Parliamentary Committees



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

Report No. 2, 56th Parliament
Innovation, Tourism Development and Environment Committee
April 2018

Innovation, Tourism Development and Environment Committee

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Acknowledgements

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Abbreviations

2017 Bill	Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017
2018 Bill/Bill	Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2018
AgForce	AgForce Queensland Farmers Limited
AEC/former committee	Agriculture and Environment Committee (55th Parliament)
BHA	Bush Heritage Australia
committee	Innovation, Tourism Development and Environment Committee
CYLC	Cape York Land Council
DEHP	former Department of Environment and Heritage Protection
department/DES	Department of Environment and Science
EDO	Environmental Defenders Office
Environmental Offsets Act	*Environmental Offsets Act 2014*
Environmental Protection Act	*Environmental Protection Act 1994*
FLPs	fundamental legislative principles
GHG	greenhouse gas
HOPE	Householders' Options to Protect the Environment Inc.
ILUA	Indigenous Land Use Agreement
LSA	*Legislative Standards Act 1992*
Land Act	*Land Act 1994*
Land Title Act	*Land Title Act 1994*
MOU	Memorandum of Understanding
Minister	Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts
NPAQ	National Parks Association of Queensland
Nature Conservation Act	*Nature Conservation Act 1992*
PCA	Property Council of Australia

QFF	Queensland Farmers' Federation
QLS	Queensland Law Society
QPA	Queensland Ports Association
QRC	Queensland Resources Council
QTFN	Queensland Trust for Nature
Wildlife Queensland	Wildlife Preservation Society of Queensland

Chair's foreword

This report presents a summary of the Innovation, Tourism Development and Environment Committee's examination of the Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2018.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The committee was aided in this undertaking by the work of the Agriculture and Environment Committee (AEC) of the 55th Parliament, which considered and reported on the 2017 version of the Bill. The AEC's public consultation process and scrutiny of the provisions of the 2017 Bill helped to inform this committee examination of the Bill.

The committee has recommended that the Bill be passed.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Environment and Science.

I commend this report to the House.

Duncan Pegg MP

Chair

Recommendations

1 Introduction

1.1 Role of the committee

The Innovation, Tourism Development and Environment Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Environment and Great Barrier Reef, Sciences and the Arts, and
- Innovation, Tourism Industry Development and the Commonwealth Games.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles (FLPs), and
- for subordinate legislation – its lawfulness.

1.2 Inquiry referral and committee process

The Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2018 (Bill/2018 Bill) was introduced into the Legislative Assembly and referred to the committee on 15 February 2018. The committee was required to report to the Legislative Assembly by 9 April 2018.

On 11 August 2017 the Agriculture and Environment Committee (AEC/former committee) of the 55th Parliament reported on the Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017 (2017 Bill) which contained similar provisions to the 2018 Bill. The AEC report did not make a recommendation on whether the Bill should be passed or not passed. The 2017 Bill lapsed when the 55th Parliament was dissolved on 29 October 2017.

This committee's inquiry process included:

- consideration of the evidence provided to the AEC in 2017 (34 submissions, departmental briefing and public hearing held on 12 July 2017 and advice provided by the former Department of Environment and Heritage Protection (DEHP))[2]
- invitation to stakeholders and subscribers to make written submissions - 28 submissions were received (see Appendix A for a list of submissions)
- public briefing from the Department of Environment and Science (department/DES) on 5 March 2018 (see Appendix B for a list of officials)
- public hearing on 19 March 2018 (see Appendix B for a list of witnesses), and
- reviewing written advice from the department in response to matters raised in submissions.

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.[3]

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1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 AEC Inquiry website - http://www.parliament.qld.gov.au/work-of-committees/former-committees/AEC/inquiries/past-inquiries/rpt40-NatureConserv

3 Committee Inquiry website - http://www.parliament.qld.gov.au/work-of-committees/committees/ITDEC/inquiries/current-inquiries/2NatCons2018

1.3 Policy objectives of the Bill

The explanatory notes state that the objectives of the Bill are to amend:

- the *Nature Conservation Act 1992* (Nature Conservation Act) to:
  - establish a new class of privately owned or managed protected area (special wildlife reserve)
  - simplify procedural requirements for titling and record-keeping of conservation agreements and protected area declarations, and
  - clarify who is bound by a conservation agreement entered into by a landholder
- the *Land Act 1994* (Land Act) and the *Land Title Act 1994* (Land Title Act) to:
  - streamline the process by which conservation agreements, for new and existing protected areas, survive tenure dealing processes such as tenure conversion and lease renewal, and
  - clarify (in the *Land Act 1994*) that where a protected area declaration is made over a lease, the purpose of the underlying lease is consistent with nature conservation
- the *Environmental Offsets Act 2014* (Environmental Offsets Act) to:
  - recognise the new class of protected area (special wildlife reserve) under the *Nature Conservation Act 1992*, and
  - clarify administrative arrangements for approving offset proposals under part 6 of the *Environmental Offsets Act 2014* in relation to offsets that have or may be granted under the *Planning Act 2016*
- the *Environmental Protection Act 1994* (Environmental Protection Act) to ensure that risks to the Great Barrier Reef can be managed consistently regardless of whether potentially harmful activities are conducted wholly within Queensland waters or partly within Queensland waters and partly in adjacent Commonwealth waters, within the Great Barrier Reef Marine Park
- the *Biodiscovery Act 2004* to provide that section 24 (Collection authority concerning land dedicated as new national park or declared as marine park) applies to special wildlife reserves and their declaration
- the *Forestry Act 1959,* the *Fossicking Act 1994* and the *Mineral Resources Act 1989* to add a special wildlife reserve to the types of areas defined as *protected areas* under these Acts, and
- the *Vegetation Management Act 1999* to include special wildlife reserves in the list of protected areas to which this act does not apply for the clearing of vegetation.[4]

1.4 Government consultation on the Bill

1.4.1 Amendment of Nature Conservation Act, Land Act and Land Title Act

The explanatory notes advised:

- consultation was undertaken with stakeholders during the initial policy development and the release of an exposure draft of the legislation
- consultation during the early policy development stage occurred primarily through meetings with key stakeholders in the conservation sector

[4] Explanatory notes, 2018 Bill, pp 1-2 and pp 21-23.

- following the early consultation, further consultation was undertaken with a broad range of stakeholders in the conservation, resources, forestry, agriculture, Native Title and local government sectors, and
- while the Queensland Productivity Commission considered that the proposal was unlikely to result in any significant adverse impacts, and would not benefit from further assessment under the Treasurer's Regulatory Impact Statement guidelines, the Commission did recommend that supporting documentation regarding implementation of the proposal be provided to stakeholders through the subsequent consultation process.[5]

1.4.2 Amendment of Environmental Offsets Act

The explanatory notes advised that external consultation on the minor and beneficial nature of the proposed administrative amendments to the Environmental Offsets Act, occurred through release of the exposure draft of the Bill.[6]

1.4.3 Amendment of the Environmental Protection Act

The explanatory notes advised that consultation with State and Commonwealth departments and agencies was undertaken on the amendments to the Environmental Protection Act and consultation with external stakeholders will be undertaken prior to any subsequent amendments in the Environmental Protection Regulation 2008.[7]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2018 be passed.

5 Explanatory notes, 2018 Bill, pp 8-9.

6 Explanatory notes, 2018 Bill, p 9.

7 Explanatory notes, 2018 Bill, p 9.

2 Examination of the Bill

This section discusses issues raised during both this committee's examination of the 2018 Bill and the former committee's examination of the 2017 Bill.

2.1 Special Wildlife Reserves

The explanatory notes advised that the Bill proposes:

- to establish a new class of voluntary, privately managed protected area (special wildlife reserve) that will provide a similar level of statutory protection to that afforded to state managed national parks, and
- the new class of protected area will apply to freehold and leasehold tenures, and ownership and management responsibilities will remain unaffected.[8]

The Hon Leeanne Enoch MP, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts (Minister) stated in the introductory speech on the Bill:

> *Establishing this special wildlife reserve mechanism will allow for protection of areas of exceptional conservation value on privately owned land and will be a significant incentive for private investment in Queensland's protected areas. This will be achieved by providing a high level of private land protection and ensure that investments in conservation will not be compromised by incompatible land uses.*[9]

The department advised the committee that under the Nature Conservation Act the term 'wildlife' includes both animals and plants and the intent of the Bill is to protect a broad range of natural and cultural values.[10]

While the majority of submissions supported the establishment of the new class of protected area, a number of stakeholders commented or raised concerns about specific provisions in the Bill. These provisions are examined below.

2.1.1 Criteria for declaration of special wildlife reserves

2.1.1.1 Amendments proposed in the Bill

Clause 12 of the Bill proposes to insert a new section 43A in the Nature Conservation Act which provides that prior to the preparation of a proposal for declaration of a special wildlife reserve the Minister must consider and take into account the 'State interest' in the area of land and consider the area's exceptional natural and cultural resources and values (section 43A(1)). The term 'State interest' is defined in proposed section 43A(8) to mean 'an interest the Minister considers to be an economic, environmental or community interest of the State'.

2.1.1.2 Issues examined

A number of submissions on the 2017 Bill noted that while the explanatory notes advised the introduction of the special wildlife reserve, as a new class of private protected area, was for the protection of lands of 'outstanding conservation value' the 2017 Bill itself did not require that the Minister be satisfied that an area of land have such values before proceeding to declaration.[11]

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8 Explanatory notes, 2018 Bill, p 3.

9 Queensland Parliament, Record of Proceedings, 15 Feb 2018, p 151.

10 DES, correspondence dated 16 March 2018, attachment, p 10.

11 See for example, Queensland Environmental Law Association, 2017 Submission 15, p 2; and QLS, 2017 submission 29, p 2.

The department advised that section 43A(1) of the 2018 Bill has been amended to make it 'explicit that the Minister must consider the outstanding natural and cultural resources and values prior to proposing the area as a special wildlife reserve' in addition to giving consideration to the economic, environmental and community interests of the State.[12]

The Queensland Law Society (QLS) indicated that it is not satisfied with the amended drafting of this section submitting:

> *The amended drafting actually expands the matters to be considered when preparing a proposal to declare, effectively allowing the determination to be made based upon either or both of:*
>
> - *the 'economical, environmental or community interests' (as determined by the Minister) under the definition of 'State interest';*
> - *the second branch of the proposed section which appears may be applied so as to encompass land areas that do not fit easily into the definition of 'State interest'.*[13]

The department responded:

> *The inclusion of a requirement to also consider broader 'State interests' when proposing an area for declaration as a Special Wildlife Reserve is intended to ensure that the Minister has regard to a broad range of values in land, in addition to an area's conservation values. This will ensure that the impact of the declaration on other environmental, economic and community interests of the State is considered.*[14]

A number of submissions also raised a concern about a lack of clarity on what criteria the Minister would use to make a decision on whether to declare an area of land as a special wildlife reserve.[15] For example, the Knobel Honey submission stated there should be more specific details of what the 'State interest' is.[16] The Property Council of Australia (PCA) was also concerned that the 'State interest' was defined very broadly and that, in effect, there is no clear criteria on which the Minister must base their decision to prepare a proposal to declare an area as a special wildlife reserve.[17] The department noted the concerns in relation to the consideration of 'State interests', and advised:

- 'State interests' are the competing land use interests that the State needs to consider prior to investigating a proposal[18]
- the definition of 'State interest' is deliberately broad to ensure that all relevant interests are taken into account[19]
- the inclusion of a requirement to also consider broader 'State interests' when proposing an area for declaration as a special wildlife reserve is intended to ensure that the Minister has regard to a broad range of values in land, in addition to an area's conservation values, and
- this will ensure that the impact of the declaration on other environmental, economic and community interests of the State is considered.[20]

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12 Public briefing transcript, 5 March 2018, p 2.

