Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Steven Dickson MP

Title of the Bill

Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013

Objectives of the Amendments

The proposed amendments are necessary to:

- ensure that the amendments in the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 (the Bill) meet the original policy objectives; and
- address matters recommended by the Health and Community Services Committee in their report (Report No. 31) on the Bill.

Achievement of the Objectives

The amendments achieve the objectives by:

- **Clarifying the civil liability provisions for plantation officials and licensees under the *Forestry Act 1959***

  The Bill as currently drafted provides civil liability protections to the State, plantation licensees and plantation sub-licensees (the entities), operating under a delegation provided under section 96B of the *Forestry Act 1959* (FA). These civil liability protections extend to these entities' employees, volunteers and officials appointed under section 17 of the FA.

  The Bill as currently drafted provides that civil liabilities unable to attach to these employees, volunteers and officials, attach instead to the State. This outcome is inconsistent with the policy intent of the provision to attach employee, volunteer and official civil

liabilities to their respective entity (being the State or plantation licensee as appropriate) where the civil liability is unable to attach to the employee, volunteer or official themselves.

The Heath and Community Services Committee Report identified that plantation sub-licensees are granted civil liability protections equivalent to plantation licensees. This outcome is beyond the policy intent of the provision to provide civil liability protections to the State and plantation licensees only.

As such, these amendments will align these provisions to be consistent with the policy intent to provide equivalent civil liability protections to the State (including its employees, volunteers and officials) and plantation licensees and their employees (in the exercise of delegated powers under 96B of the FA), plantation licensee's volunteers, and plantation licensee's officials appointed under section 17 of the FA.

- **Clarifying the minimum public notice periods for marine park management plans**

  Recommendation 13 of the Heath and Community Services Committee Report No. 31 was *"to provide consistent minimum periods of time for making submissions on draft management plans and amendments to management plans in the Nature Conservation Act 1992, Marine Park Act 2004 and Recreation Areas Management Act 2006"*.

  Currently, the minimum periods of time for making submissions on draft management plans and amendments to management plans are:

  - *Nature Conservation Act 1992* (NCA) – at least 20 business days after the notice is published
  - *Recreation Areas Management Act 2006* (RAM Act) – at least 20 business days after the notice is given
  - *Marine Parks Act 2004* (MPA) – at least 28 days after the notice is given

  While these time periods are generally consistent, it is possible that where consultation is undertaken during public holidays, interested parties may have less time for comment on a marine park management plan. Therefore amendments will align the minimum periods of timing for making public submissions on marine park management plans and amendments with those time periods under the NCA and RAM Act. This will result in a period of at **least 20 business days** for making submission on a draft management plan and draft amendment to a management plan across Queensland Parks and Wildlife Service managed areas.

- **Clarifying the interests of indigenous people under the object of the *Nature Conservation Act 1992***

  Recommendation 2 of the Heath and Community Services Committee Report No. 31 was *"to consider introducing an amendment to clause 24 of the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 to clarify that the 'interest' that indigenous people may have in protected areas is an interest under Aboriginal tradition or Island custom"*.

  The Bill, as currently drafted, inserts a supplementary outcome into the object of the NCA to provide for the involvement of indigenous people in the management of protected areas in

which they have an interest. The recommendation of the Committee was in response to concerns that the word 'interest' may be interpreted as a legal or equitable interest given the legal definition of 'interest in land'. The intent of the new object is to recognise the important role of indigenous people in the management of protected areas in broad terms. As such, amendments will clarify that the 'interest' that indigenous people may have in protected areas is an interest **under Aboriginal tradition or Island custom**.

- **Clarifying the place of Aboriginal tradition and Island custom in national park management principles**

  Recommendation 4 of the Heath and Community Services Committee Report No. 31 was *"that the Minister inform the Legislative Assembly of the Government's response to the issues raised about the place of Aboriginal tradition and Island custom in the proposed amendments to management principles for national parks"*.

  The Bill, as currently drafted, inserts two new management principles for national parks under the NCA:

  17(d) provide opportunities for educational and recreational activities in a way consistent with the area's natural and cultural values; and
  17(e) provide opportunities for ecotourism in a way consistent with the area's natural and cultural values.

  While legal advice confirms that the amendments will not alter the status of Aboriginal tradition under the NCA, additional amendments will put beyond doubt that Aboriginal tradition and Island custom should be considered in the context of providing opportunities for education, recreation and ecotourism on national parks. The two additional management principles will be amended to provide that national parks are to be managed to provide opportunities for education, recreation and ecotourism in a way consistent with the area's nature and **cultural resources** and values. The definition of cultural resources under the NCA includes places or objects that have significance or value under Aboriginal tradition or Island custom.

