Parliamentary Committees

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

Report No. 31

Health and Community Services Committee

October 2013

Health and Community Services Committee

Chair	Mr Trevor Ruthenberg MP, Member for Kallangur
Deputy Chair	Mrs Jo-Ann Miller MP, Member for Bundamba
Members	Ms Ros Bates MP, Member for Mudgeeraba
	Dr Alex Douglas MP, Member for Gaven
	Mr John Hathaway MP, Member for Townsville
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	Mr Dale Shuttleworth MP, Member for Ferny Grove
Staff	Ms Sue Cawcutt, Research Director
	Ms Lee Archinal, Principal Research Officer (part-time)
	Ms Kathleen Dalladay, Principal Research Officer (part-time)
	Mr Karl Holden, Principal Research Officer (part-time)
	Ms Stephanie Cash, Executive Assistant
Technical Scrutiny Secretariat	Ms Renee Easten, Research Director
	Mr Karl Holden, Principal Research Officer (part-time)
	Ms Marisa Ker, Principal Research Officer (part-time)
	Ms Tamara Vitale, Executive Assistant

Contact details	Health and Community Services Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7688
Fax	+61 7 3406 7070
Email	hcsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/hcsc

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Abbreviations

the Bill	Nature Conservation and Other Legislation Amendment Bill (No.2) 2013
the chief executive	the Director General of the Department of National Parks, Recreation, Sport and Racing
the committee	Health and Community Services Committee
the departments	DAFF, DEHP and DNPRSR
DAFF	Department of Agriculture, Fisheries and Forestry
DEHP	Department of Environment and Heritage Protection
DNPRSR	Department of National Parks, Recreation, Sport and Racing
Forestry Act	*Forestry Act 1959*
the Minister	Minister for National Parks, Recreation, Sport and Racing
MP Act	*Marine Parks Act 2004*
NC Act	*Nature Conservation Act 1992*
QPWS	Queensland Parks and Wildlife Service
RAM Act	*Recreation Areas Management Act 2006*

Glossary

Cardinal principle	Under section 17(1) of the *Nature Conservation Act 1992* the 'cardinal principle' is: A national park is to be managed to – (a) provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values; and (b) present the area's cultural and natural resources and their values; and (c) ensure that the only use of the area is nature-based and ecologically sustainable.
Marine park	**Marine parks** are established over tidal lands and waters to protect and conserve the values of the natural marine environment while allowing for its sustainable use. They protect habitats including mangrove wetlands, seagrass beds, mudflats, sandbanks, beaches, rocky outcrops and fringing reefs. The three marine parks in Queensland are: • Great Barrier Reef Coast Marine Park • Great Sandy Marine Park, and • Moreton Bay Marine Park.

Protected area (s. 14 of the NC Act, as amended by clauses 26 and 114)	**Protected areas** means – (a) national parks (b) national parks (Aboriginal land) (c) national parks (Torres Strait Islander land) (d) national parks (Cape York Peninsula Aboriginal land) (e) regional parks (f) nature refuges, and (g) coordinated conservation areas Further information about each protected area tenure under the NC Act, including the management principles for each tenure, can be found at **Appendix C.**
Recreation area	**Recreation areas** are areas where nature-based recreation is encouraged but carefully planned and managed to protect them for conservation. Recreation areas are generally managed by the Queensland Parks and Wildlife Service on a user-pays basis, for example through camping and vehicle permit fees.[1] There are seven recreation areas established under the RAM Act.
State forest	**State forests** are land set apart and declared under the Forestry Act as a State forest. The primary purpose of State forests is timber production and watershed protection. The Forestry Act also allows a number of secondary purposes, including grazing, conservation, recreation, apiary sites, infrastructure and mining.
Timber reserve	**Timber reserves** are land set apart and declared under the Forestry Act as a timber reserve.

1 Department of National Parks, Recreation, Sport and Racing, *Recreation areas*, accessed 16 September 2013 from http://www.nprsr.qld.gov.au/recreation-areas/index.html

Chair's foreword

On behalf of the Health and Community Services Committee of the 54th Parliament of Queensland, I present this report on the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 (the Bill).

The Bill was introduced into the Legislative Assembly by the Minister for National Parks, Recreation, Sport and Racing on 20 August 2013. The committee was required to report to the Legislative Assembly by 9 October 2013.

