

Nature Conservation and Other Legislation (Indigenous Joint Management—Moreton Island) Amendment Bill 2020

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Shannon Fentiman, Minister for Employment and Small Business and Minister for Training and Skills Development make this statement of compatibility with respect to the Nature Conservation and Other Legislation (Indigenous Joint Management—Moreton Island) Amendment Bill 2020.

In my opinion, the Nature Conservation and Other Legislation (Indigenous Joint Management—Moreton Island) Amendment Bill 2020 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

On 27 November 2019, the Federal Court of Australia made a native title consent determination recognising the Quandamooka People's native title rights on Moreton Island (Mulgumpin). As part of the consent determination process, the State and the Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC), the representatives of the Quandamooka People, agreed to work towards the joint management of protected areas on Moreton Island, similar to existing joint management arrangements with QYAC on Minjerribah (North Stradbroke Island).

To achieve this outcome, amendments are required to the *Aboriginal Land Act 1991* (ALA), the *Nature Conservation Act 1992* (NCA) and the *Recreation Areas Management Act 2006* (RAMA) to:

- give prescribed protected areas on Moreton Island the status of transferable land so they may be granted to QYAC as Aboriginal land;
- provide that the Indigenous Management Agreement prepared for the management of prescribed protected areas on Moreton Island is recognised under the ALA to facilitate the declaration of an Indigenous Joint Management Area (IJMA) under the NCA;
- provide for the declaration of an IJMA over prescribed protected areas to deliver joint management arrangements with QYAC on Mulgumpin, consistent with commitments in the Indigenous Land Use Agreement negotiated between QYAC and the State; and
- ensure consultation and other requirements, as specified in the IMA, are met before certain permits and authorities are granted.

Some additional amendments, unrelated to the joint management outcome, are being made to provide clarification about the operation of existing provisions and provide consistency across related legislation. These amendments will:

- clarify the relationship between several sections of the NCA that relate to the grant of

a lease, agreement, licence, permit or other authority over State land protected areas, IJMAs, national parks (Cape York Peninsula Aboriginal land) and special wildlife reserves;

- clarify the preservation of certain existing interests on land granted as Aboriginal land; and
- mirror amendments that provide clarity around the operation of the ALA as it relates to the continuation of certain interests on Aboriginal land in the *Torres Strait Islander Land Act 1991* (TSILA) for consistency in these pieces of legislation.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are relevant to the Bill are:

- Property rights (section 24)
- Cultural rights - Aboriginal peoples and Torres Strait Islander peoples (section 28)

Property rights

Section 24 of the Human Rights Act provides that all persons have the right to own property alone or in association with others and a person must not be arbitrarily deprived of the person's property.

A number of amendments in the Bill provide for the protection and promotion of property rights.

Amendments to the ALA will designate prescribed protected areas on Moreton Island, which are State lands, as transferable land. This will allow for subsequent processes to occur that may result in the land being granted to QYAC, as the registered native title body corporate representing the Quandamooka People, in the form of freehold Aboriginal land. If granted, the land will be held in trust by QYAC for the Quandamooka People and continue to be managed as part of the protected area estate.

The declaration of an Indigenous Joint Management Area over these lands under the NCA will provide opportunities for the Quandamooka People to be involved in the joint management of the prescribed protected areas with the Queensland Parks and Wildlife Service. These amendments will facilitate greater self-determination and provide opportunities for the economic, social and cultural aspirations of the Traditional Owners to be achieved.

Unrelated to the native title determination, amendments to the NCA will also positively engage property rights by protecting the statutory property rights of the holders of certain permissions. The amendments will clarify the operation of provisions relating to the grant of a lease, agreement, licence, permit or other authority (permissions) over State land protected areas, IJMAs, national parks (Cape York Peninsula Aboriginal land) and special wildlife reserves to remove a risk that would adversely impact on property rights if the permissions were found to be invalid by an interpretation contrary to the intent of the legislation.

Cultural rights - Aboriginal peoples and Torres Strait Islander peoples

Section 28 of the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. Cultural rights that are relevant to amendments in the Bill are provided in section 28(2)(a) the right to enjoy, maintain, control, protect and develop their cultural heritage; section 28(2)(d) the right to maintain and strengthen their distinct spiritual, material and economic relationship with the land and other resources with which they have a connection under Aboriginal tradition; and section 28(2)(e) the right to conserve and protect the environment and productive capacity of their land and other resources.

Amendments in the Bill that provide for the joint management of protected areas on Moreton Island between the State and QYAC will protect and promote the cultural rights of the Quandamooka people. The declaration of an IJMA will facilitate the Quandamooka Peoples' access to Country and cultural sites for continued connection to Country and cultural practice. It will provide an opportunity for traditional knowledge and cultural values to be incorporated into the management of protected areas on Moreton Island and provide for the protection and enhancement of the Island's natural and cultural resources and values.

Conclusion

In my opinion, the Nature Conservation and Other Legislation (Indigenous Joint Management—Moreton Island) Amendment Bill 2020 is compatible with human rights under the *Human Rights Act 2019* because it does not limit a human right.

Shannon Fentiman MP
Minister for Employment and Small Business
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