- **Clarifying the restrictions on resource use area declarations for conservation parks**

  Recommendation 7 of the Heath and Community Services Committee Report No. 31 was "*that the Bill be amended to guarantee protection of existing conservation parks and put beyond doubt that mining, geothermal activities and greenhouse gas storage activities will not be permitted on land formerly dedicated as a conservation park, or future areas with similar characteristics, and will be permitted only on land that was formerly a resources reserve or future areas that have similar characteristics to a resources reserve"*.

  It is not intended for the changes under the Bill to alter the current restrictions on the granting of a mining interest, geothermal tenure or GHG authority on conservation parks under the NCA. The Bill, as currently drafted, allows for the automatic transfer of all conservation parks into regional park tenure. This transfer process for conservation parks does not provide for the creation of a resource use area (RUA) over these areas. The creation of an RUA is restricted to areas of resources reserve that are transferred to regional park as a part of the tenure transfer process.

The intention, in the future, is for any new RUA to only be created on regional parks at the time the park is dedicated. To achieve this outcome, the amendments will provide that following the initial transfer of tenures, an RUA over a regional park can only be declared **at the time of dedication of the area** as regional park. This will better reflect the intent of the RUA as a tool to enable the dedication of areas where a potential or known interest or resource has been identified at the time of dedication of the area. These amendments will put beyond doubt that there is no opportunity for an RUA to be declared over a former conservation park, even after these areas have been transferred into the new regional park tenure.

Alternative Ways of Achieving Policy Objectives

These amendments address provisions proposed under the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013. As such, legislative amendments are the only means of achieving the policy objectives.

Estimated Cost for Government Implementation

The amendments do not impose additional costs for government implementation other than those outlined in the original Explanatory Notes.

Consistency with Fundamental Legislative Principles

The amendments are consistent with the objectives and intent of the original Bill and create no additional inconsistencies with fundamental legislative principles other than those outlined in the original Explanatory Notes.

Consultation

The majority of amendments are provided to clarify matters recommended by the Health and Community Services Committee in their report on the Bill. The recommendations of the Committee were made following consideration of public submissions and evidence received during the public hearing on the Bill.

The Department of the Premier and Cabinet and the Office of the Queensland Parliamentary Counsel have been consulted on the amendments.

NOTES ON PROVISIONS

Clause 1 amends clause 8 of the Bill to amend the *Civil Liability Act 2003* (CLA) to insert a cross-referencing provision to the civil liability protections provided under *Forestry Act 1959* (FA) in clause 2.

Section 7 of the CLA outlines provisions relating to the operation of that Act. Clause 8 of the Bill as currently drafted appends a note to section 7 of the CLA to refer to the civil liability protections provided in other acts under the Bill. This clause amends clause 8 of the Bill in order to update references to the civil liability provisions of the FA that are subject to amendment in clause 2.

Clause 2 amends clause 14 of the Bill to align civil liability provisions with the policy intent to provide appropriate protections to the State (including its employees, volunteers and officials). Equivalent civil liability protections are also provided to plantation licensees and their employees (in the exercise of delegated powers under 96B of the FA), plantation licensee's volunteers, and plantation licensee's officials appointed under section 17 of the FA. These provisions provide civil liability protection in any proceeding for damages based on a liability for personal injury (including death), damage to property or any resulting economic loss.

For clarity, clause 2 inserts separate, though equivalent provisions (being sections 96E and 96F), to delineate the State and plantation licensees' respective civil liability protections as they apply to their employees, volunteers and officials in their respective areas of management.

Clause 2 retains the State's civil liability provisions provided in clause 14 of the Bill to protect it, its employees, volunteers and officials from civil liability for acts or omissions where they:

- perform or purportedly perform a function under the FA; or
- exercise or purportedly exercise a power under the FA; or
- manage or operate a State forest or timber reserve.

Clause 2 retains and delineates a plantation licensee's civil liability provisions provided in clause 14 of the Bill to insert section 96F into the FA to protect it, its employees, volunteers and officials from civil liability for acts or omissions where they:

- perform or purportedly perform a delegated function under the FA; or
- exercise or purportedly exercise a delegated power under the FA.

Clause 2 also retains provisions provided in clause 14 of the Bill by inserting section 96G into the FA to outline exceptions to the civil liability protections as they apply to the State and a plantation licensee (an entity), including:

- an entity's construction, installation or maintenance of a relevant fixture or road that is defective (other than because of a natural event); or
- an entity's failure to give adequate notice of a relevant fixture or road that is defective (other than because of a natural event); or
- an entity's carrying out of a non-exempt activity; or

- a liability of the entity as an insured person under the *Motor Accident Insurance Act 1994*; or
- an injury for which compensation is payable under the *Workers' Compensation and Rehabilitation Act 2003*.

Clause 3 amends clause 17 of the Bill to provide that the minimum period of time for making submissions on a draft management plan under section 31 of the *Marine Parks Act 2004* (MPA) is 20 business days after notice is published. The current section 31 of the MPA states a minimum period of 28 days.