The Bill amends the *Nature Conservation Act 1992, Forestry Act 1959, Marine Parks Act 2004 and Recreation Areas Management Act 2006* to increase access to national parks and other public land and reduce red tape and streamline legislative processes. The Bill amends the management planning process for protected areas and reduces the State's exposure to liability on Queensland Parks and Wildlife Service managed land, including national parks. It also introduces a new offence for selling dugong and marine turtle meat and products from commercial premises.

In considering the Bill, the committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

The complex structure of the Bill and the limited explanation of the policy intent in the accompanying Explanatory Notes have made the task of considering the Bill challenging for the committee. To assist Members of the Legislative Assembly and other interest parties to better understand the intent and impact of the Bill, this report includes a number of tables which explain some of the main amendments in the Bill**.**

On behalf of the committee, I thank those who made written submissions on this Bill and gave evidence at its public hearing. Thanks also to officials from the Department of National Parks, Recreation, Sport and Racing, the Department of Environment and Heritage Protection and the Department of Agriculture, Fisheries and Forestry, the committee's staff and the Technical Scrutiny secretariat.

I commend the report to the House.

Trevor Ruthenberg MP

Chair

Recommendations and comments

Recommendation 1 4

The committee recommends that the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 be passed.

Recommendation 2 4

The committee recommends that the Minister consider introducing an amendment to clause 24 of the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 to clarify that the 'interest' that indigenous people may have in protected areas is an interest under Aboriginal tradition or Island custom.

Recommendation 3 21

The committee recommends that the Minister address community concerns about the type of activities that will in the future be allowed in national parks and regional parks, specifically:

- that during the second reading debate the Minister describe the types of activity that the Bill will and will not permit in areas of high conservation value, and how those areas will be protected from potentially damaging uses, and
- that the Minister direct the Department of National Parks, Recreation, Sport and Racing to publish as soon as possible in an accessible format:
  - the decision making framework and criteria for permitting activities in protected areas, and
  - the risk mitigation that may be required of commercial, recreational, educational and ecotourism operators.

Recommendation 4 22

The committee recommends that the Minister inform the Legislative Assembly of the Government's response to the issues raised about the place of Aboriginal tradition and Island custom in the proposed amendments to management principles for national parks.

Recommendation 5 26

The committee recommends that the Minister inform the Legislative Assembly of the outcome of the review of current forest reserves before action is taken to designate those areas as a different tenure.

Recommendation 6 30

The committee recommends that the Bill be amended to provide that the chief executive may, by gazette notice, declare a prescribed national park, or part of a prescribed national park as a special management area (controlled action) or special management area (scientific).

The gazette notice declaring the SMA should include the information currently listed in clause 139 of the Bill (proposed section 42A(2)(c) and (d) of the Nature Conservation Act 1992) to identify the limits of the area to which the notice applies and the prescribed activities that may be carried out in the area.

The amendment should provide that while the gazette notice is not subordinate legislation, it must be tabled in the Legislative Assembly and is subject to disallowance provisions under the Statutory Instruments Act 1992.

Recommendation 7 **31**

The committee recommends that the Bill be amended to guarantee protection of existing conservation parks and put beyond doubt that mining, geothermal activities and greenhouse gas storage activities will not be permitted on land formerly dedicated as a conservation park, or future areas with similar characteristics, and will be permitted only on land that was formerly a resources reserve or future areas that have similar characteristics to a resources reserve.

Recommendation 8 **35**

The committee recommends that a commercial operator be required to:

- prepare an assessment of the impact of the proposed commercial or recreational use on the protected area's natural and cultural values. The assessment could be limited to the part of the protected area affected, and
- prepare a strategy to mitigate any risks identified in the assessment
- provide the assessment and strategy to the Department of National Parks, Recreation, Sport and Racing.

The committee recommends that after an operator's activity has been approved, the impact assessment and risk-mitigation strategy are published on the department's website.

Recommendation 9 **36**

The committee recommends that the Minister inform the Legislative Assembly during the second reading debate of the criteria for and types of proposed ecotourism facility which would trigger an invitation for public comment on the proposal before approval is considered.