13 2018 submission 22, p 2.

14 DES, correspondence date 16 March 2018, attachment, p 4

15 See for example, 2017 submissions 10, 14, 15, 29 and 2018 submissions 13 and 22.

16 Knobel Honey, 2017 submission 10, p 1.

17 2017 submission 14, p 1 and 2018 submission 13, p 1.

18 DES, correspondence dated 16 March 2018, attachment, p 4.

19 DEHP, correspondence to AEC dated 25 July 2017, p 3.

20 DES, correspondence dated 16 March 2018, attachment, p 4.

Several submissions argued that conservation values should be prioritised over other State interests when considering a special wildlife reserve proposal. For example Ms Julia Siddall submitted that proposed section 43A should be amended to give the conservation interest in the site clear legislated priority as 'without very strong provision in legislation favouring strong weighting of environmental protection, economic considerations have consistently been given more weight by decision makers'.[21] The department response advised that all values in the land (conservation, economic, other environmental and community values) will be assessed on their merits for each proposal.[22]

The QLS submission noted that land use planning principles require that land is utilised for its highest and best use and recommended that section 43A include a requirement that consideration be given to these principles when a determination is being made.[23] The department responded that the Minister will consider the existing and potential land uses for an area before proceeding to make a proposal for a special wildlife reserve and this consideration will specifically include future transport corridors, and mineral and petroleum exploration.[24]

In its submission, the Householders' Options to Protect the Environment Inc. (HOPE) noted that in the Nature Conservation Act, the terms 'conservation' and 'nature' are defined but not what is considered 'exceptional natural and cultural resources and values' and submitted:

> *A definition of this term is necessary as it is a key determinant of an area being declared a special wildlife reserve. Indeed, other countries including, New Zealand, Nova Scotia, and the European Commission, as examples, have more precise criteria in their legislation of the classification of a protected reserve area.*
>
> *For example, in all three of the above-mentioned countries legislation, an area is to be designated as a special area of conservation if they meet the, more precisely defined, criteria of having rare or endangered native species in their natural habitat or the area is a representative example of a natural ecosystems for that country.*
>
> *The effect of having precisely defined criteria rather than just a vague term of, 'exceptional natural and cultural resources and values', is that the Ministers declaration of a special wildlife reserve will be based on objective determination rather than subjective interpretation.*[25]

The HOPE submission recommended the legislation be amended to include objective criteria of when an area is considered to be in possession of 'exceptional natural and cultural resources and values'.[26] In response the department advised that it is not considered helpful to provide a threshold definition of the conservation values required given the broad range of relevant values that an area may contain and the fact that priority for conservation of nature may change over time, and that this is consistent with the absence of such criteria in the Nature Conservation Act for national parks.[27]

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21 2018 submission 8, p 1.

22 DES, correspondence dated 16 March 2018, attachment, p 2.

23 2018 submission 22, p 2.

24 DES, correspondence dated 16 March 2018, attachment, p 4.

25 2018 submission 6, p 2.

26 2018 submission 6, p 2.

27 DES, correspondence dated 16 March 2018, attachment, p 4.

2.1.2 Consent of materially affected parties

2.1.2.1 Amendments proposed in the Bill

If the Minister is satisfied that an area should be declared as a special wildlife reserve, a proposal for declaration must be prepared, and under proposed section (43A(5)) the Minister must give written notice (including a due date for submissions - 43A(6)) about the proposal to:

- each person who has an interest in the land
- each holder of an exploration permit
- each holder of an authority to prospect, and
- each holder of a mining interest, geothermal tenure or greenhouse gas (GHG) authority.

Proposed section 43B(2) provides that if the rights or interests of a person mentioned in proposed section 43A(5)) will be materially affected by the conservation agreement, the Minister must not enter into the agreement without the person's written consent.

2.1.2.2 Issues examined

During the former committee's inquiry into the 2017 Bill, concerns were raised regarding the wording of the Bill in relation to the rights of a materially affected party. For example, the QLS submitted that, the rights and interests of a person will not be affected by the 'conservation agreement' rather, it will be the 'declaration' of a special wildlife reserve which will affect the rights and interests of a person.[28]

The former committee's report noted the following advice from DEHP:

- an amendment to proposed section 43A(5) to reference the declaration of a special wildlife reserve could have implications in its interactions with section 69 of the Nature Conservation Act which provides safeguards to landholders' interests for all classes of protected areas, and
- a preferred option would be to amend proposed section 43C to require terms in the conservation agreement that apply restrictions on activities that will be statutorily prohibited upon declaration of the declaration of the protected area.[29]

Consequently, proposed section 43C(1) of the 2018 Bill was amended to ensure that a conservation agreement for a special wildlife reserve must contain the same terms that prohibit the granting of authorities over the land that would be prohibited on declaration.[30] The department advised:

> *The recent amendment to the Bill (made subsequent to this issue being raised) brings forward the effect of the prohibition on mining, from the declaration stage, to the conservation agreement stage. This will allow for mining interest holders to clearly be entitled to make a submission on the material effects of the prohibition under sections 43B(2) and 43E(3).*[31]

Some stakeholders expressed concern about the use of the term 'materially affected' in proposed sections 43B(2) and 43E(3) as they considered it was unclear what 'materially affected' means.[32] The Queensland Resources Council (QRC) recommended that the term 'materially affected' be defined in the Bill and include those activities prohibited under proposed section 43C 'to make it clear that those activities, and associated holders, are considered to be materially affected if pre-existing'.[33]

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28 2017 submission 29, p 3.

29 AEC Report No 40, 55th Parliament, Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017, pp 19-20.

30 DES, public briefing transcript, 5 March 2018, p 2.

31 DES, correspondence dated 16 March 2018, attachment, p 4.

32 See for example, 2018 submissions 13, 16 and 22.

33 2018 submission 16, p 3 and p 6.

The department advised the committee that the term 'materially affected' can be readily understood by reference to its plain English meaning and as informed by the text, purpose and context of the Nature Conservation Act so it is not considered necessary to define the term.[34]

AgForce Queensland Farmers Limited (AgForce) proposed that where a proposal for a special wildlife reserve is made within agricultural land, for example in a strategic cropping area, neighbouring properties should be included in the list of interested parties given the risks of third party impacts from unmanaged reserves.[35]

The department advised that an assessment of a proposed area's agricultural values, current and potential, including its location within identified areas such as strategic cropping or other high value agricultural areas, will be assessed. It also advised that notifications, and the associated right to withhold consent if materially affected by a proposal, are limited to those people with an interest in the land proposed for declaration as a special wildlife reserve, including those holders of specific resource authorities associated with the land.[36]

The PCA submitted that all parties with an interest in the land should be directly notified and that parties should not be notified by placing advertisements in newspapers.[37] The department responded by advising:

- the department has extensive experience in notification for nature refuge declarations (well over 500 proposals) and through this process the department has accurately identified interest holders of the land for direct notification
- the identification of interested parties is achieved through a variety of means - relevant state departments and government owned corporations are contacted to obtain details of any interested parties; databases are searched; and the land title for the property is searched for all relevant registered interests held on the title
- however the publication clause (proposed section 43A(7)) has been included for consistency with existing provisions relating to nature refuges in section 44 of the Nature Conservation Act and the department has not had cause to utilise these provisions in relation to nature refuges, and
- the proposed provisions mirror those that have been utilised for over approximately 20 years in relation to the nature refuges protected area class.[38]

The 2017 QLS submission recommended a process be inserted to protect third party interests including elements of notification, a right to make a submission/objection to the proposal, a requirement for the Minister to provide written reasons in response and a right to appeal by the interest holder.[39] The department responded that there is a process in place within the Bill and the existing Nature Conservation Act to protect third party interests which includes the notification and consent processes outlined above, the court process in section 173 of the Nature Conservation Act and judicial review.[40]

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34 DES, correspondence dated 16 March 2018, attachment, p 4.

35 2017 submission 28, p 3 and 2018 submission 18, p 1.

36 DES, correspondence dated 16 March 2018, attachment, p 5.

37 2018 submission 13, p 1.

38 DES, correspondence dated 16 March 2018, attachment, p 5.

39 2017 submission 29, p 5.

40 DES, correspondence dated 16 March 2018, attachment, p 5.

2.1.3 Traditional Owner rights and consent

2.1.3.1 Amendments proposed in the Bill

Proposed new section 43B of the Nature Conservation Act provides that the Minister and landholders must agree on the declaration of the area as a special wildlife reserve and agree to the terms of the conservation agreement and there must be an approved management program for the reserve.

The Bill does not provide for the express consent of the native title holder. However, the explanatory notes advised that notice should be given to a native title holder:

> *The Minister must give written notice of the proposal to any person who has an interest in land, such as a mortgagee, native title holder or someone with the benefit of an easement, in the area proposed for the reserve, and those who hold a specific authority as listed, in the manner described in the section.*[41]

In relation to the impact the declaration of a special wildlife reserve will have on affected parties, including native title holders, the explanatory notes advised:

> *Establishment of special wildlife reserves, through introduction of the Bill, is not considered controversial as negotiation and declaration of a reserve is entirely voluntary and a conservation agreement does not impact on the rights and/or interests of other relevant parties, including native nitle holders, without consent.*[42]

The explanatory notes advised that consultation was undertaken with native title holders, amongst other stakeholders, when developing the special wildlife reserves proposal and that as a result of the consultation a number of changes were made including, ensuring 'that tenure resolution processes are not pre-empted by including provisions that prevent a special wildlife reserve from being declared over transferable land under the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991'*.[43]

Proposed section 43 of the Bill provides that division 3B (Special wildlife reserves) does not apply to transferable land under the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* while the explanatory notes clarify that 'this exclusion is not intended to prevent the declaration of the land as a special wildlife reserve after the transfer of the land'.[44]

2.1.3.2 Issues examined

The Cape York Land Council Aboriginal Corporation (CYLC) submission noted that while the provisions require the agreement of the landholder before a special wildlife reserve can be declared, the definition of 'landholder' does not include native title holders (while it does include pastoral leaseholders and freehold land owners). The CYLC recommended that the definition of 'landowner' under the Nature Conservation Act be broadened to include native title holders and that the Bill should mandate the consent of native title holders via an Indigenous Land Use Agreement (ILUA).[45]

The department responded by advising:

- a conservation agreement is intended to primarily bind (and thereby restrict the rights and interests) of 'landholders' as defined under the Nature Conservation Act
- other interest holders may be bound by consent

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41 Explanatory notes, 2018 Bill, p 13.

42 Explanatory notes, 2018 Bill, p 3.

43 Explanatory notes, 2018 Bill, p 8.

44 Explanatory notes, 2018 Bill, p 12.

45 2018 submission 17, pp 2-3.

