

Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2018

Explanatory Notes

For

**Amendments to be Moved During
Consideration in Detail by the Honourable
Leeanne Enoch MP**

**Nature Conservation (Special Wildlife Reserves) and Other
Legislation Amendment Bill 2018**

Objectives of the Amendments

Amendment of *Nature Conservation Act*

The amendments to the Bill have arisen in response to recommendations made during the Innovation, Tourism Development and Environment Committee's (the Committee) review of the Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2018 (the Bill).

Concerns were raised regarding clarity of the relationship between the establishment of a special wildlife reserve and Indigenous land use agreements in Cape York.

Additionally, a number of submissions to the Committee suggested that there was a lack of transparency in relation to the management program for a special wildlife reserve, and that these should be made available for public scrutiny.

The amendments to be considered in detail seek to address these concerns.

Amendment of *Environmental Protection Act*

The amendments to section 19 of the *Environmental Protection Act 1994* are to clarify the policy intent of the amendments in the Bill.

The amendments ensure that the power to prescribe an environmentally relevant activity on the basis that the activity will or may adversely affect a value of the marine environment extends to activities carried out wholly in Queensland and activities carried partly in Queensland and partly outside Queensland, but either partly or wholly within the Greater Barrier Reef Marine Park.

The amendments will also ensure that the head of power to prescribe activities as environmentally relevant activities applies where the activity is carried partly in Queensland and partly outside Queensland, but either partly or wholly within the Greater Barrier Reef Marine Park.

This will enable consistent regulation of all activities regardless of the territorial boundaries within which the activities are carried out. It will also ensure consistent regulation of activities that may either involve a contaminant release, or may otherwise adversely affect a value of the marine environment.

Amendment of the *Mineral Resources Act* and *Mineral Resources Regulation*

Amendments to the *Mineral Resources Act 1989* (the Mineral Resources Act) and the *Mineral Resources Regulation 2013* (the Mineral Resources Regulation) are required to ensure the royalty rates for bauxite operate as intended and support the longstanding administrative practice.

The Mineral Resources Act imposes liability for royalty on minerals, while royalty rates are prescribed in the Mineral Resources Regulation. The Mineral Resources Regulation prescribes a two-tiered royalty rate for bauxite. Currently, the royalty rate for bauxite that is 'sold, disposed of or used outside the State' is higher than for bauxite 'sold, disposed of or used within the State'.

It is intended that the higher bauxite royalty rate apply to bauxite mined for consumption outside the State and the lower bauxite royalty rate apply to bauxite mined for consumption within the State. This is the longstanding policy position dating back to the *Mineral Resources Regulation 2003*.

The amendments to be considered in detail seek to address this issue.

Achievement of the Objectives

Amendment of Nature Conservation Act

Section 43B (Proposal for declaration of special wildlife reserve)

While the declaration of a special wildlife reserve does not affect native title rights and interests, and a conservation agreement for a special wildlife reserve cannot affect native title rights and interests without consent, the proposed amendment requires that an Indigenous land use agreement allow for a proposed special wildlife reserve in the Cape York Peninsula Region, where native title has not been extinguished. The objective of this amendment is to address the relationship between the establishment of a special wildlife reserve and Indigenous land use agreements on Cape York.

Section 43C (Terms of conservation agreement for special wildlife reserve)

Under clause 12 of the Bill, the new section 43C contains terms that (1) must and (2) may be included within a conservation agreement. The proposed amendment, requiring a reference to the management program in the conservation agreement is intended to alleviate concerns of stakeholders about transparency, and ensure that public access to a management program is given in the same manner as for a conservation agreement.

A subsequent regulatory amendment will be required to fully achieve this objective, by specifying the manner by which access to a conservation agreement and management program for a special wildlife reserve is given.

Amendment of Environmental Protection Act

Clause 47 of the Bill is amended to clarify the intended scope of the head of power to prescribe environmentally relevant activities.