Recommendation 10 **37**

The committee recommends that the Minister inform the Legislative Assembly during the second reading debate what action is proposed in response to concerns that the proposed removal of the requirement to prepare a management plan is consistent with contractual obligations in an Indigenous Management Agreements.

Committee comment **39**

The committee suggests that the Minister consider carefully any requests for public consultation on the management of a protected area when considering whether to prepare a management plan for a protected area.

Recommendation 11 **42**

The committee recommends that the Bill be amended to require the Minister to take reasonable steps to notify interested parties that a draft management plan is available for comment.

The steps taken by the Minister and his or her department may include publishing a notice on the department's website, emailing stakeholders and publishing in a local newspaper.

Recommendation 12 **42**

The committee recommends that the Minister inform the Legislative Assembly during the second reading debate of the steps that will be taken to notify interested parties that a draft management plan is available for comment, including any plans for a management plan consultation page to which people may subscribe to receive updates.

Recommendation 13 **42**

The committee recommends that the Bill be amended to provide consistent minimum periods of time for making submissions on draft management plans and amendments to management plans in the Nature Conservation Act 1992, Marine Park Act 2004 and Recreation Areas Management Act 2006.

Recommendation 14 **43**

The committee recommends that the Bill be amended to provide that a gazette notice approving a management plan for protected area, marine park or recreation area must be tabled in the Legislative Assembly and be subject to the disallowance provisions in sections 49 to 51 of the Statutory Instruments Act 1992.

The amendment to the Bill should also require that a copy of the management plan be tabled at the same time as the gazette notice.

Recommendation 15 **44**

The committee recommends that the Bill be amended to correct drafting error in clause 77 of the Bill.

Recommendation 16 **44**

The committee recommends that the Bill be amended to require the Minister to take reasonable steps to notify interested parties that a draft amendment to a management plan is available for comment.

The steps taken by the Minister and his or her department may include publishing a notice on the department's website, emailing stakeholders and publishing in a local newspaper.

Recommendation 17 **46**

The committee recommends that the Bill be amended to more clearly define the exemption from consultation when the proposed change is to ensure the plan is consistent with State government policy about the management of the area to which the plan applies.

Recommendation 18 **47**

The committee recommends that the Minister provide examples during the second reading debate of amendments to management plans that would not require consultation.

Recommendation 19 **53**

The committee recommends that during the second reading debate the Minister provide more detailed information to the Legislative Assembly to:

- respond to the concerns raised by the Queensland Law Society
- explain the reason that the provisions about civil liability are required, and
- explain the parameters and outcomes of the risk assessment undertaken by Government to inform the amendments to protect the State from civil liability.

Recommendation 20 **55**

The committee recommends that the Minister inform the Legislative Assembly during the second reading debate about the resolution of any inconsistency between native title rights the proposed offence to sell or give away dugong or marine turtle meat or products at a commercial food premise.

1 Introduction

1.1 Role of the committee

The Health and Community Services Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012, consisting of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

1.2 Committee process

The Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 (the Bill) was referred to the committee on 20 August 2013, and the committee was required to report to the Legislative Assembly by 9 October 2013.

Officials from the Department of National Parks, Recreation, Sport and Racing, the Department of Environment and Heritage Protection, and the Department of Agriculture, Fisheries and Forestry (the departments) briefed the committee about the Bill on 2 September 2013. The committee called for submissions by notice on its website, and wrote to stakeholder organisations to invite submissions. Over two hundred submissions were received (see list at Appendix A). A number of submissions were not accepted as they were not relevant to the Bill. Other submissions were not accepted because it was not possible to verify that the submission was from an actual individual or organisation. Submissions in this category were received by email, and did not provide a name and/or address, and the sender did not respond to two requests for their name and/or address.

The committee held a public hearing on 20 September 2013 at Parliament House, Brisbane and heard from 12 witnesses (see list at Appendix B). The hearing was broadcast live on the Parliament website.

Transcripts of the briefing provided by the departments on 2 September and the public hearing on 20 September 2013 are published on the committee's webpage. Submissions received and accepted by the committee are also published on the webpage at www.parliament.qld.gov.au/hcsc.