- where the State wishes to restrict or extinguish the native title rights and interests of a native title party it would be required to give consent in accordance with the *Native Title Act 1993* which is typically provided through an ILUA
- where native title exists or may exist for a proposed special wildlife reserve area, relevant native title parties will be notified and may provide a submission to the Minister on the proposal and this process will ensure transparency, and
- no new rights or interests will be granted to a lease holder through the conservation agreement or declaration of a special wildlife reserve and as such, it is not considered necessary to include native title consent through an ILUA.[46]

The CYLC also submitted that the Bill's proposed exclusion of the native title holders from the rights and protections afforded to landholders in respect to the declaration of special wildlife reserves is contrary to section 10 of the *Racial Discrimination Act 1975* (Cth).[47] The department responded by advising:

- the Bill does not distinguish on the base of race but upon different proprietary interests in land - the provisions distinguish between persons holding an interest in land who fall within the scope of a 'landholder', and persons holding other interests in land, and
- in that regard, native title holders are given the same rights as holders of other non-native title interests who do not fall within the scope of 'landholder', namely the right to give or withhold their consent if the conservation agreement materially affects their interest.[48]

The submission from CYLC argued that if proposed amendments to provide for special wildlife reserves proceed then the conversion of pastoral leases to defacto conservation tenures will accelerate because the declaration of a special wildlife reserve will make it more attractive for conservation organisations to raise funds to purchase a pastoral lease to be managed as a perpetual private national park:

> *This creates a major risk that wealthy conservation groups will use the acquisition of pastoral leases and their conversion to special wildlife reserves as a way of strategically locking land up from economic development.*
>
> *Whilst we are not opposed in principle to conservation outcomes, this type of land use change should only occur following consent from native title parties, as would be required if the pastoral lease tenure was otherwise changing to national park tenure. In cases where Cape York pastoral leases have been purchased by the State and converted to a public national park the State has negotiated an Indigenous Land Use Agreement (ILUA) with Aboriginal traditional owners to provide consent for this land use and tenure change. The same principle must apply to the declaration of a special wildlife reserve.*[49]

The department responded by advising:

- given the requirement for the land to contain exceptional natural and cultural values, the process undertaken by the State in considering and determining the various State interests in the land, as well as the notification and consent process, the vexatious use of this mechanism by a landholder is not possible, and
- only the Minister, not a landholder, may propose an area for declaration as a special wildlife reserve.[50]

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46 DES correspondence dated 16 March 2018, attachment, p 3.

47 2018 submission 17, p 3.

48 DES correspondence dated 16 March 2018, attachment, p 3.

49 2018 submission 17, p 2.

50 DES correspondence dated 16 March 2018, attachment, p 3.

A number of other stakeholders requested that the department ensure that native title impacts/conflicts be clarified and avoided, or consent sought if native title is affected.[51] For example, the Australian Conservation Foundation recommended that the consent of Traditional Owners be sought through existing native title procedures during the application of special wildlife reserves and that the Queensland Government manage this process on behalf of landholders.[52]

At the public briefing the department provided the following advice:

> *The declaration or subsequent management of special wildlife reserves cannot impact on native title rights and interests unless consent is provided. Conservation agreements are worded specifically so they do not impact upon native title rights and interests. This ensures that there are no obligations or restrictions placed on native title parties which would interfere with the exercise and enjoyment of their native title rights. All native title holders—all claimants—will be contacted and required to provide consent if they are materially impacted by the special wildlife reserves, as it will be for any other person with an interest in the land who is materially affected. The consent may take the form of an Indigenous land use agreement if that is the preferred means of the native title holders. As I said before, a conservation agreement cannot be executed, nor a declaration occur, without this consent. Importantly, we are not providing any additional rights or powers to the landholder over those already granted to them under the Land Act. Native title parties will continue to exercise and enjoy their rights.*
>
> *There may be instances where a conservation agreement may materially affect native title rights and interests. For example, if we had a special wildlife reserve that was in an area that was habitat for a rare species which is attractive to poachers, the agreement may restrict entry such as through a locked gate. That would impact on native title holders, so they would have to provide consent or be given some other means of entry through agreement.* [53]

2.1.3.3 Committee comment and recommendation

The committee noted the concerns raised by the CYLC and other stakeholders with respect to the potential impacts of the Bill on native title rights and interests.

The committee also noted the detailed advice provided by the department, particularly the advice that, relevant native title parties will be notified and given submission rights in respect of special wildlife reserve proposals and, should native title rights and interests be affected, the State will enter into an Indigenous Land Use Agreement with the native title party.

Recommendation 2

The committee recommends that the Minister work with Traditional Owners to ensure their concerns in relation to native title are addressed.

2.1.4 Protection of non-conservation land use interests

2.1.4.1 Proposed framework

DEHP provided the former committee with a list of State and third party interests which would be assessed, where appropriate, before any special wildlife reserve can be declared. These interests include mining, energy, forestry, agriculture, planning, transport infrastructure, water resources, native title, registered mortgagors, sub-lessees, easement holders and defence.[54] DEHP also advised

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51 See for example, 2018 submissions 8, 10, 11, 12, 21, 24 and 25.

52 2018 submission 12, p 2.

53 Public briefing transcript, 5 March 2018, pp 2-3.

54 DEHP, correspondence dated 4 July 2017, attachment, p 7.

that a draft *Memorandum of Understanding – protected area proposals* (MOU) between the department and other departments responsible for Queensland's mining, quarrying, water, apiculture, agriculture and forestry interests' details the roles, responsibilities, administrative arrangements and procedures to be followed in assessing a proposed protected area, including a special wildlife reserve.[55]

At the 2018 public briefing the department advised that in terms of mining leases or other interests, the Department of Natural Resources, Mines and Energy will be reviewing any prospectivity, and if there is any possibility of further mining interest, it will ensure State interests are not given up without benefit.[56]

2.1.4.2 Issues examined

The QRC recommended that the MOU be referenced in the explanatory notes 'to demonstrate that Government has a process for assessing the interests of the land as suitable to become a special wildlife reserve prior to proceeding to notification of materially affected parties'.[57]

The department responded:

- the draft inter-department MOU details an agreed approach between the chief executives of government departments as to how they will coordinate and communicate in relation to protected area proposals, and
- it is not appropriate to reference such a document in legislation - the safeguards in relation to interest holders exist within the Bill itself and the Minister is required to consider State interests in the land, which include resource interests, prior to the notification of a proposal for a special wildlife reserve.[58]

The QRC also recommended that the explanatory notes be amended to clarify that special wildlife reserves will not be declared over land where there is an active exploration, prospecting and resource extraction interest unless granted by consent.[59] The department responded that the explanatory notes are clear that any materially affected interest holder (including holders of the authorities mentioned) is required to consent to the conservation agreement.[60]

2.1.5 Incompatible land uses

2.1.5.1 Proposed restrictions

The key objective of the Bill is to establish a new class of privately owned or managed protected area to allow for the protection of lands of outstanding conservation value from 'incompatible land uses'.[61] The department advised that protection of these lands from land uses such as resource activities and native forest timber harvesting is a well-supported concept internationally, within Australia and in Queensland and the International Union for Conservation of Nature's system of protected area classifications recognises that private protected areas managed primarily for conservation should be an integral part of a robust protected area system.[62]

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55 DEHP, correspondence dated 4 July 2017, attachment, pp 7-8.

56 Public briefing transcript, 5 March 2018, p 5.

57 2018 submission 16, p 3 and p 6.

58 DES, correspondence dated 16 March 2018, attachment, p 1.

59 2018 submission 16, p 6.

60 DES, correspondence dated 16 March 2018, attachment, p 1.

61 Explanatory notes, 2018 Bill, p 1.

62 DES, correspondence dated 16 March 2018, p 1.

According to the Bill and advice from the department, upon declaration of a special wildlife reserve, the following land uses will be restricted:

- the State will be prohibited from getting or selling forest products on the protected area (due to the proposed amendment to the *Forestry Act 1959*)[63]
- the granting of mining, petroleum, geothermal and GHG authorities will be prohibited[64]
- commercial grazing will not be allowed on the reserve[65] or within a 100 metre buffer between the reserve and the next property,[66] and
- some conservation-related activities such as low-level ecotourism and scientific and educational activities may be allowed where appropriate.[67]

2.1.5.2 Issues examined

Some submissions supported the proposed restriction of incompatible land uses, for example Bush Heritage Australia (BHA) noted that having to manage incompatible land uses on reserves 'takes significant time, resources and operational capacity that might otherwise be directed into on ground conservation land management and involves, invariably, an element of conflict with mining and tenement holders'.[68] BHA also noted that the higher level of protection afforded by the proposed special wildlife reserve will provide organisations which are investing in the conservation with an enhanced incentive for increased investment in Queensland.[69]

However a number of submissions, while supporting the proposed restrictions, recommended they be extended to provide a higher level of protection. For example, the National Parks Association of Queensland (NPAQ), the Environmental Defenders Office (EDO) and a number of other submissions recommended that the exclusions be extended to include:

- all grazing (not just commercial grazing) as grazing tramples habitat, compacts soil and spreads weeds
- ecotourism that compromises the environmental values of the protected areas, with ecotourism infrastructure to be located adjacent to protected areas, and
- new petroleum pipeline licences, as pipelines can fragment habitat and introduce weeds.[70]

The department responded by advising:

- ecotourism developments will only be permitted if already permitted under the underlying tenure and any ecotourism activities will need to be consistent with the management principles and conservation agreement for the reserve
- grazing for management purposes may be allowed on a case-by-case basis (for instance, to assist in the control of pest plants), where aligned with the management principles of the reserve

63 Explanatory notes, 2018 Bill, p 23.

64 Explanatory notes, 2018 Bill, p 11.

65 DEHP, correspondence to AEC dated 4 July 2017, attachment, p 5.

66 Public briefing transcript, 5 March 2018, p 6.

67 DEHP, correspondence to AEC dated 4 July 2017, attachment, p 5.

68 2018 submission 14, p 2.

69 2018 submission 14, p 2.

70 See for example, 2018 submissions, 19, 21, 4, 8 and 11.

- section 27 of the Nature Conservation Act does not allow for resource extraction activities but allows for the survey and construction of pipelines traversing protected areas, and
- the provisions of section 27 will be applied to special wildlife reserves to deliver the intent of national park equivalent protection and development constraints relating to protected areas will be applicable to special wildlife reserves, which will involve the avoidance, mitigation and offsetting of significant values.[71]

At the public hearing on the Bill the committee further explored the issue of allowing limited grazing on special wildlife reserves. The Wildlife Preservation Society of Queensland (Wildlife Queensland) advised the committee that there are instances where non-commercial grazing is acceptable in a protected area for management purposes, but that this should not become a permanent exercise. Wildlife Queensland provided the example where buffel grass can be controlled by grazing to limit the number of cats and thereby maintain an endangered species such as the bridles nail-tail wallaby.[72] While the EDO agreed that grazing may be appropriate in some circumstances, they argued that it should not be a perpetual management practice and should be balanced with consideration of other management practices that might be more appropriate for a protected area.[73]

The committee also asked the EDO at the public hearing about their concerns in relation to ecotourism. The EDO explained that as ecotourism applications come forward there are not clear criteria for a decision-maker to decide what a suitable impact on the protected area is and what is not suitable. The EDO explained:

> *Therefore, for even the public to try to defend the interests of a protected area there needs to be really clear criteria on what is of an appropriate magnitude and what really does not fit within the kind of development envisaged in the protected area. Without that, we do not have any check and balance on that decision and it is just too open to the discretion of the decision-maker at the time. For a public interest matter like protected area, there needs to be very clear stipulations on if you are going to allow development in there, what kind of developments with examples and what just is not acceptable.*[74]

Wildlife Queensland advised the committee that ecotourism is a term so broad that it is difficult to talk generally about it, however:

> *If I come back to the special wildlife reserve, yes, there are plenty of instances where ecotourism could happen there. It might be a matter of somebody who owns the land taking people around and showing them some of the wildlife values in the area. However, if ecotourism means building a facility there so people can stay overnight, have food and everything else, then that is a different thing altogether and it may be totally inappropriate.*[75]

A number of other stakeholders objected to some of the proposed restrictions. For example, AgForce opposed the exclusion of grazing and the permanent removal of land from agricultural production on the basis that 'actively used agricultural land has the ability to comprehensively and securely protect outstanding conservation values' and due to increasing food and fibre needs.[76]

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71 DES, correspondence dated 16 March 2018, attachment, p 2.

72 Public hearing transcript, 19 March 2018, p 6.

73 Public hearing transcript, 19 March 2018, p 8.

74 Public hearing transcript, 19 March 2018, p 10.

75 Public hearing transcript, 19 March 2018, p 10.

76 2018 submission 18 and 2017 submission 28, p 1.

