant land managers, including Brisbane City Council and SEQ Water. Future management requirements for the land were discussed and it was agreed that the Brisbane Forest Park arrangements should cease. While not currently considered necessary, if there is a future need for land coordination, there are other options to achieve the same effect.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, however the provision relating to ecotourism leases on national parks is broadly consistent with the *Conservation and Land Management Act 1984* in Western Australia, which supports the grant of a performance based ecotourism lease over a national park for a period of 21 years with the option to renew for a further 21 years. Many other jurisdictions, including the Northern Territory, Victoria and Tasmania provide for ecotourism leases on national parks.

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Nature Conservation and Other Legislation Amendment Bill 2012.*

Clause 2 states that clauses 8, 11 and 13 and the definition of 'ecotourism facility' in clause 17 are intended to commence on a day fixed by proclamation. These provisions relate to the ability to authorise an ecotourism facility for a national park or national park (recovery), including indigenous joint management areas, or a national park (Cape York Peninsula Aboriginal land).

Part 2 Repeal of Brisbane Forest Park Act 1977

Clause 3 repeals the Brisbane Forest Park Act 1977.

Part 3 Amendment of Forestry Act 1959

Clause 4 provides that Part 3 amends the *Forestry Act 1959*.

Clause 5 inserts a note in section 26(1A) of the *Forestry Act 1959* to indicate that the *Petroleum and Gas (Production and Safety) Act 2004*, section 437A(1), allows for an easement to be created for a pipeline licence holder over land that is in a State forest. This cross-reference helps provide clarity about legislative authority to deal with State forest land.

Clause 6 amends section 35 of the *Forestry Act 1959* to remove the maximum limits of 10 hectares and 7 years that apply to the grant of occupation permits over State forest.

Part 4 Amendment of Nature Conservation Act 1992

Clause 7 provides that Part 4 amends the *Nature Conservation Act 1992*.

Clause 8 amends section 35(1) of the Act to create the ability for the Chief Executive to authorise an ecotourism facility for a national park or national park (recovery). The clause maintains the existing ability to authorise a service facility.

The amended section 35(1)(c) provides that an ecotourism facility can only be authorised if the Chief Executive is satisfied that the use:

- will be in the public interest;
- is ecologically sustainable; and
- will provide to the greatest possible extent for the preservation of the natural condition of the land and protection of its cultural resources and values.

The amended section 35(1)(d) provides that a specific regulation must be made to allow the use of the area for a service facility or ecotourism facility. This is consistent with the current requirement in relation to authorising a service facility on national park.

The amendments provided in clause 8 [which apply to national park and national park (recovery)] are mirrored in clauses 11 and 13 respectively in

regard to national park (Cape York Peninsula Aboriginal land), and national park or national park (recovery) that is an indigenous joint management area.

Clause 9 inserts a new section 35A in the Act to provide a simplified process to authorise an 'existing service facility' on a national park or national park (recovery). 'Existing service facility' is defined in section 35A(4) to mean a service facility (such as a telecommunication tower, powerline or water pipeline) that was already present at the time the land was dedicated under the Act as national park or national park (recovery).

The simplified authorisation process for an existing service facility is consistent with the process for authorising a new service facility (under section 35 of the Act), but omits particular requirements of limited relevance to infrastructure that is already present.

Specifically, section 35A does not require the making of a specific regulation before the Chief Executive may grant an authority for the particular service facility use; nor does it require the Chief Executive to be satisfied that the use will be in the public interest and that there is no reasonably practicable alternative.

The new section 35A(1)(b) requires the Chief Executive to be satisfied that the use is ecologically sustainable and does not include carrying out substantial improvements to the existing facility. Any substantial improvements need to be authorised under section 35 of the Act.

The new section 35A(3) indicates that section 35A does not apply to national park or national park (recovery) that is an indigenous joint management area. (An equivalent amendment for authorising existing service facilities in indigenous joint management areas is provided by clause 12 of the Bill.)

The amendments provided in clause 9 [which apply to national park and national park (recovery)] are mirrored in clauses 12 and 14 respectively in regard to national park (Cape York Peninsula Aboriginal land), and national park or national park (recovery) that is an indigenous joint management area.

Clause 10 amends section 36(5)(b) of the Act to recognise the new section 35A. This ensures that section 36 does not limit the application of sections 35 and 35A, both of which will now apply to the authorisation of service facilities for national park and national park (recovery).

Clause 11 amends section 42AE of the Act to create the ability for the Chief Executive, and the indigenous landholder for the land, to authorise an ecotourism facility for a national park (Cape York Peninsula Aboriginal land). The clause maintains the existing ability to authorise a service facility.

The amended section 42AE(1)(c) provides that an ecotourism facility can only be authorised if the Chief Executive and the indigenous landholder are satisfied that the use:

- will be in the public interest;
- is ecologically sustainable; and
- will provide to the greatest possible extent for the preservation of the natural condition of the land and protection of its cultural resources and values.