2 Examination of the Bill

2.1 Policy objectives of the Bill

In his explanatory speech, the Minister for National Parks, Recreation, Sport and Racing (the Minister) stated that the Bill "will result in the most significant changes to the way that Queensland national parks and other protected areas are managed since the Nature Conservation Act was introduced in 1992".[2]

The Bill's objectives are to amend the Nature Conservation Act 1992 (NC Act), Forestry Act 1959 (Forestry Act), Recreation Areas Management Act 2006 (RAM Act) and Marine Parks Act 2004 (MP Act) to:

- increase access to national parks and other public lands
- reduce red tape, and
- streamline legislative processes.[3]

The Explanatory Notes tabled with the Bill state that the amendments:

> *… contribute to the Queensland Government's commitment to open national parks for the enjoyment of all Queenslanders and to deliver improved access for both tourists and the wider community. This commitment has been made within the context of identifying and protecting significant conservation and other values and ensuring that the protected area estate is managed in a manner appropriate to the values that it contains.*[4]

The Bill aims to achieve these objectives by:

- broadening the objectives of the NC Act to include the involvement of indigenous people in the management of protected areas, the use and enjoyment by the community of protected areas, and the social, cultural and commercial use of protected areas (see chapter 4 of this report)
- reducing the number of protected area tenure classes from 14 to seven and amending the management principles for tenures to provide for educational, recreational, commercial and ecotourism opportunities in protected areas (see chapters 5 and 6)
- replacing the requirement for all protected areas to have management plans with a requirement to have a management statement, and amending the process for preparing any management plans (see chapter 7), and
- reducing the State's exposure to liability from incidents that occur on Queensland Parks and Wildlife Service managed land (see chapter 8).

The Bill makes other amendments to the NC Act; for example to: create a new offence for selling meat or other products from dugongs or marine turtles from commercial premises; permit conservation officers to provide proof of identity at the first reasonable opportunity; and provide that is an offence to give false or misleading information to departmental officers (see chapter 9).

The Bill also makes consequential amendments to various Acts which contain references or relate to the NC Act, Forestry Act, RAM Act and MP Act.

2.2 Structure and commencement of the Bill

The Bill is structured according to how its provisions would be commenced. Part 2 of the Bill contains amendments to six Acts which are proposed to commence on Royal Assent; Part 3 of the Bill contains

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2 Legislative Assembly of Queensland, *Hansard*, 20 August 2013, p.2606 (Hon. Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing), available at http://www.parliament.qld.gov.au/documents/hansard/2013/2013_08_20_WEEKLY.pdf

3 Explanatory Notes, Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013, p.1, available at https://www.legislation.qld.gov.au/Bills/54PDF/2013/NatureConOLAB213E.pdf

4 ibid.

amendments to 14 Acts which are proposed to commence on proclamation; two of those Acts are also amended in Part 2 of the Bill. Part 4 of the Bill contains amendments about forest reserves which are proposed to commence on proclamation. Schedule 1 contains minor and consequential amendments to a variety of Acts, and its Parts are arranged according to proposed commencement on Royal Assent or by proclamation. One of the effects of this drafting approach is that the amendments to the NC Act are located in three Parts of the Bill, and in two locations in Schedule 1.

On 17 September 2013, DNPRSR responded to a request for further information about the proposed approach to commencement of the Bill. The DNPRSR stated that the amendments in the Bill fall into three categories:

- amendments commencing on Royal Assent
- amendments about protected area tenure classes commencing by proclamation, and
- amendments about forest reserves commencing by proclamation.

The DNPRSR stated that this distinction is necessary given that some of the proposed amendments require other supplementary processes, such as amendments to subordinate legislation, to be completed prior to commencement of the provision.[5] A table outlining the proposed commencement of key amendments in the Bill is at Appendix D, page 67 of this report.

Section 4(3)(k) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation is unambiguous and drafted in a sufficiently clear and precise way.

The committee acknowledges the need for a staged approach to the commencement of the Bill to facilitate the implementation of the Government's policy. It considers that the Bill's structure makes it difficult for Members of the Legislative Assembly and the community to understand the Bill's provisions and their effect. Concerns were also raised in submissions about the structure of the Bill and a lack of information to explain the Bill and its objectives in the Explanatory Notes.[6]

The committee notes that it is possible for a Bill to be presented with a simpler structure that may be more readily understood, while having a potentially complex schedule for commencement of its provisions.