The department noted AgForce's concern about the removal of land from agricultural production and advised that this will only occur where an assessment of the relative agricultural and conservation values of a proposed area has been undertaken:

> *An assessment of the significance of land for agricultural purposes will be undertaken prior to a proposal proceeding. This will include areas identified by the Department of Agriculture and Fisheries as strategic or high value agricultural land.*[77]

The previous committee received submissions that objected to beekeeping being prohibited on special wildlife reserves.[78] DEHP responded that beekeeping would not be consistent with the management principles and therefore would not be permitted on special wildlife reserves, other than as a short-term continuing use under the proposed new section 43H.[79] This committee explored this issue further during the public hearing and was advised by Wildlife Queensland that honey bees can damage native flowers to the effect that it affects its capacity to germinate.[80]

The CYLC submitted that special wildlife reserves will result in less agricultural activity on pastoral leases which would limit employment opportunities for Aboriginal and other people. The CYLC also noted that normally the grant of a mining lease would require the consent of native title parties through an ILUA, with employment and other economic benefits for native title parties negotiated in the process of reaching agreement.[81] The CYLC submitted:

> *If a special wildlife reserve was declared according to the process proposed in the Bill it would prohibit new mining and other development opportunities in that area, and native title parties would consequently lose the potential for economic benefit without their agreement.*
>
> *If the declaration of a special wildlife reserve required the consent of native title parties through an ILUA then native title parties could decide whether they support the potential loss of mining or other opportunities in exchange for any potential benefits associated with a special wildlife reserve.*[82]

The department responded by advising:

- the Minister is required to consider State interests prior to a proposal for a special wildlife reserve proceeding. As well as environmental interests, these include economic or community values
- the right to approve, refuse or restrict mining activities does not rest with either the landholder or native title holder, but with the State
- the Minister will be required to assess the potential loss of mining and other State interests as they relate to the public benefits of a special wildlife reserve, and
- additionally, as the declaration of a new special wildlife reserve would be made through regulation, the 'best practice regulation' process will be followed for each proposal, in consultation with the Queensland Productivity Commission (Office of Best Practice Regulation) and any potential significant adverse impacts will be assessed through this process.[83]

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77 DES, correspondence dated 16 March 2018, attachment, p 2.

78 2017 submissions 10 and 17.

79 DEHP, correspondence dated 25 July 2017, attachment, p 6.

80 Public hearing transcript, 19 March 2018, p 10.

81 2018 submission 17, p 2.

82 2018 submission 17, p 2.

83 DES, correspondence dated 16 March 2018, attachment, pp 2-3.

Further, at the departmental briefing the department advised the committee that the State is unlikely to let a special wildlife reserve be declared over an area of prime agricultural land, and neither is prime agricultural land likely to display those exceptional cultural and natural values that the department would be looking for in a special wildlife reserve.[84]

The department also advised that it believes economic and community benefits may flow from the transition to conservation focused land management; for example, through expenditure in the local community by the landholder on such things as labour, tools and other materials and there may be increased visitation by volunteers and researchers who come to the area, donors and students.[85]

2.1.6 Previous use authorities

2.1.6.1 Amendments proposed in the Bill

The Bill proposes to insert a new section 43H (Previous use authorities in special wildlife reserve) to allow the chief executive to grant a limited term authority to allow for a use that is not otherwise captured under section 43F (Leases etc. over land in a special wildlife reserve) to continue through the declaration of a special wildlife reserve. The explanatory notes provided:

> *The use of this provision is solely at the discretion of the chief executive, and may be used, for instance, to allow the declaration of a special wildlife reserve to occur where the pre-existence of a particular use may otherwise prevent the declaration. For example, it may be seen as desirable to pursue the early declaration of a reserve to protect a particularly vulnerable species or ecosystem, but a current interest is held over the land for a period of time, and the person is not willing to relinquish their interest prematurely.*[86]

Proposed section 43H provides that the previous use authority must not be renewed and cannot continue beyond the allowable term (the unexpired term of the authority (agreement, lease, licence, permit or other authority), or otherwise, three years after the declaration of the reserve.

2.1.6.2 Issues examined

The QRC raised the following concerns in relation to proposed section 43H:

- given the section will only apply if the previous use started immediately before the declaration was made 'this does not adequately account for existing approvals nor does it consider activities that are periodic or sporadic (e.g. exploration) as a previous use', and
- that it may not be possible to transition or cease operations and complete the relevant compliance activities (e.g. decommissioning and rehabilitation as specified in the Environmental Authority) within the allowable term.[87]

The QRC recommended that the section be amended to allow for the grant of, or extension to a previous use authority beyond the allowable term consistent with any pre-existing approvals and to assist in the transition or cessation of operations and, for example, completion of relevant rehabilitation activities. The submission also recommended that exploration activities be considered under the section 43H of the Bill as a previous use, particularly where the proponent is able to demonstrate intent (by means of material submitted to the Department of Natural Resources, Mines and Energy) to undertake activities within the unexpired term.[88]

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84 Public briefing transcript, 5 March 2018, p 3.

85 Public briefing transcript, 5 March 2018, p 3.

86 Explanatory notes, 2018 Bill, p 12.

87 2018 submission 16, p 3.

88 2018 submission 16, pp 3-4.

The department responded by advising:

- it is not intended to use a previous authority to allow the continuation of activities prohibited by the declaration of a special wildlife reserve, such as mining or forestry
- given active mining interests on a special wildlife reserve will be prohibited, and this must be stated within a conservation agreement, consistent with section 43C(1)(c), this prohibition must be made clear to interest holders through the notification and consent process in section 43B, and
- the resource interest holder would be entitled to withhold consent to the conservation agreement if its ability to continue its authorised activities would be materially affected by the agreement.[89]

The QLS queried how the previous use authority framework will operate with respect to a lease containing an option to renew:

> *An option to renew is exercisable at the election of the lessee and it is an enforceable right against the lessor. Is an option to renew considered part of the 'allowable term' under section 43H(5) of the SWR Bill? If not, it would appear that the previous use authority will interfere with an option to renew clause which adversely affects a person's existing rights.*[90]

The department advised that an option to renew a lease would not be considered part of the allowable term under section 43H and this restriction would need to be considered by the holder of such a lease when considering whether to provide consent to the conservation agreement. The department also noted that if the leaseholder was the 'landholder' with whom the Minister was entering into the conservation agreement, the provisions of section 43H would not apply.[91]

In its 2017 submission Energy Queensland noted that section 43G(2) provides for the approval of service facilities existing prior to the land being made a special wildlife reserve and that the chief executive 'may' grant an approval for an existing service facility:

> *Energy Queensland's electrical Infrastructure and communication sites meet the definition of a service facility under the Bill and could potentially be located on land proposed to be made a SWR. This Infrastructure is designed, constructed and maintained to ensure it remains in place over a long period of time and can't be easily relocated. Energy Queensland requests that section 43G(2) be amended to state that the 'chief executive* ***must*** *grant' an authority to an existing service facility in the event of the land being made a SWR.*[92]

DEHP advised the former committee that section 43G exists to provide the power for the chief executive to grant an approval for a service facility and this reflects the drafting style of the Office of the Queensland Parliamentary Counsel (OQPC), and is identical to the approach taken for the equivalent provisions relating to grant of service facility authorities for national parks (sections 35 and 35A):

> *If an existing service facility were be included in a special wildlife reserve the owner of the facility would be required to consent to the conservation agreement for the special wildlife reserve which could be given on the condition that an approval was provided under s43G(2).*[93]

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89 DES, correspondence dated 16 March 2018, attachment, p 6.

90 2017 submission 29, p 5.

91 DES, correspondence dated 16 March 2018, attachment, p 6.

92 2017 submission 21, p 1.

93 DEHP correspondence to AEC dated 25 July 2017, attachment, p 5.

2.1.7 Land management on the reserve

2.1.7.1 Proposed land management framework

The Nature Conservation Act provides the framework for the management of protected areas in Queensland. The proposed special wildlife reserves will be on privately owned or managed land and they will exhibit exceptional natural or cultural values and a management regime which is focussed on conserving those values.[94]

The Bill proposes to establish management principles for special wildlife reserves. The explanatory notes advised that these principles will provide a framework to guide management of special wildlife reserves by the landholder:

- a legally binding, perpetual conservation agreement, and an associated management program, will be negotiated for each special wildlife reserve.
- the conservation agreement and management program will detail management outcomes and actions to ensure enduring protection of each special wildlife reserve's conservation values in order to achieve the management principles, and
- both documents will have a statutory basis, as authorising documents, and will guide compliance actions, if necessary.[95]

The department advised the committee:

> *… the management of special wildlife reserves will be underpinned by management principles which sit within the bill plus the conditions that sit within the conservation agreement and in the statutory management program. Compliance provisions are also proposed in the bill and they will be further strengthened by subsequent regulatory amendments. Additionally, special wildlife reserve landholders will still be required to meet their legal obligations for weed and pest management under the Biosecurity Act the same as other landholders in Queensland.* [96]

DEHP advised the previous committee that management programs will be specific to each wildlife reserve and the values that it is trying to protect and it will be about controlling pests and weeds, looking after waterways and general land management such as maintaining cover and other general land management activities.[97]

The explanatory notes advised that on-going management costs will be met by the private sector and to be considered as a special wildlife reserve, the landholder must possess or source high-level conservation-focussed management capabilities. There will also be an ongoing cost for government in the assessment and review of the management program and on-going monitoring and landholder service (e.g. staffing, provision of advice, property visits, compliance checks); and incentives (e.g. funding for assistance with on-ground threat mitigation measures).[98]

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94 DES, public briefing transcript, 5 March 2018, p 2.

95 Explanatory notes, 2018 Bill, p 3.

96 DES, public briefing transcript, 5 March 2018, p 2.

97 Public briefing transcript, 12 July 2017, p 4.

98 Explanatory notes, 2018 Bill, p 6.

2.1.7.2 Issues examined

The committee heard concerns regarding the impact that the management of special wildlife reserves could have on adjacent land if the land is not managed appropriately.[99]

AgForce commented that there was a 'potential impact to neighbouring properties if the potential pest, weed and fire risks of the special wildlife reserves are not managed appropriately into the future.'[100]

The Queensland Farmers' Federation (QFF) raised concerns regarding restrictive management practices on special wildlife reserves:

> *Management of SWRs will have flow on effects to the management of adjacent productive agricultural land. It is therefore essential that restrictive management practices imposed on SWRs do not negatively impact productive agricultural land and the overall management of the farming system.*
>
> *The management of pests and weeds on crown land have created ongoing issues for landholders that abut these government-managed lands. The management practices used can be restrictive and frequently do not manage pests and weeds effectively.*[101]

The department responded by advising:

- special wildlife reserve landholders will be required to abide by existing pest plant and animal management legislation in the *Biosecurity Act 2014*, in the same way as their neighbours
- in addition, due to the effects of pests on natural values, pest management will form a typically prominent part of an approved management program for a special wildlife reserve and the obligations placed on special wildlife reserve landholders to manage these issues will be greater than those on other landholders
- the intensive management obligations placed upon landholders of a special wildlife reserve, including the management of pests and weeds should result in benefits to neighbouring properties, and
- fire management regimes would be a typical component of an approved management program for a special wildlife reserve and, landholders will be required to comply with the *Fire and Emergency Services Act 1990.*[102]

The committee discussed concerns about landholder management capacity with the department at the 2018 public briefing. The department advised:

> *… when we are looking at someone who might be suitable for a special wildlife reserve, one of the criteria we will be looking at is the landholder's suitability. Because they are in perpetuity, we want to make sure that the person has experience in managing land, that they have the financial capacity to hold onto the land and manage the land and that they have some good governance arrangements so there will be ongoing management. We will be looking at landholder suitability as well as that day-to-day compliance.*[103]

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99 See for example, 2017 submissions 18, 28, 33 and 2018 submissions 18, and 15.