Clause 47 of the Bill limits the head of power to prescribe an environmentally relevant activity on the basis that the activity will or may adversely affect a value of the marine environment to where that activity is carried out partly within the State and partly outside the State, but wholly within the Great Barrier Reef Marine Park. Clause 47 is amended to ensure that this power is not limited by the location in which the activity is carried out.

Under the Bill, the extraterritorial application of section 19 of the *Environmental Protection Act 1994* is limited to enabling the State to regulate activities that occur wholly within the Great Barrier Reef Marine Park. Clause 47 is amended to clarify that the State also has powers to regulate activities that occur partly within the Great Barrier Reef Marine Park.

Amendment of the Mineral Resources Act and Mineral Resources Regulation

The Mineral Resources Regulation replaced the *Mineral Resources Regulation 2003* in September 2013 and the relevant bauxite royalty rate provisions were brought across with the same wording. However, prior to 1 July 2008, the *Mineral Resources Regulation 2003* specifically provided that the higher bauxite rate applied to bauxite that was 'mined for consumption outside the State'. Despite changes to the wording of the bauxite royalty rate provisions, the Mineral Resources Act, *Mineral Resources Regulation 2003* and Mineral Resources Regulation have always been administered in accordance with the longstanding policy position.

Amendments to the Mineral Resources Act and Mineral Resources Regulation ensure that the higher bauxite royalty rate applies to bauxite mined for consumption outside the State and the lower bauxite royalty rate applies to bauxite mined for consumption within the State.

Consistent with the underlying policy and to support the longstanding administrative practice, the amendments will apply retrospectively from 1 July 2008. Therefore, they will apply to bauxite royalty liabilities arising on or after 1 July 2008. The amendments will also apply for the purpose of any legal proceeding, including a proceeding started before commencement of the amendments.

Alternative ways of Achieving Policy Objectives

The minor changes to the Nature Conservation Act are deemed the most appropriate way to achieve the objectives.

For the amendments to the Mineral Resources Act and the Mineral Resources Regulation, the policy objective can only be achieved by legislative amendment as mining royalty is administered under legislation in Queensland.

Estimated cost for government implementation

No costs for implementation.

Consistency with fundamental legislative principles

There is no impact on fundamental legislative principles arising from the amendments to the Nature Conservation Act.

Amendment of the Mineral Resources Act and Mineral Resources Regulation

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively – Legislative Standards Act 1992, sections 4(2)(a) and 4(3)(g)

Retrospective amendment is considered necessary and appropriate in this case as the amendments will ensure the bauxite royalty rate provisions operate as intended, are consistent with the longstanding practice for assessing royalty on bauxite and will protect revenue.

As the amendments will apply to legal proceedings started before commencement, bauxite royalty payers will not be able to challenge bauxite royalty assessments on the basis that the lower bauxite rate should have applied to bauxite mined for consumption outside the State. However, bauxite royalty payers will continue to have full legal rights to challenge bauxite royalty assessments in all other respects.

The amendments will provide certainty for bauxite royalty payers and for Government in relation to mineral royalty liabilities arising on or after 1 July 2008. Government agencies responsible for administering royalty have always administered the bauxite royalty rate provisions in accordance with the intended policy position and bauxite royalty payers have consistently lodged and paid bauxite royalty accordingly. In light of this, it is not considered that the amendments adversely affect the rights or liberties of bauxite royalty payers.

Consultation

The Committee invited subscribers and stakeholders to comment on the Bill, with 28 submissions received. A public hearing and public briefing were also held.

The Government have accepted the recommendations contained within the Committee's report in order to satisfy the concerns of stakeholders raised during consultation.

Consultation was not undertaken for the amendments to the Mineral Resources Act and the Mineral Resources Regulation. Consultation is not considered appropriate as the amendments are required to ensure the legislation operates as intended and to protect royalty revenue.

Notes on provisions

Amendment 1 amends Clause 12 of the Bill to include a new subsection in **section 43B (Making conservation agreement for special wildlife reserve)** to address the relationship between the establishment of a special wildlife reserve and Indigenous land use agreements in the Cape York Peninsula Region.