The committee considers that it is particularly important for Members of the Legislative Assembly to be able to easily understand the legislation they are asked to examine. Tables in the report and appendices summarise some amendments to protected area tenures and management principles in the Bill to assist Members of the Legislative Assembly and other interested people to understand the intended impact of the Bill.

2.3 Should the Bill be passed?

Standing Order 132(1)[7] requires the committee to recommend whether the Bill should be passed. The committee considered the policy changes which the Bill would implement, as well as the application of fundamental legislative principles. The evidence considered by the committee is summarised in this report.

After considering the Bill, a briefing by the departments, submissions, the evidence provided at a public hearing and other material, the committee has decided to recommend that the Bill should be passed.

5 Dr Liz Young, Director, Policy Reform, Queensland Parks and Wildlife Service, Department of National Parks, Recreation, Sport and Racing, *Correspondence*, 17 September 2013, see Appendix D

6 Submissions 154, 157, 158 and 197

7 Legislative Assembly of Queensland, *Standing Rules and Orders of the Legislative Assembly*, as amended 12 September 2013, available at http://www.parliament.qld.gov.au/work-of-assembly/procedures

The committee also recommends amendments to the Bill to address some issues raised during its examination. In addition, the committee recommends that the Minister provide further information to the Legislative Assembly during the second reading debate to respond to some of the issues and concerns raised by stakeholders.

Recommendation 1

The committee recommends that the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 be passed.

3 Overview of current legislation

3.1 Nature Conservation Act 1992

The current object of the *Nature Conservation Act 1992* (the NC Act) is the conservation of nature (section 4). Section 5 of the NC Act provides that this object is to be achieved by an integrated and comprehensive conservation strategy for the whole of the State.

Part 4 of the NC Act provides for the way that protected areas are declared, dedicated and managed. In summary, Part 4 of the NC Act:

- specifies the protected area tenures to which the NC Act applies, currently including: the different classes of national parks; conservation parks; resources reserves; nature refuges and coordinated conservation areas (section 14)
- provides that each protected area must be managed in accordance with the management principles for the tenure and management plan for the area (sections 15 to 26). The following *cardinal principle* (section 17(1)(a)), applies to the management of national parks:

  > *A national park is to be managed to provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and value.*

- prohibits certain activities in specified protected areas, for example, an authority cannot be granted for mining, geothermal activities and greenhouse gas storage activities in a national park (section 27)
- provides that State land may be dedicated as a protected area (section 29), that a dedication may be revoked (section 32) and that protected areas may be amalgamated (section 33) by regulation by the Governor in Council
- provides for the chief executive to grant a lease, agreement, license, permit or other authority for a *service facility*, *ecotourism facility* or a use prescribed under a regulation in a protected area (the *Nature Conservation (Protected Areas Management) Regulation 2006* provides for camping permits and commercial activity permits) (section 35), and
- provides that a lease, agreement, license, permit or other authority must be consistent with the management principles and any management plan for the protected area (other than an indigenous joint management area which is dealt with under section 42AO) (section 34).

Part 4A of the NC Act provides for the dedication, revocation and management of forest reserves. The forest reserve tenure class was introduced as an interim holding tenure, as part of the 1999 South East Queensland Forest Agreement, to facilitate the transfer of State forest and timber reserve land into one of the protected area tenures, for example a national park.[8]

3.2 Marine Parks Act 2004

The following marine parks have been established in Queensland under the *Marine Parks Act 2004*: Great Barrier Reef Coast Marine Park; Great Sandy Marine Park; and Moreton Bay Marine Park.

Marine parks are established over tidal lands and waters to protect and conserve the values of the natural marine environment while allowing for its sustainable use. Marine parks protect habitats including mangrove wetlands, seagrass beds, mudflats, sandbanks, beaches, rocky outcrops and fringing reefs.[9]

8 Explanatory Notes, p.54

9 Department of National Parks, Recreation, Sport and Racing, *Marine parks*, accessed 16 September 2013 from http://www.nprsr.qld.gov.au/marine-parks/index.html

3.3 Recreation Areas Management Act 2006

Queensland has seven recreation areas established under the *Recreation Areas Management Act 2006.* They are: Fraser Island; Green Island; Moreton Island; Bribie Island; Inskip Peninsula; Cooloola, and Minjerribah.