100 Public hearing transcript, Brisbane, 12 July 2017, p 10.

101 2018 submission 15, p 3.

102 DES, correspondence dated 16 March 2018, attachment, p 5.

103 Public briefing transcript, 5 March 2018, p 7.

DEHP also advised the former committee:

> *A prospective special wildlife reserve landholder must be able to demonstrate a high-level of expertise (or access to it) and capacity to resource high-level conservation management of their land in the long-term. Furthermore, prospective landholders must have clear governance and accountability structures and/or succession planning which provide assurance of continuing prioritisation of conservation management as the key intent for the land in the long-term.*[104]

Wildlife Queensland submitted that it is clear that the management program is the key document in which the landholder commits to management outcomes and management actions to achieve those outcomes and that it would therefore be appropriate for the management program to be given greater recognition in the Bill.[105] The department reiterated that the Bill articulates the requirements for a management program and by ensuring that activities are consistent with both the management principles for the reserve, and the conservation agreement for the reserve, 'the department is confident that any consideration of further licences, permits or authorities over the reserve will be consistent with the intentions for the reserve'.[106]

2.1.8 Compliance and enforcement

2.1.8.1 Proposed framework

Compliance actions will guided by the conservation agreement and management program which will detail management outcomes and actions to ensure enduring protection of each special wildlife reserve's conservation values.[107]

DEHP advised the previous committee that compliance and penalty measures would be brought in through regulations and will also be provided for in section 62 of the Nature Conservation Act which is to be amended to more adequately deal with special wildlife reserves by referencing their management programs in this section as an 'authorising' instrument.[108]

The Bill proposes to amend section 154 of the Nature Conservation Act (Other powers of conservation officer) to extend the powers of a conservation officer to access a protected area to investigate or monitor compliance with the conservation agreement for the area.

2.1.8.2 Issues examined

A number of submissions raised questions regarding the compliance and enforcement mechanisms which will be available to ensure the maintenance of conservation and management standards on special wildlife reserves. For example, Wildlife Queensland commented that 'there is no apparent head of power for the landholder to be penalised for not complying with the conservation agreement and the management program…'.[109] The Wildlife Queensland submission also recommended that proposed section 154(1)(a)(iii) be amended to include reference to the management program as 'it is the management program that is likely to contain matters that need inspection on the ground'.[110]

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104 DEHP, correspondence dated 4 July 2017, attachment, p 7.

105 2018 submission 10, p 2.

106 DES, correspondence dated 16 March 2018, attachment, p 10.

107 Explanatory notes, 2018 Bill, p 3.

108 DEHP correspondence to AEC dated 14 July 2017, p 1.

109 2018 submission 10, p 5.

110 2018 submission 10, p 5.

The QFF raised a concern that the Bill does not detail the compliance requirements for special wildlife reserves and submitted that 'this must be clearly articulated so that landholders are completely informed when choosing to enter in to an agreement and alternatively, allow for a dispute process for adjoining landholders in the event the reserve is not being appropriately and/or responsibly managed.'[111]

The Queensland Trust for Nature (QTFN) submitted that management processes should support self-auditing where possible with regular (but not frequent) checks or audits to ensure outcomes are being achieved and potential problems are identified as early as possible.[112]

The department advised the committee:

- regulations relating to compliance, including restrictions and offences are proposed should this Bill be enacted
- a head of power for penalties relating to not complying with a conservation agreement will require further consultation with existing nature refuge landholders, as they would be directly affected by such provisions subsequent to entering into a conservation agreement, and
- the requirement for a regular review of the management program for a special wildlife reserve (section 120GA) will require an assessment of the effectiveness of management under the existing management program and this will establish a baseline for evaluation of management effectiveness.[113]

At the public briefing the committee asked the department who would scrutinise the capacity of the landholder to deliver in relation to the management program. The department advised that in terms of landholders meeting their requirements in terms of pests and weeds, nature refuge officers will be going out to visit them. It also advised it will also come under the *Biosecurity Act 2014* which is administered by the Department of Agriculture and Fisheries. The department reiterated its advice that in assessing the declaration of a special wildlife reserve one of the criteria will be the landholder's suitability:

> *Because they are in perpetuity, we want to make sure that the person has experience in managing land, that they have the financial capacity to hold onto the land and manage the land and that they have some good governance arrangements so there will be ongoing management. We will be looking at landholder suitability as well as that day-to-day compliance.*[114]

In response to a further question from the committee about the process for assessing the capacity of a new landholder if the land is disposed of by the original landholder, the department advised that before a landholder can sell the land or transfer or surrender a lease, the landholder must obtain the written consent of the chief executive officer of the department:

> *Amendments to the Land Act also require the consent of the minister accompanying an application if they want to subdivide freehold or leasehold land or amalgamate a lease. They will have to seek approval prior to transfer. Then it may stop being a special wildlife reserve altogether or someone else may want to make it a wildlife reserve.*[115]

The department also clarified that if land with a special wildlife reserve is sold the reserve remains registered on the title unless there is a revocation of the reserve.[116]

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111 2018 submission 15, p 3.

112 2018 submission 7, p 2.

113 DES, correspondence dated 16 March 2018, attachment, p 8.

114 Public briefing transcript, 5 March 2018, p 7.

115 Public briefing transcript, 5 March 2018, p 7.

116 Public briefing transcript, 5 March 2018, p 7.

2.1.9 Resourcing and incentives

2.1.9.1 Proposed resourcing

The explanatory notes advised that initially, the creation and management of special wildlife reserves will be undertaken by the department's staff within the existing NatureAssist budget allocation. It is anticipated that the department may require one additional full-time equivalent position for every five to 10 special wildlife reserves created.[117] The department also advised the committee that it is only expecting one or two of the reserves to be established each year.[118]

DEHP advised the former committee that it is likely that suitable landholders of proposed special wildlife reserves will have a management plan for their property, or would be intending to do so:

> *Existing management plans for properties would form the basis of a management program and therefore the preparation of a management program will not be an overly onerous or costly task for the landholder.*
>
> *The Department is currently developing policy and associated management program templates that will assist landholders in efficiently preparing management programs.*[119]

2.1.9.2 Issues examined

A number of stakeholders raised concerns that government investment in special wildlife reserves must not come at the expense of suitable funding for the expansion and appropriate management of public protected areas or the Nature Refuges Program.[120] Some stakeholders also submitted the government should provide incentives and resources for special wildlife reserves and national parks in general.[121]

The department advised:

- the Government considers that national parks are, and should remain, the cornerstone of Queensland's protected area system
- the Government is currently considering the most effective means to increase and manage the protected area estate through the development of a Protected Area Strategy for Queensland, and
- the allocation of budgets and resources for protected areas programs is a matter of government policy and not within the scope of the Bill.[122]

AgForce submitted that the current protected area estate is under-resourced and recommended that a bond be put aside for the management costs of the reserves for 50 years as 'the costs of managing private protected areas to a high standard in perpetuity are not inconsequential and so must be accounted for'.[123] The department responded by noting that the risks associated with a special wildlife reserve landholder's financial position are significantly less than that of a resource proponent and 'as such it is not considered that a 50 year financial bond held by the State would be necessary'.[124]

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117 Explanatory notes, 2018 Bill, p 6.

118 Public briefing transcript, 5 March 2018, p 5.

119 DEHP correspondence to AEC dated 25 July 2017, attachment, p 10.

120 See 2018 submissions 8, 10, 11, 19, 21 and 25.

121 See 2018 submissions 2, 14, 15, 21, 23 and 24.

122 DES, correspondence dated 16 March 2018, attachment, p 8.

123 2017 submission 28, p 2.

124 DES, correspondence dated 16 March 2018, attachment, p 10.

2.1.10 Ownership change, lease surrender, revocation

2.1.10.1 Amendments proposed in the Bill

Proposed section 43K(1) provides that a conservation agreement for a special wildlife reserve is binding on the landholder of the land, the landholder's successor in title and any other person with an interest in land in the reserve who consented to the agreement. This means that special wildlife reserves will be retained in perpetuity.

Proposed section 43C(1)(b) of the Nature Conservation Act will require a conservation agreement for a special wildlife reserve to state that it is binding on the landholder of the land and the landholder's successors in title.

Proposed section 43L applies if a special wildlife reserve is declared over freehold land or land in a lease under the Land Act. It requires a person who intends to surrender all or part of the freehold land or lease; allow a lease to expire at the end of its term; or transfer the lease to seek to obtain the chief executive's written approval. The explanatory notes provided:

> *The chief executive's consideration of a lease surrender or expiry is considered necessary to allow the chief executive to consider options that will best provide for the on-going existence and appropriate management of the reserve. Under the Land Act 1994, upon expiry or absolute surrender of a lease (other than a State lease) or freehold lot to the State, the land becomes unallocated State land and all interests in the land are extinguished upon registration of the surrender. This will effectively end the declaration of the reserve. It would be preferable for the chief executive to be able to consider other options prior to a surrender that would allow for the continuance of the special wildlife reserve, as intended upon its declaration.*
>
> *The chief executive's consideration of an application to transfer leasehold land over which a special wildlife reserve is declared will provide an opportunity to prevent the transfer of a lease to a landholder that the chief executive considers to be incapable of providing, or unlikely to provide, management of the reserve in accordance with the reserve's management principles, conservation agreement and management program. …*
>
> *Transfer of a freehold lot has not been captured in this provision, as to do so would be an unusually restrictive provision in relation to freehold land dealings.*[125]

The department advised the committee that a special wildlife reserve can only be revoked by a resolution made by the Legislative Assembly requesting the Governor in Council to make the revocation:

> *This process, analogous to that for protected areas on State land (including national parks), serves to ensure that the highest level of scrutiny is applied to a proposal for revocation.*[126]

DEHP advised the former committee that the Bill does not restrict the grounds by which a special wildlife reserve may be revoked. It also advised there are special circumstances outlined in proposed section 43J(3) in the Bill for revocations where changes to a special wildlife reserve are inconsequential, such as a minor boundary correction of alignment as the administrative burden associated with minor revocations is high and the Legislative Assembly's consideration is not warranted in such cases.[127]

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125 Explanatory notes, 2018 Bill, p 16.

126 DES, correspondence dated 16 March 2018, attachment, p 6.

127 DEHP correspondence to AEC dated 19 July 2017, p 1.

2.1.10.2 Issues examined

AgForce raised a concern that the proposed amendments to ensure the State retains the option to continue a special wildlife reserve on leasehold land after surrender or expiration essentially places the management of the land under state responsibility adding to the ongoing management costs borne by the State.[128] The department advised that while the proposed amendments are designed to allow the possibility of retaining the special wildlife reserve in private management:

> *It is acknowledged that there may be a period when the State takes on management responsibility while an alternative private manager is found. Without the proposed amendment, the only two viable options available will be for the state to take full responsibility for the special wildlife reserve or for the revocation of the special wildlife reserve. It is considered preferable to retain the option for a special wildlife reserve on leasehold land to remain in private management upon expiry or surrender of a lease. Options to re-gazette as national park, including through a tenure resolution process would also remain open for consideration.*[129]

The EDO recommended that the power to revoke special wildlife reserve declaration should be subject to further conditions limiting when the declaration may be revoked and suggested a provision requiring that the Minister provides an offset to ensure the overall conservation outcomes remain the same.[130] The department responded:

> *A special wildlife reserve can be used to legally secure an offset under the Environmental Offsets Act 2014. Any impacts on legally secured offset areas must be offset in accordance with the Queensland Environmental Offsets Framework.*[131]

2.1.11 Oversight and transparency

2.1.11.1 Management programs and conservation agreements

Clause 25 of the Bill proposes to insert a new division 6A into Part 7 of the Nature Conservation Act (Management statements, management plans, management programs and conservation plans) to provide for the preparation and approval of management programs for special wildlife reserves. While the Act requires management statements and management plans to be made publicly available (see sections 113A, 118(2)(a), and 120D) there is no such requirement proposed for conservation agreements or management programs for special wildlife reserves.