For consistency, this clause also clarifies that the requirement to give notice on a draft management plan does not apply if the Minister considers there has already been adequate other public consultation about the matters the subject of the amendment and the consultation has been for a period of at least 20 business days. The current section 31 of the MPA states a minimum period of 28 days.

These amendments are being made to address Recommendation 13 of the Committee *"to provide consistent minimum periods of time for making submissions on draft management plans and amendments to management plans in the Nature Conservation Act 1992, Marine Park Act 2004 and Recreation Areas Management Act 2006."*

Clause 4 amends clause 20 of the Bill to provide that the minimum period of time for making submissions on draft amendments to a management plan under section 36 of the *Marine Parks Act 2004* (MPA) is 20 business days after notice is published. The current section 36 of the MPA states a minimum period of 28 days.

This amendment is being made to address Recommendation 13 of the Committee *"to provide consistent minimum periods of time for making submissions on draft management plans and amendments to management plans in the Nature Conservation Act 1992, Marine Park Act 2004 and Recreation Areas Management Act 2006."*

Clause 5 amends clause 20 of the Bill to provide consistency with amendments being made to the minimum period of time for making submissions on draft amendments to management plans through clause 4. The amendment provides that the requirement under section 36 of the *Marine Parks Act 2004* (MPA) to give notice on a draft amendment to a management plan does not apply if the Minister considers there has already been adequate other public consultation about the matters the subject of the amendment and the consultation has been for a period of at least 20 business days. The current section 36 of the MPA states a minimum period of 28 days.

This amendment is being made in line with Recommendation 13 of the Committee *"to provide consistent minimum periods of time for making submissions on draft management plans and amendments to management plans in the Nature Conservation Act 1992, Marine Park Act 2004 and Recreation Areas Management Act 2006."*

Clause 6 amends clause 24 of the Bill to provide clarification around the use of the word 'interest' in section 4 of the *Nature Conservation Act 1992*. This amendment clarifies that the word 'interest' it is not intended to be restricted to a legal or equitable interest, but rather an interest under Aboriginal tradition or Island custom.

This amendment is being made to address Recommendation 2 of the Committee *"to consider introducing an amendment to clause 24 of the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 to clarify that the 'interest' that indigenous people may have in protected areas is an interest under Aboriginal tradition or Island custom."*

Clause 7 amends clause 116 of the Bill to provide an additional amendment to the management principles of national parks under section 17 of the *Nature Conservation Act 1992* (NCA). This amendment will put beyond doubt that Aboriginal tradition and Island custom should be considered in the management of national parks in the context of providing opportunities for education, recreation and ecotourism. This clause adds the word 'resources' immediately after the word 'cultural' in management principles 17(d) and 17(e), resulting in a requirement that national parks are to be managed to provide opportunities for education, recreation and ecotourism in a way that is consistent with the area's natural and cultural resources and values.The definition of cultural resources under the NCA includes places or objects that have significance or value under Aboriginal tradition or Island custom.

This amendment is being made as a result of Recommendation 4 of the Committee *"that the Minister inform the Legislative Assembly of the Government's response to the issues raised about the place of Aboriginal tradition and Island custom in the proposed amendments to management principles for national parks."*

Clause 8 amends clause 139 of the Bill to put beyond doubt that the current restrictions on the granting of a mining interest, geothermal tenure or GHG authority on conservation parks will continue when these areas are transferred into the regional park tenure. The clause provides that the declaration of a resource use area (RUA) over a regional park under the new section 42C of the *Nature Conservation Act 1992* can only occur at the time of dedication of the area as regional park. This will exclude the opportunity for an RUA to be declared over a former conservation park given that clause 153 of the Bill allows for the automatic transfer of these areas into the regional park tenure without an RUA.

This amendment is being made to address Recommendation 7 of the Committee "*that the Bill be amended to guarantee protection of existing conservation parks and put beyond doubt that mining, geothermal activities and greenhouse gas storage activities will not be permitted on land formerly dedicated as a conservation park, or future areas with similar characteristics, and will be permitted only on land that was formerly a resources reserve or future areas that have similar characteristics to a resources reserve."*

Clause 9 amends clause 153 of the Bill which contains transitional provisions to facilitate the transfer of areas into the new classes of protected area being introduced by the Bill. These transitional provisions include a new section 199 of the *Nature Conservation Act 1992* (NCA) that provides that, from commencement, existing resources reserves are taken to be regional parks with a resource use area (RUA) declared over them. Clause 9 amends the new section 199 to support amendments being made through clause 8. These amendments clarify that the automatic transition of resources reserves to regional park tenure with an RUA occurs despite section 42C of the NCA which requires the declaration of an RUA to occur at the time of dedication of the area as regional park.