Nature-based recreation is encouraged in recreation areas, however, recreational use is carefully planned and managed to protect the area for conservation. Recreation areas are generally managed by the Queensland Parks and Wildlife Service (QPWS) on a user-pays basis, for example through camping and vehicle permit fees.[10]

3.4 Forestry Act 1959

The *Forestry Act 1959* provides for land to be set apart and declared as a State forest or timber reserves. The primary purpose of State forests is timber production and watershed protection. The Forestry Act also allows a number of secondary purposes, including grazing, conservation, recreation, apiary sites, infrastructure and mining.

10 Department of National Parks, Recreation, Sport and Racing, *Recreation areas*

4 Object of the Nature Conservation Act 1992

Section 4 of the NC Act provides that the object of the NC Act is the conservation of nature. The object is to be achieved by an integrated and comprehensive conservation strategy for the whole of the State, including:

- the gathering of information and community education
- the dedication and declaration of protected areas
- the management of protected areas
- the protection of native wildlife and its habitats
- the ecologically sustainable use of protected wildlife and areas
- recognition of Aboriginal and Torres Strait Islander interests, and
- cooperative involvement of landholders.[11]

4.1 Proposed amendment

Clause 24 of the Bill amends section 4 of the NC Act to provide that the object of the NC Act would be the conservation of nature while allowing for:

- the involvement of indigenous people in the management of protected areas
- the use and enjoyment of protected areas by the community, and
- the social, cultural and commercial use of protected areas in a way consistent with the natural and cultural and other values of the areas.

The Explanatory Notes state that the current object of the NC Act is narrow, and does not reflect the Government's commitment to achieving recreation and commercial outcomes in the management of protected areas or what the NC Act currently provides for in regard to providing access to, and use of protected areas.[12]

The intention of the amendments is for the object of the NC Act to provide explicitly for recreational and commercial uses in protected areas while continuing to retain a focus on the primary purpose of nature conservation.[13] The DNPRSR advised that:

> *The object has been constructed in a way that makes it clear that the importance of nature conservation does not automatically override the other values in determining how protected areas should be managed and for what outcomes. However, the object of the act still highlights the importance of the conservation of nature while providing for these additional activities or management outcomes.*[14]

4.2 Submissions about the objects of the Act

As noted, the committee received a large number of submissions, many of which expressed concerns about the Bill, particularly the proposed additions to the objects of the Act and the potential effect on conservation of nature. A smaller number of submissions supported the amendments to the objects, in some instances subject to consideration of other aspects of the Bill. The main issues raised in submissions are outlined in the following sections.

11 *Nature Conservation Act 1992* (NC Act), section 5
12 Explanatory Notes, p.2
13 ibid.
14 Jason Jacobi, Acting Deputy Director-General, Queensland Parks and Wildlife Service, Department of National Parks, Recreation, Sport and Racing, *Public Briefing Transcript*, 2 September 2013, pp.2 and 3, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/NatureCon2-2013/trns-02sep2013.pdf

4.3 Amended objects – tourism and recreation potential

A number of submissions support amendment to the object of the NC Act.[15] Mr Shane O'Reilly, of O'Reilly's Rainforest Retreat, stated that the amendments to provide for activities, events, modern facilities and ecotourism, are vital if national parks are to remain relevant. Mr O'Reilly stated that national parks are under-resourced; facilities are run down; poorly maintained and technically out of date; visitation numbers are decreasing. He argued that if national parks are relevant to the public, more people will visit, and will spend money that can be used for conservation.[16]

Some submissions, including the Queensland Tourism Industry Council (QTIC), AgForce Queensland and Wildlife Tourism Australia Inc., gave qualified support for social, cultural and commercial uses of protected areas, as long as the use is ecologically sustainable and does not adversely impact on the natural and cultural values of protected areas.[17]

Mr Daniel Gschwind, Chief Executive Officer, QTIC, stated that:

> *When we seek use of national parks, it is on the basis that we understand that our customers value the natural attributes of what we have to offer. They do not want to go and see a national park that is on the brink of being destroyed and they certainly do not want to leave with a sense that they have contributed to the destruction of a national park.*
>
> *… tourism operators … are entirely committed to sustainable use and sustainable management, and not just as a glib marketing ploy but as a genuine commitment to look after the areas that they use because their very future depends on it.*[18]