Clause 29 of the Bill proposes to replace section 134 of the Nature Conservation Act (Records to be maintained by the registrar). The proposed section outlines the manner in which records are to be kept or removed by the registrar for the listed instruments in relation to land, and requires the registrar to record the information provided. The explanatory notes advised:

> *This allows the existence of the instruments applying to the land to be recorded visibly on the title for the land, should a person, such as a prospective purchaser, undertake a search of the land title.*[132]

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128 2017 submission 28, p 2.

129 DES, correspondence dated 16 March 2018, attachment, p 7.

130 2018 submission 21, p 3.

131 DES, correspondence dated 16 March 2018, attachment, p 6.

132 Explanatory notes, 2018 Bill, p 20.

2.1.11.2 Issues examined

A number of stakeholders submitted that there should be transparency in relation to the determination and assessment of the relative values of particular land and that this information should be publicly available.[133]

The QTFN recommended that statements of reasons should accompany decisions in relation to special wildlife reserves and supporting material (including the departmental assessment and recommendation) must be made available to the public.[134]

The HOPE submission recommended that the legislation be amended to include details of the State interest in proposed section 43A(4) as this section only requires the area's exceptional natural and cultural resources and values, to be described in the Minister's proposal.

> *…… it can be concluded that those persons in, section 43A(5), that are required to be given written notice of the proposal are not going to be fully informed of all the considerations and interests that the Minister has analyzed in order for the declaration to be made.*
>
> *Consequently, these persons in, section 43A(5), can't make a knowledgeable decision or submission about this declaration to the Minister if they are ill informed of all the considerations and interests that the Minister has based his/her declaration on.*[135]

The department responded by advising:

- the decision making process for determining whether a property should be declared a special wildlife reserve includes a number of factors, including landholder capability, and not all information that contributes to the decision will be published in the public domain (such as commercial in confidence or private information)
- decisions made under the Nature Conservation Act are open to review under section 173B and judicial review, and
- access to information on public funding of special wildlife reserves will be in accordance with relevant legislation considering privacy and confidentiality obligations.[136]

A number of stakeholders also raised concerns about the lack of public access to agreements entered into in relation to special wildlife reserves. For example, Wildlife Queensland submitted that the management program and the conservation agreement should be made available for public scrutiny as 'there needs to be a capacity for the public to (a) know what actions are being undertaken, and (b) know that, over time, the commitments entered into via the management program and conservation agreement are being honoured and maintained'. The submission recommended that a new section be included in Part 7 of the Nature Conservation Act to provide advice about where the management program can be viewed by a member of the public.[137]

The NPAQ also recommended that management plans for special wildlife reserves be made available to the public as 'public scrutiny is necessary to ensure the areas meet their obligations under the legislation and provides a mechanism to minimise rorts'.[138]

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133 See for example, 2108 submissions 7 and 12.

134 2018 submission 7, p 2.

135 2018 submission 6, p 1.

136 DES, correspondence dated 16 March 2018, attachment, p 9.

137 2018 submission 10, pp 1 and 3.

138 2018 submission 19, p 2.

The EDO recommended that the public register under the Nature Conservation Act should be amended to include management programs and conservation agreements as these instruments should 'be available for public scrutiny, to ensure that the public can inform themselves of conservation activities being undertaken, and assess whether they are being effective in achieving their aims'.[139]

The department responded by advising:

- the Bill provides for the public availability of conservation agreements for special wildlife reserves, and their existence will be readily apparent from a search of the land title
- conservation agreements will be made available on request and the Bill provides for conservation officers to access these reserves to monitor and inspect for compliance
- landholders may be willing to have their management documents available for public scrutiny however, like other authorising documents, such as licences and permits under the Nature Conservation Act management programs are not proposed to be public documents, and
- it is intended that terms relating to the implementation of management programs will be standard terms of all conservation agreements for special wildlife reserves.[140]

Recommendation 3

The committee recommends that the Minister look at reasonable amendments that would improve public accountability with respect to management programs for special wildlife reserves.

2.2 Amendment of the Environmental Protection Act

2.2.1 Trans-shipping activities in the Great Barrier Reef

2.2.1.1 Amendments proposed in the Bill

Clause 47 of the Bill proposes to amend section 19 of the Environmental Protection Act to prescribe additional circumstances in which an environmentally relevant activity may be prescribed in a regulation.

Section 19 of the Environmental Protection Act currently only allows for the regulation, assessment and compliance of the portion of an environmentally relevant activity that is carried out in Queensland waters.[141] The proposed amendment would allow a regulation to prescribe potentially harmful activities carried out partly within Queensland waters and partly in adjacent Commonwealth waters, but within the Great Barrier Reef Marine Park.[142]

DEHP advised the former committee that Schedule 2 of the Environmental Protection Regulation 2008 currently sets out prescribed environmentally relevant activities and, as at July 2017, it included a list of 64 environmentally relevant activities that are regulated under this framework.[143]

The department advised this committee that the amendment would ensure that risks to the Great Barrier Reef can be managed consistently and would enable implementation of a government commitment to not support trans-shipping activities adversely affecting the Great Barrier Reef.[144]

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139 2018 submission 21, p 5.

140 DES, correspondence dated 16 March 2018, attachment, p 9.

141 DEHP, correspondence to AEC dated 7 August 2017, p 3.

142 Explanatory notes, 2018 Bill, p 2 and p 4.

143 DEHP, correspondence to AEC dated 7 August 2017, p 3.

144 DES, correspondence dated 16 March 2018, pp 1-2.

The Minister in the introductory speech on the Bill noted:

> *This amendment creates the capacity to implement important protections for our marine environment by recognising that neither nature nor pollution respect the arbitrary boundary between Queensland and Commonwealth waters. This amendment will support consistent and fair regulation in the Great Barrier Reef region to activities such as trans-shipping, which may be conducted either wholly in Queensland waters or across Queensland and Commonwealth waters.*[145]

2.2.1.2 Issues examined

The 2017 QRC submission requested clarity on which environmentally relevant activities the proposed regulation amendments are to apply to and how these environmentally relevant activities would be further regulated.[146] In response, DEHP advised 'a detailed proposal to implement the Reef 2050 commitment is being developed and will be the subject of consultation in due course'.[147] This confirmed the explanatory notes advice that:

> *Consultation with external stakeholders will be undertaken prior to any subsequent amendments in the Environmental Protection Regulation 2008.*[148]

Further, in response to questions from the former committee, DEHP advised:

> *Any subsequent amendments to the EP Regulation with the intent to prescribe a new environmentally relevant activity, in the context of the proposed amendments, will follow the necessary processes that have been used so far when prescribing a new environmentally relevant activity or omitting an existing environmentally relevant activity.*[149]

During the 2018 public briefing, the committee asked for an update on progress in developing the prescribed environmentally relevant activities. The department responded that no consultation had been undertaken to date as it was waiting for the Bill to be passed prior to consultation occurring.[150] However, the QRC advised in its 2018 submission that consultation has occurred with the QRC and other stakeholders regarding the *Proposed Regulation of trans-shipping activities in Queensland waters and the Great Barrier Reef* released by the department on 22 September 2017.[151] The QRC submission further noted that the department had advised them that the regulation is intended to capture an assumed significant future intensification of trans-shipping activities, particularly in the Great Barrier Reef Marine Park and is intended to:

- capture any component of the trans-shipping process (onshore activities through to offshore transfer)
- restrict trans-shipping within the ports limits of declared ports
- introduce refusal rights for trans-shipping for areas, within the marine park, but outside the above port limits, and
- introduce additional assessment criteria for trans-shipping.[152]

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145 Queensland Parliament, Record of Proceedings, 15 Feb 2018, p 152.

146 2017 submission 8, pp. 7-8.

147 DEHP, correspondence dated 25 July 2017, p 12.

148 Explanatory notes, 2018 Bill, p 9.

149 DEHP, correspondence to AEC dated 7 August 2017, p 3.

150 Public briefing transcript, 5 March 2018, p 6.

151 2018 submission 16, p 5.

152 2018 submission 16, p 5.

The QRC requested the committee encourage the department to continue to engage with stakeholders to establish a clear and appropriately narrow scope for the proposed regulation changes.[153]

The Queensland Ports Association (QPA) submission advised that the following comments in its 2017 submission to the department on the proposed regulation of trans-shipping activities had not been addressed:

- the need for the regulation was not clearly explained
- the description of trans-shipping activities was severely lacking and the environmental impacts grossly overstated
- there was a lack of clarity regarding which products or substances were intended to be captured
- the discussion on risk did not properly consider likelihood and did not factor in controls that can be applied through best practice trans-shipping management, and
- it was not clear where the regulation was meant to apply (i.e. master planned areas, port limits etc).[154]

The QPA requested that the committee encourage the department to continue engaging with relevant stakeholders to ensure that the issues listed above are satisfactorily addressed and the outcomes of the proposed legislative amendments are aligned with the actual risks of trans-shipping.[155]

In response to the issues raised by the QRC and QPA the department advised:

- the Environmental Protection Act amendment, of itself, has no effect unless enlivened through a regulation and the department correctly informed the former committee that there had been no consultation on the terms of any prescribed environmentally relevant activities (new regulation), pending passage of the Bill
- the decision to amend the current regulation will be a further and separate policy decision for government, and
- the department has consulted with stakeholders on a policy approach to trans-shipping. The department intends to consult in preparing advice to the Government on a change to the regulation.[156]

153 2018 submission 16, p 6.

154 2018 submission 27, p 1.

155 2018 submission 27, p 2.

156 DES correspondence dated 16 March 2018, attachment, p 11.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill and brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 Rights and liberties of individuals

Clause 14 of the Bill proposes to insert new section 51 (Conservation agreements and conservation covenants for nature refuges binding) into the Nature Conservation Act.

Proposed section 51(1) provides that a conservation agreement in relation to the land in a nature refuge is binding on:

- the landholder of the land
- the landholder's successors in title, and
- any other person with an interest in land in the nature refuge, to the extent the agreement contains terms to that effect.

Pursuant to section 51(2) a conservation covenant in relation to the land in a nature refuge is binding on persons with an interest in the land to the extent stated in the covenant.

Section 51(3) provides that sub-section (1) applies if there is a lease or reserve under the Land Act over the land in the nature refuge and the lease is renewed or extended; converted to freehold land or a different type of lease; or the reserve is converted to freehold land or a different type of reserve.

Current section 45(2) of the Nature Conservation Act provides that if the rights of any of the following persons will be materially affected by the conservation agreement, the Minister must not enter into it without that person's written consent:

(a) if land in the area is subject to a lease, mining interest, geothermal tenure or GHG authority - the lessee, interest holder or authority holder, or
(b) if land in the area is subject to an encumbrance - the person entitled to the benefit of the encumbrance.

Binding a person to a conservation agreement who is not a signatory to the agreement (such as successors in title to the land in question or any other person with an interest in land in the nature refuge), to the extent the agreement contains terms to that effect, potentially breaches section 4(2)(a) of the LSA, which provides that legislation should have sufficient regard to the rights and liberties of individuals.