This amendment provides certainty around special wildlife reserve proposals that may occur in the Cape York Peninsula Region. This amendment requires that the Minister may only enter into a conservation agreement for a special wildlife reserve in the Cape York Peninsula Region if an Indigenous land use agreement allowing for the reserve exists. This provision applies only in areas where native title has not been extinguished.

The term *Cape York Peninsula Region* means the Cape York Peninsula Region under the *Cape York Peninsula Heritage Act 2007*. Amendment 4 of these amendments includes a provision to insert this definition into the Dictionary schedule of the Act.

Amendment 2 amends Clause 12 of the Bill to include a new subsection in **section 43C (Terms of conservation agreement for special wildlife reserve)** to ensure a reference to the management program for the special wildlife reserve is included in the list of items a conservation agreement must contain.

The requirement to include details of the management program for a special wildlife reserve in each conservation agreement is intended to make management programs publicly accessible in the same manner as conservation agreements.

Further, regulatory amendments will be made once the Bill has passed to outline the process by which conservation agreements and management programs can be made available to the public.

Amendment 3 inserts a new clause, Clause 28A, into the Bill, to omit the section-specific definition of *Cape York Peninsula Region*, to allow the definition to be more appropriately placed in the Act's Dictionary schedule.

Amendment 4 amends Clause 36 of the Bill to insert a definition for *Cape York Peninsula Region* within the Dictionary, to clarify the meaning of this term throughout the Act. This replaces the section-specific definition contained in section 132A of the Act.

Consistent with the section-specific definition omitted by Amendment 3, the dictionary definition reads:

Cape York Peninsula Region means the Cape York Peninsula Region under the *Cape York Peninsula Heritage Act 2007*.

Amendment 5 amends Clause 47 of the Bill to provide greater certainty regarding the amended power to prescribe environmentally relevant activities under section 19 of the *Environmental Protection Act 1994*.

This amendment ensures that the power to prescribe an environmentally relevant activity on the grounds that the activity will or may otherwise adversely affect the marine environment is not restricted by the territorial context within which the activity is carried out. The amendment ensures that this power applies to activities carried out within the following territorial boundaries:

- entirely within Queensland (including entirely within Queensland and entirely within the Great Barrier Reef Marine Park)
- partly in Queensland and partly outside Queensland, but entirely within the Great Barrier Reef Marine Park
- partly in Queensland outside the Great Barrier Reef Marine Park and partly outside Queensland within the Great Barrier Reef Marine Park.

Clause 47 of the Bill limits the extraterritorial application of the power to prescribe an environmentally relevant activity to prescribing an activity carried out partly within the State and partly outside the State, but wholly within the Great Barrier Reef Marine Park. It does not extend to an activity that is carried out only partly within the Great Barrier Reef Marine Park. Amendment 5 ensures that the power also applies to an activity that is carried out partly within the State outside the Great Barrier Reef Marine Park and partly outside the State within the Great Barrier Reef Marine Park. This is achieved through the use of the term 'relevant Great Barrier Reef Marine Park area' in the amended section 19(1A).

Amendment 6 amends Clause 47 of the Bill to insert a new definition that supports the delivery of Amendment 5. The term 'relevant Great Barrier Reef Marine Park area' is introduced into section 19 of the *Environmental Protection Act 1994* through Amendment 5.

Amendment 7 inserts new clauses 60A and 60B of the Bill.

New Clause 60A of the Bill amends the heading of chapter 15 to insert the words 'declaratory and validating' after 'Transitional'.

New Clause 60B of the Bill inserts new part 16 into chapter 15 to provide declaratory and validating provisions relating to the *Mineral Resources Regulation 2013* and the repealed *Mineral Resources Regulation 2003*.