Mr Gschwind said the term "other values of the area" in clause 24 did not add anything of benefit to the object, and opens the object too broadly to interpretation of what "other values" may be.[19]

The Queensland Outdoor Recreation Federation (QORF) supported the increased opportunity for managed recreation and commercial outcomes; as long as recreational and educational opportunities are valued as much as commercial opportunities.[20]

4.4 Indigenous peoples' involvement in management of protected areas

The Balkanu Cape York Development Corporation (Balkanu Corporation) and Cape York Land Council Aboriginal Corporation (Cape York Land Council) and Carpentaria Land Council Aboriginal Corporation support the amendments to the object to include "the involvement of indigenous people in the management of protected areas in which they have interest".[21] Balkanu Corporation and Cape York Land Council were concerned that the amended may be interpreted as a legal or equitable interest in land.[22] Their submission recommended that the proposed section 4(a) be amended to clarify that the 'interest' referred to in the clause is an interest under Aboriginal Tradition or Island custom, to ensure it is not be open to interpretation as an 'interest' in land.[23] Their proposed addition to the amendment is underlined below:

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15 Submissions 94, 133, 138 and 169
16 O'Reilly's Rainforest Retreat, Submission 94, p.2
17 Submissions 72, 90, 145, 149, 152, 164, 168, 182 to 184 and 190
18 Daniel Gshwind, Chief Executive Officer, Queensland Tourism Industry Council, *Public Hearing Transcript*, 20 September 2013, p.14, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/NatureCon2-2013/trns-20sep2013.pdf
19 ibid., p.13
20 Queensland Outdoor Recreation Federation, Submission 143, p.1
21 Balkanu and Cape York Land Council, Submission 197; and Carpentaria Land Council Aboriginal Corporation, Submission 187
22 Terry Piper, Chief Operating Officer, Balkanu Cape York Development Corporation, *Public Hearing Transcript*, p.7
23 Balkanu and Cape York Land Council, Submission 197, p.3

> *… (a) the involvement of indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom.*

Carpentaria Land Council Aboriginal Corporation recommended that the amendment should go further and the legislation "must ensure that where Indigenous people assert or hold native title interests in protected areas, they are not just 'involved' in the management of these areas, but are provided with the statutory responsibility of co-management".[24]

The Balkanu and Cape York Land Council raised concerns that the inclusion in the object of the "use and enjoyment of the community" and "social, cultural and commercial use of protected areas" may override indigenous involvement in national park (Cape York Peninsula Aboriginal Land).[25]

AgForce Queensland recommended that the Bill be amended to provide for the involvement of "neighbouring producers" in the management of protected areas.[26]

4.5 Impact on the purpose of the Nature Conservation Act and the cardinal principle

A significant number of submissions opposed the amendments to the objects of the Act, and argued that the object of NC Act should remain "the conservation of nature" only.[27] The committee notes that a significant number of the submissions received were based on material prepared by Mr Peter Ogilvie, National Parks Association Queensland. Those and other submissions stated that the amendments fundamentally change the purpose of the NC Act from the conservation of nature to the social, cultural and commercial use of protected areas. Submissions also stated that broadening of the object diminishes the 'cardinal principal' of national park management.[28]

Submissions argued that the amendments weaken the legal strength and ability of the NC Act to protect and conserve nature, while ensuring that social, commercial and cultural uses of national parks have legal standing when the NC Act is interpreted. The Livingstone Remnant Vegetation Study Group stated that experience shows that once social, cultural and commercial use of protected areas are added as an object, the primary needs of the environment are relegated to last rather than primary place.[29]

The Alliance to Save Hinchinbrook Inc. asserted that poor outcomes for the Great Barrier Reef Marine Park under old legislation were the result of pretending that "two such opposed purposes" of 'conservation' and 'reasonable use' could be combined meaningfully into one object.[30]

4.6 Potential impact on environment and cultural heritage

A number of submissions stated that the primary purpose of national parks is to protect and conserve natural heritage, landscape, cultural heritage, flora and fauna. The secondary purpose is to allow people to commune and interact with nature in a passive way. The Alliance to Save Hinchinbrook Inc. and Cairns and Far North Environment Centre were concerned that the Bill will mean that no park in Queensland will be set aside for the preservation nature.[31]