The amended section 42AE(1)(d) provides that a specific regulation must be made to allow the use of the area for a service facility or ecotourism facility. This is consistent with the current requirement in relation to authorising a service facility on national park.

Clause 12 inserts a new section 42AEA in the Act to provide a simplified process to authorise an 'existing service facility' on a national park (Cape York Peninsula Aboriginal land). 'Existing service facility' is defined in section 42AEA(3) to mean a service facility (such as a telecommunication tower, powerline or water pipeline) that was already present at the time the land was dedicated under the Act as national park (Cape York Peninsula Aboriginal land).

The simplified authorisation process for an existing service facility is consistent with the process for authorising a new service facility (e.g. under section 42AE of the Act), but omits particular requirements of limited relevance to infrastructure that is already present.

Specifically, section 42AEA does not require the making of a specific regulation before the Chief Executive may grant an authority for the

particular service facility use; nor does it require the Chief Executive and the indigenous landholder to be satisfied that the use will be in the public interest and that there is no reasonably practicable alternative.

The new section 42AEA(1)(b) requires the Chief Executive and the indigenous landholder to be satisfied that the use is ecologically sustainable and does not include carrying out substantial improvements to the existing facility. Any substantial improvements need to be authorised under section 42AE of the Act.

Clause 13 amends section 42AO of the Act to create the ability for the Chief Executive, and the indigenous landholder for land that is an indigenous joint management area in a national park or national park (recovery), to authorise an ecotourism facility for the land. The clause maintains the existing ability to authorise a service facility.

The amended section 42AO(1)(c) provides that an ecotourism facility can only be authorised if the Chief Executive and the indigenous landholder are satisfied that the use:

- will be in the public interest;
- is ecologically sustainable; and
- will provide to the greatest possible extent for the preservation of the natural condition of the land and protection of its cultural resources and values.

The amended section 42AO(1)(d) provides that a specific regulation must be made to allow the use of the area for a service facility or ecotourism facility. This is consistent with the current requirement in relation to authorising a service facility on national park or national park (recovery).

Clause 14 inserts a new section 42AOA in the Act to provide a simplified process to authorise an 'existing service facility' on land that is an indigenous joint management area in a national park or national park (recovery). 'Existing service facility' is defined in section 42AOA(3) to mean a service facility (such as a telecommunication tower, powerline or water pipeline) that was already present at the time the land was dedicated under the Act as an indigenous joint management area.

The simplified authorisation process for an existing service facility is consistent with the process for authorising a new service facility (e.g. under

section 42AO of the Act), but omits particular requirements of limited relevance to infrastructure that is already present.

Specifically, section 42AOA does not require the making of a specific regulation before the Chief Executive may grant an authority for the particular service facility use; nor does it require the Chief Executive and the indigenous landholder to be satisfied that the use will be in the public interest and that there is no reasonably practicable alternative.

The new section 42AOA(1)(b) requires the Chief Executive and the indigenous landholder to be satisfied that the use is ecologically sustainable and does not include carrying out substantial improvements to the existing facility. Any substantial improvements need to be authorised under section 42AO of the Act.

Clause 15 amends section 42AP(5) of the Act to recognise sections 42AO and the new section 42AOA. This ensures that section 42AP does not limit the application of sections 42AO and 42AOA, both of which will now apply to the authorisation of service facilities in indigenous joint management areas within national park and national park (recovery).

Clause 16 amends section 141 of the Act to provide that the Chief Executive may not delegate the Chief Executive's powers under sections 35A, 42AEA, 42AO, 42AOA, and 42AP (in additional to other sections already listed in section 141).

Therefore, the Chief Executive cannot designate any other person to act on the Chief Executive's behalf to authorise service facilities and ecotourism facilities in national park or national park (recovery) areas, including indigenous joint management areas, or in national park (Cape York Peninsula Aboriginal land).

The Chief Executive will therefore need to take personal responsibility for the relevant authorisation. This high level approval recognises the significance of approving long-term facilities that may have a significant impact on the land's natural and cultural resources and values.

Clause 17 amends the schedule (Dictionary) in the Act to insert definitions of 'ecotourism facility' and 'national park (recovery)'.

'Ecotourism facility' is defined as a facility with its primary purpose to facilitate the presentation, appreciation and conservation of the area's natural condition and cultural resources and values. The definition also provides that the facility cannot allow for an activity that is inconsistent with this primary purpose and that would require significant change to the land's natural condition or would adversely affect the conservation of the land's cultural resources and values. Examples of such inconsistent use are the construction of a golf course, amusement park or casino.

A definition of 'national park (recovery)' is inserted to correct a previous oversight. The definition indicates that 'national park (recovery)' means an area dedicated 'under this Act' [the *Nature Conservation Act 1992*] as a national park (recovery).