New section 865 provides a declaration about the *Mineral Resources Regulation 2003*. Subsection (1) provides that the *Mineral Resources Regulation 2003*, as in force from time to time before its repeal, is taken to have had effect for the declaration period as if schedule 4, part 2, section 2 were amended as provided in new section 865.

Subsections (2) to (5) set out the relevant amendments which ensure that the words in schedule 4, part 2, section 2 of the *Mineral Resources Regulation 2003* generally replicate the words in schedule 3, section 4 of the *Mineral Resources Regulation 2013* as amended by the Bill, when enacted.

Subsection (6) provides that the 'declaration period' means the period from commencement of the *Mines and Energy Legislation Amendment Regulation (No.2) 2008* on 1 July 2008 until the commencement of the *Mineral Resources Regulation 2013* on 1 September 2013.

New section 866 provides a declaration about the *Mineral Resources Regulation 2013*. Subsection (1) provides that the *Mineral Resources Regulation 2013*, is taken to have effect for the declaration period as if schedule 3, section 4 were amended as provided in new section 866.

Subsections (2) to (5) set out the relevant amendments which ensure that the words in schedule 3, section 4 of the *Mineral Resources Regulation 2013* during the declaration period replicate the words in schedule 3, section 4 of the *Mineral Resources Regulation 2013* as amended by the Bill, when enacted.

Subsection (6) provides that 'declaration period' means the period from commencement of the *Mineral Resources Regulation 2013* on 1 September 2013 until the commencement of schedule 3, section 4 of the *Mineral Resources Regulation 2013* as amended by the Bill, when enacted.

New section 867 provides for the application of new sections 865 and 866 for all purposes and for the validation of relevant acts. Subsection (1) provides that new sections 865 and 866 apply for all purposes including making an assessment, lodging a royalty return, paying a royalty-related amount and making a requirement to do anything relating to a royalty. Section 331 of the *Mineral Resources Act 1989* states that a royalty-related amount means an amount of royalty, an amount of a civil penalty, an amount of unpaid royalty interest, a royalty penalty amount or an amount of a prescribed fee.

Subsection (2) provides that a person's rights and liabilities, including a person's liability to pay a royalty-related amount, are declared to be the same as if the repealed *Mineral Resources Regulation 2003* and the *Mineral Resources Regulation 2013* had been amended as provided in new sections 865 and 866.

New section 868 provides that the declaratory and validating provisions in new part 16 of chapter 15 apply for the purpose of any legal proceeding, including a proceeding started before the commencement of new part 16.

Amendment 8 inserts new Clauses 61A and 61B of the Bill.

New Clause 61A of the Bill provides that this part amends the *Mineral Resources Regulation 2013*.

New Clause 61B of the Bill amends schedule 3, section 4 which prescribes the royalty rate for bauxite. Currently, different rates of royalty apply depending on whether the bauxite is sold, disposed of or used outside or within the State. Schedule 3, section 4 as amended by the Bill, when enacted, will provide that for bauxite sold, disposed of or used in a return period by a holder, the different royalty rates apply depending on

whether the bauxite is mined for consumption outside or within the State. The amendments ensure that the bauxite royalty rates operate as intended and support the longstanding administrative practice. There is no change to the actual bauxite royalty rates.

Section 4(a) as amended by the Bill, when enacted, will provide that for bauxite sold, disposed of or used in the return period by a holder that is mined for consumption outside the State, the rate is the higher of 10 per cent of the value of the bauxite (export value rate) or \$2 for each tonne of bauxite.

Section 4(b) as amended by the Bill, when enacted, will provide the royalty rate for bauxite sold, disposed of or used in the return period by a holder that is mined for consumption within the State. If the holder also sold, disposed of or used bauxite in the return period that is mined for consumption outside the State, the rate is the higher of 75 per cent of the amount per tonne of the export value rate or \$1.50 per tonne of bauxite. For all other bauxite, the rate is \$1.50 per tonne of bauxite.

Amendment 9 amends the long title of the Bill to reflect the fact that the Bill amends the *Mineral Resources Regulation 2013*.