The explanatory notes acknowledged that binding a person who is not a signatory to an agreement is a potential breach of fundamental legislative principles and provided the following justification for the section:

> *While it may appear to impact upon fundamental legislative principles to bind a person who is not a signatory to an agreement, the written consent of interest holders who are materially*

affected, such as those to be bound by a conservation agreement, is required under section 45(2). Any subsequent interest holder, such as a future sublessee, would be entering into such an interest with the full knowledge of the conservation agreement and the nature refuge declaration.

For this reason, the amendment to section 51 does not present a significant issue in relation to fundamental legislative principles.[157]

3.1.1.2 Compulsory acquisition of property

Clause 12 proposes to insert section 43A into the Nature Conservation Act. Section 43A applies if, after considering the State interest in relation to an area of land and the area's natural cultural resources and values, the Minister is satisfied the area should be declared as a special wildlife reserve.

Section 43A(5) provides that the Minister must give written notice about the proposal to declare a special wildlife reserve to:

- each person who has an interest in land in the proposed reserve area
- each holder of an exploration permit under the *Mineral Resources Act 1989* for land in the proposed reserve area
- each holder of an authority to prospect under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004* for land in the proposed reserve area, and
- each holder of a mining interest, geothermal tenure or GHG authority to which land in the proposed reserve area is subject.

Section 4(3)(i) of the LSA provides that legislation should provide for the compulsory acquisition of property only with fair compensation. As acknowledged in the OQPC Notebook:

A legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason.[158]

In its submission on the 2017 Bill, the QLS argued that compensation should be payable to resource tenure holders and that the failure to do so is a breach of FLPs:

If the reasoning is that no compulsory acquisition occurs, either because the resource tenement holder continues to hold the same tenement that it did before, or because compulsory acquisition requires that the State gain something that the resource tenement holder loses, QLS would disagree.

Such a position would be incorrect for these reasons:

The resources tenement holder may no longer be able to exercise the rights under its tenement that it could exercise before the declaration.

The State does in fact gain, by reference to what the resource tenement holder loses. At the very least, the State gains these things: preservation of the "economic, environmental or community interests of the State" by reference to which the declaration is made (or, as is more broadly stated in the Explanatory Notes, preservation of the "outstanding conservation value" of the land); and in any case, removal of the obligation to consider any application for a further tenement, for example a production tenement in respect of a relevant exploration tenement.[159]

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157 Explanatory notes, 2018 Bill, p 7.

158 OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 73.

159 2017 submission 29, pp 6-7.

The QLS recommended that the Bill provide for 'just terms compensation for direct and indirect compulsory acquisition effected by the SWR Act and declarations made under it'.[160]

The former committee received the following advice from DEHP on the 2017 Bill:

> *Where an* [exploration, prospecting or resource extraction] *interest exists on a proposal area, the interest will continue over the land until it is resolved or expires under its terms. Special wildlife reserves will not be declared where there is an active interest (unless by consent which is unlikely).*[161]

3.1.1.3 Aboriginal tradition and custom

Clause 12 proposes to insert section 43B into the Nature Conservation Act.

Section 43B(1) provides that the Minister must, for the State, enter into a conservation agreement for a proposed special wildlife reserve if:

(a) the Minister and the landholder of land in the proposed reserve area for the special wildlife reserve agree:

  (i) the land should be a special wildlife reserve; and

  (ii) on the terms of the agreement for the reserve; and

(b) there is an approved management program for the reserve.

As noted previously, the Minister must give written notice about a proposal to 'each person who has an interest' in land in the proposed special wildlife reserve area (section 43A(5)(a)).

If the rights or interests of such a person will be materially affected by the conservation agreement, the Minister must not enter into the agreement without the person's written consent (section 43B(2)).

At the former committee's public hearing on the 2017 Bill, the CYLC raised concerns that the provisions did not require the express consent of a native title holder.[162]

The CYLC's concerns invited consideration of section 4(3)(j) of the LSA which provides that legislation should have sufficient regard to Aboriginal tradition and Island custom. This FLP encompasses two considerations:

- legislation should be drafted to recognise Aboriginal and Islander customary law and to avoid unintended legislative impacts on traditional practices, and
- 'limited concession' to Aboriginal traditional Island custom was based on 'a recognition of the unique status of Aborigines and Torres Strait Islanders as Australia's indigenous peoples.' [163]

DEHP advised the former committee that the rights and interests of native title holders are adequately protected by the provisions contained in the Bill:

> *A conservation agreement is intended to primarily bind (and thereby restrict the rights and interests of) the lessee or freehold landholder who has requested the agreement (hence the particular definition of landholder in the Nature Conservation Act 1992). The Minister will provide written notification to all persons with an interest in the land including native title holders (and claimants) to seek advice regarding whether they are materially affected. The Minister may not*

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160 2017 submission 29, p 7.

161 DEHP, correspondence to AEC dated 4 July 2017, attachment, p 4.

162 Public hearing transcript, 2017 Bill, 12 July 2017, p 8.

163 OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 79.

proceed with the special wildlife reserve without the consent of all interest holders who are materially affected.[164]

3.1.2 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

3.1.2.1 Delegation of legislative power

Clause 12 of the Bill proposes to insert new Part 4, Division 3B (Special wildlife reserves) into the Nature Conservation Act. Some sections of Division 3B allow for certain matters to be prescribed by regulation:

- section 43D provides that a regulation may declare an area of land the subject of a conservation agreement as a special wildlife reserve
- section 43I provides that a regulation may amalgamate the areas of two or more special wildlife reserves and assign a name to the amalgamated area, and
- section 43J(1) provides that a regulation may revoke the declaration of all or part of a special wildlife reserve.

Clause 47 proposes to amend section 19 of the Environmental Protection Act, adding a new section 19(1A) to provide that a regulation may prescribe an activity carried out partly within the State and partly outside the State, but within the Great Barrier Reef Marine Park, as an environmentally relevant activity if the Governor in Council is satisfied of certain matters.

[These include:

- either both of two matters already contained in Section 19 (that a contaminant will or may be released into the environment when the activity is carried out, and the release of the contaminant will or may cause environmental harm), or
- that the activity will or may otherwise adversely affect an environmental value of the marine environment.]

Clauses 12 and 47 propose to allow for potentially important matters to be prescribed by regulation. This potentially breaches section 4(4)(a) of the LSA which provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons. Section 4(5)(c) of the LSA provides that subordinate legislation should contain only matters appropriate to that level of legislation.

As noted previously in section 2.18 of this report the department also advised that it proposes to introduce regulations to detail restrictions and offences in relation to special wildlife reserves should the Bill be enacted.

In relation to the use of regulations pursuant to proposed section 43I of the Nature Conservation Act, the explanatory notes advised:

The new section 43I (Amalgamation of special wildlife reserves) allows the Governor in Council to amalgamate and rename special wildlife reserves, by regulation, without the requirement to go through the more onerous process required for simple revocations. This simpler process is seen as acceptable, as no net effect is had on the values or protection of the values of the special wildlife reserves involved. Amalgamation is essentially an administrative process, for which the passing of a resolution by the Legislative Assembly would be excessive. Standard administrative processes will apply in relation to amendment of conservation agreements, management programs and recording actions with the registrar.[165]

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164 DEHP, correspondence dated 7 August 2017, p 2.

165 Explanatory notes, 2018 Bill, p 15.

The explanatory notes provide this commentary in relation to proposed section 43J:

> *The new section 43J (Revocation of special wildlife reserves) details the processes that must be followed to revoke through regulation, a special wildlife reserve, in whole or in part. The revocation of a special wildlife reserve area can generally only occur if the Legislative Assembly has passed a resolution requesting the Governor in Council to make the revocation. This process, analogous to that for protected areas on State land (including national parks), serves to ensure that the highest level of scrutiny is applied to a proposal for revocation. This process is intended to provide the highest possible level of security to a special wildlife reserve declaration, in line with the level of security afforded to national parks.*[166]

In relation to the department's proposal to introduce regulations to prescribe offences for special wildlife reserves, the former Scrutiny of Legislation Committee considered the issue of creating offences and prescribing penalties in subordinate legislation. It accepted that offences and penalties may be delegated to subordinate legislation in limited circumstances, provided the following safeguards are observed:

- rights and liberties of individuals should not be affected, and the obligations imposed on persons by such delegated legislation should be limited
- the maximum penalties should be limited, generally to 20 penalty units
- where possible, the types of regulation to be made under such provisions, which are foreseeable at the time of drafting the Bill, should be specified in the Bill, and
- where the types of regulation to be made are not reasonably foreseeable at the time of drafting the Bill, a sunset clause (for a period not exceeding two years) should be set in respect of the relevant provision to allow time to identify the necessary penalties and offences.[167]

The department provided the following justification:

> *The proposed regulation is consistent with fundamental legislative principles and no rights or liberties will be effected. Declarations of special wildlife reserves are of a voluntary nature only. As this class of protected area has yet to be created, there are no existing landholders who can be impacted retrospectively by offences in the regulation.*
>
> *As a class of protected area under the Nature Conservation Act 1992 (the Act), the offence contained within section 62 of the Act will apply to special wildlife reserves. Section 62 of the Act carries a maximum penalty of 3000 penalty units, or 2 years imprisonment. Lesser offences that will apply to special wildlife reserves within the proposed regulation will be in accordance with section 175(2)(t) of the Act, which limits offences within a regulation to be no more than 165 penalty units.*
>
> *It should be noted that it is not proposed to create new types of offences for special wildlife reserves. Rather, a subset of existing offences that already apply to other classes of protected area will be extended to also apply to this new class of protected area. For this reason it is not deemed necessary or appropriate to relocate offences from the existing regulation to the Bill.*
>
> *The proposed regulation will be consistent with [s]ection 175 of the Act which provides a regulation making power in respect of a range of matters relevant to protected areas. The proposed offences exist already in the Nature Conservation (Protected Area Management) Regulation 2006 and apply to a range of protected area classes.*[168]

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166 Explanatory notes, 2018 Bill, p 15.

167 OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 150.

168 DEHP, correspondence to AEC dated 1 August 2017, p 3.

In relation to Clause 47 DEHP advised the former committee that the Environmental Protection Act, under section 19, currently provides the head of power for an environmentally relevant activity to be prescribed under the Environmental Protection Regulation 2008 and that this regulation currently includes a list of 64 environmentally relevant activities that are regulated under this framework:

> *The proposed EP Act amendment does not change the head of power for prescribing environmentally relevant activities or the nature of the activities that may be prescribed under the EP Regulation. The EP Act amendment only provides for applying the existing regulatory framework to activities conducted partially in Queensland waters and partially in Commonwealth waters, within the Great Barrier Reef Marine Park. …*
>
> *Any subsequent amendments to the EP Regulation with the intent to prescribe a new environmentally relevant activity, in the context of the proposed amendments, will follow the necessary processes that have been used so far when prescribing a new environmentally relevant activity or omitting an existing environmentally relevant activity.*[169]

3.2 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are detailed and contain the information required by Part 4 of the LSA and a level of background information and commentary that facilitates understanding of the Bill's aims and origins.

[169] DEHP, correspondence to AEC dated 7 August 2017, p 3.

Appendix A – Submitters

Sub #	Submitter – 2018 Bill
001	Gecko Environment Council
002	Local Government Association of Queensland
003	The Bimblebox Alliance Inc
004	Australian Veterinary Association Ltd
005	Mr Alvar Dalton
006	Householders' options to Protect the environment Inc.
007	Queensland Trust for Nature
008	Ms Julia Siddall
009	Ms Michelle Finger
010	Wildlife Preservation Society of Qld
011	Ms Felicity Underhill
012	Australian Conservation Foundation
013	Property Council of Australia
014	Bush Heritage Australia
015	Queensland Farmers' Federation
016	Queensland Resources Council
017	Cape York Land Council Aboriginal Corporation
018	AgForce Queensland Farmers Limited
019	National Parks Association of Queensland
020	Ms Alison Finger
021	Environmental Defenders Office
022	Queensland Law Society
023	Terrain Natural Resources Management
024	The Pew Charitable Trusts
025	Queensland Conservation
026	Association of Mining and Exploration Companies
027	Queensland Ports Association
028	South Endeavour Trust

Sub #	Submitter – 2017 Bill
001	Michelle Finger
002	World Wildlife Fund, Australia
003	South Endeavour Trust
004	PEW Charitable Trusts
005	Environmental Defenders Office of North Queensland
006	Gecko Environmental Council
007	Bush Heritage Australia
008	Queensland Resources Council
009	Sunshine Coast Environmental Council
010	Knobel Honey
011	Pamela Berrigan
012	Bryan Cifuentes
013	Local Government Association of Queensland
014	Property Council of Australia
015	Queensland Environmental Law Association
016	Wide Bay Burnett Environmental Council
017	Queensland Beekeepers' Association
018	Property Rights Australia
019	Wildlife Preservation Society of Queensland, Gold Coast Branch
020	Wildlife Preservation Society of Queensland
021	Energy Queensland
022	Australian Rainforest Conservation Society Inc.
023	Birds Queensland
024	The Outback Prospector
025	Queensland Trust for Nature
026	Protect the Bush Alliance
027	Cape York Land Council Aboriginal Corporation

028	AgForce Queensland
029	Queensland Law Society
030	Birdlife Southern Queensland
031	National Parks Association of Queensland
032	Isaac Regional Council
033	Queensland Farmers' Federation
034	Healthy Soils Australia

Appendix B – Witnesses at public briefings and public hearings

Public departmental briefing – 5 March 2018

Department of Environment and Science

- Mr Robert Hughes, Acting Executive Director, Conservation and Sustainability Services
- Dr Beth Clouston, Director, Conservation and Biodiversity Policy, Conservation and Sustainability Services

Public departmental briefing – 12 July 2017

Department of Environment and Heritage Protection

- Mr Nick Weinert, Acting Deputy Director General, Conservation and Sustainability Services
- Mr Laurie Hodgman, Director, Environmental Policy and Legislation
- Dr Beth Clouston, Director, Conservation and Biodiversity Policy

Public hearing – 19 March 2018

Wildlife Preservation Society of Queensland

- Mr Peter Ogilvie, President

Environmental Defenders Office

- Ms Revel Pointon, Solicitor

Public hearing – 12 July 2017

Queensland Resources Council

- Ms Frances Hayter - Policy Director, Environment
- Ms Chelsea Kavanagh – Policy Manager, Environment

Isaac Regional Council

- Cr Anne Baker – Mayor
- Mr Gary Stevenson – Chief Executive Officer

Cape York Land Council Aboriginal Corporation

- Mr Shannon Burns – Policy Officer

Balkanu

- Mr Terry Piper – Chief Operating Officer

AgForce Queensland

- Ms Lauren Hewitt – Special Policy Advisor
- Ms Tamara Badenoch – Special Policy Advisor

Queensland Law Society

- Ms Vanessa Krulin – Policy Solicitor
- Mr Martin Klapper – Mining & Resources Law Committee member

South Endeavour Trust

- Mr Tim Hughes – Director

Statement of Reservation 1

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

Liberal National Party Members' Statement of Reservation

There have been a number of significant concerns raised by stakeholders through the committee's consideration of the bill, largely relating to the creation of Special Wildlife Reserves (SWR).

Uncertainty regarding declaration of SWR

While the Palaszczuk Labor Government claims the bill had been amended to clarify the criteria by which the Minister must consider in declaring SWR, the reality is the amendments have made matters worse.

This position has been scrutinised by stakeholders including the Property Council and the Queensland Law Society (QLS). The QLS in fact made the point that this Bill, in its view, was not 'good law'.

The QLS raised the following concerns in their submission.

> *The amended drafting actually expands the matters to be considered when preparing a proposal to declare, effectively allowing the determination to be made based upon either or both of:*
>
> - *The 'economical, environmental or community interests' (as determined by the Minister) under the definition of 'State interest';*
> - *The second branch of the proposed section which appears may be applied so as to encompass land areas that do not fit easily into the definition of 'State interest'.*

The loose parameters regarding a "state interest" seem to give the Minister unfettered power to make declarations. At the very least, meeting the criteria should require both "economical, environmental or community interests" AND "state interests" to be satisfied.

The department's responses to stakeholder submissions on this issue did little to clarify the criteria.

Removal of land from agricultural production/economic development

The Queensland Resources Council (QRC) raised concerns about SWR being declared over land where there is active exploration underway and recommended a clarification by the government.

The LNP Members consider provisions to prevent commercial grazing within a 100 metre buffer between the SWR and the next property to be an unacceptable violation of the property rights of landholders. Combined with the fact that neighbouring graziers might not even be considered for consultation as a "materially affected" party, this will negatively affect farming families across Queensland.

The bill does not provide a clear framework by which eco-tourism proposals may be considered on land where an SWR has been declared.

We hold concerns that the Bill will result in the permanent loss of valuable farming land, and echo the concerns of AgForce Queensland in both this inquiry and that undertaken in 2017. This is not only about vital horticultural, beef and other agricultural uses that are readily identifiable with Queensland - the committee heard that even beekeeping would be considered incompatible with the SWR management principles.

The Queensland Farmers' Federation (QFF) raised concerns regarding restrictions arising from SWR, saying:

> *Management of SWRs will have flow on effects to the management of adjacent productive agricultural land. It is therefore essential that restrictive management practices imposed on SWRs do not negatively impact productive agricultural land and the overall management of the farming system.*
>
> *The management of pests and weeds on crown land have created ongoing issues for landholders that abut these government-managed lands. The management practices used can be restrictive and frequently do not manage pests and weeds effectively.*

LNP Members hold serious concerns about the impact SWR may have on adjacent agricultural producers, impacts similar to those experienced by landholders adjacent to parts of Queensland's National Park estate where inadequate management of pests – both animals and weeds – continue to impact negatively on agricultural producers trying to make a living on their land. The lack of clarity provided by the department about how owners of SWR will be 'policed' in the implementation of management plans on SWR only adds to these concerns that, once declared, there is a good chance that SWR will not be adequately managed and adjoining landholders will suffer as a result.

Materially affected parties

The LNP Members consider the definition of those considered "materially affected" by the creation of an SWR to be inadequate. The department's assertion is that the term "materially affected" should be understood by its plain English meaning. Without further guidance in the bill, explanatory notes or the Minister's second reading speech it remains unclear whether parties such as neighbouring landholders would be considered in this definition even though the declaration of an SWR would have an impact on their property.

This concern was also raised by stakeholders including AgForce and QRC.

The Property Council highlighted the inadequacy of how the Minister is to notify parties – through notifications in newspapers – rather than directly contacting them.

Traditional Owner concerns

Similar to the concerns raised about which parties would be considered "materially affected" and would be consulted on the declaration of an SWR, the bill does not expressly identify Native Title holders as a party with an interest in a particular piece of land. This has been a concern raised by the Cape York Land Council Aboriginal Corporation (CYLC).

The CYLC raised concerns that SWR declarations will result in less agricultural activity on pastoral leases which would limit employment opportunities for Indigenous people.

At the public hearing during the previous committee's consideration of the bill, Balkanu made the following assertion:

> *there is the potential to misuse strategic wildlife reserves to lock up country from economic development… Generally our position overall is that for traditional owners in [Cape York] meaningful employment and economic opportunities are critical. We have always been about looking at conservation while also ensuring that we protect economic opportunities for traditional owners in the Cape. It is the most impoverished area of Queensland, and a job in the Cape is probably very hard to come by compared to jobs down here. Our experience has been that the conservation sector does not provide much in the way of meaningful employment opportunities. It is important, but the grazing sector and other options are also very important.*

While the Committee has recommended further consultation between the Minister and Traditional Owners, the LNP Members consider this far too late in the process.

Ownership change

Under this Bill, conservation agreements for the proposed special wildlife reserves will be perpetual, that is, future owners will be tied to the agreement. The LNP Members have serious concerns about the property rights of future landholders and the ability to review or renegotiate a SWR.

There are very limited circumstances in which a SWR can be revoked – requiring a resolution of the Parliament. This will affect the value of the property, adversely impacting upon the owner of the property, as well as potentially affecting neighbouring property owners. Future property owners may not wish to fully revoke a SWR, but the bill does not outline a process for review or renegotiation of the SWR, even upon a change in ownership of the land. There is no guarantee that a future owner will be able to fulfil obligations required under the management agreement, financially and otherwise, again placing at risk the interests of adjacent landholders and also the stated aims of SWR. If SWR are to be perpetually binding on the title (as a result of the State's laws), surely the State must have some responsibility to ensure that future owners of the land can fulfil obligations under the SWR. Or is this a case of 'all care, no responsibility' from the State of Queensland when it comes to SWR?

Other concerns

There continue to be a number of other concerns which have not been addressed by the government. Processes should be outlined for scenarios including if the relationship between landholder and department breaks down over disagreements about the interpretation of the management agreements or if a land holder is no longer able to meet the financial obligations of managing the SWR.

Concerns have also been raised about the lack of scrutiny which will be available over management programs and SWR and the risks of rorts. The National Parks Association of Queensland (NPAQ) and the Wildlife Preservation Society of Queensland have raised these concerns.

NPAQ noted in their submission to the committee that:

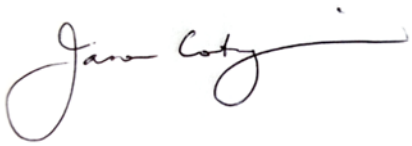
> *The Bill currently includes no provision for management programs SWR to be reviewed or accessed by the public. Public scrutiny is necessary to ensure the areas meet their obligations under the legislation and provides a mechanism to minimise rorts. Where government funding is provided, provision should be made for public access to the management programs. Sections 120EA- EF of the Bill should be amended to require management programs for SWRs that receive government incentives to be made available to the public.*

There is a risk that while SWR remain privately owned, the government could be subsidising SWR management activities and there needs to be processes to ensure accountability.

Queenslanders expect that any government funding for SWR management programs are actually spent on delivery of the programs.

In response to the committee's report the Palaszczuk Labor Government needs to commit to making these management agreements open and transparent and publicly reporting on management programs for SWR which receive government support or funding.

The LNP will further outline concerns with the policy objectives of the bill during its Second Reading debate.



Jon Krause
Deputy Chair
Member for Scenic Rim

Jason Costigan
Member for Whitsunday

Statement of Reservation 2

I am in support of this Bill however would appreciate if the Minister could clarify the following regarding my concerns around neighbouring properties with potential incompatible land uses.

The draft Chairs Report No 2 Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2018 states in section 2.1.5.1 'Proposed Restrictions' that "commercial grazing will not be allowed on the reserve or ***within a 100 metre buffer between the reserve and the next property****"*

While commercial grazing on a Special Wildlife Reserve ('SWR') is clearly inconsistent with the management principles of a SWR under the proposed section 21B, it is not clear where the Bill provides the rationale to declare a 100 metre buffer prohibiting commercial grazing between the Reserve and the next property. A buffer zone would be an undue constraint on adjoining landholders using their land for commercial grazing, or other uses that are consistent with their land use zoning, however inconsistent with the Reserve.

Such restrictions on individual property rights should be reserved for higher impact activities such as resource extraction, or clearly stipulated prior as to where the onus lies on mitigating impacts and the financial costs associated with the provision of the buffer as part of that mitigation.

Having seen the ramifications of incompatible neighbouring land uses, the importance of clearly outlining the who, what and how in mitigating impacts, including through the use of buffers, should be considered.

Sandy Bolton MP

Noosa

Date – 9th April 2018