The Brisbane Branch of the Wildlife Preservation Society of Queensland (WPSQ), and four submissions from individuals, stated that the Bill would weaken the purpose of the NC Act, resulting

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24 Carpentaria Land Council Aboriginal Corporation, Submission 187, p.5

25 Balkanu and Cape York Land Council, Submission 197, p.4

26 AgForce Queensland, Submission 90, p.3

27 Submissions 6 to 8, 10 to 21, 25 to 29, 30 to 38, 41 to 56, 58, 60, 61, 67, 69 to 71, 75 to 77, 88, 89, 95, 96, 103, 105, 106, 108, 109, 111 to 115, 117, 119, 122 to 130, 131, 134, 136, 137, 139, 142, 144, 147, 150, 151, 154, 156 to 158, 160, 161, 163, 167, 168, 171 to 173, 175, 179, 180, 185, 186, 191, 193, 194, 198, and 201 to 203

28 Submissions 8, 10 to 14, 16, 17, 19, 20, 21, 24, 25, 27, 29, 30, 32 to 38, 41, 42, 50, 51, 60, 67, 69 to 71, 73, 77, 82, 85, 88, 89, 91, 93, 98, 100, 101, 105, 106, 108, 109, 111 to 113, 115, 117, 119, 122, 127, 142, 144, 147, 154, 158, 171, 175, 176, 178, 180, 186, 188, 189, 193 to 195, and 201 to 203

29 Livingstone Remnant Vegetation Study Group, Submission 14, p.1

30 Alliance to Save Hinchinbrook Inc., Submission 19, p.1

31 Submissions 19 and 137

in long-term negative impacts for the ecological integrity of national parks. The Brisbane Branch of the WPSQ stated that "any increase in the use of biologically valuable land and reduction of controls to ensure protection will be detrimental to future biodiversity, as well as reducing the reason the land was protected in the first place".[32]

A significant number of submissions highlighted the potential environmental impacts of increasing recreational and commercial activities in protected areas. Concerns included: threats from fragmentation; weed and feral animal problems; species loss and loss of habitats for threatened flora and fauna.

A number of submissions questioned what analysis had, or would be undertaken, of the impact of commercial and recreational use on the environment, including endangered species that live in national parks.

4.7 Size of national park estate and conservation

A number of submissions raised concerns about the size of the national park and the potential impact of broader objects in the Act. Submissions indicated that Queensland's national park estate covers approximately 4.8 per cent of the state – less than the international standard of 17 per cent and less than other States and Territories 14 per cent.[33] The WWF Australia cited a 2009 survey which demonstrated that 69 per cent of Queenslanders wanted the government to buy new national parks to protect wildlife habitats.[34]

The Queensland Murray-Darling Committee (QMDC) and other submissions, argued that with a small area managed for biodiversity, it is not unreasonable to protect those areas solely for the purpose of nature conservation.[35] The Gold Coast and Hinterland Environmental Council (Gecko), the Far North Queensland Branch of the WPSQ, and six other submissions stated that the other 90 per cent of Queensland can be used for activities such as four wheel driving and quad bike riding.[36]

4.8 Access to protected areas for social, cultural and commercial uses

4.8.1 Current social, cultural and commercial uses

A number of submissions challenged the Government's statement that national parks are "locked up".[37] The QMDC stated that:

> *These areas are not "locked up" without purpose or value. They are safeguarded for current and future uses e.g. research and scientific discovery of, for example, new medicines from native plants or for passive recreation aligned to biodiversity values.*[38]

A significant number of submissions suggested that the amendments to the object of the NC Act were unnecessary, as social, cultural and commercial use is already permitted under the management principles for each protected area tenure.[39] See chapter 5 for further information about management principles.

32 Brisbane Branch of the Wildlife Preservation Society of Queensland (WPSQ), Submission 8, p.1
33 Submissions 1, 2, 3, 5 to 7, 9, 24, 50, 55, 58, 61, 100, 101, 104, 107, 119, 122 to 125, 127, 139, 140, 141, 146, 147, 167, 168, 172, 176, 179, 191, 196 and 198
34 WWF Australia, Submission 147, p.3
35 Queensland Murray-Darling Committee Inc., Submission 127, p.4
36 Submissions 100, 114, 101, 120, 122, 139, 146 and 150
37 Submissions 83, 122, 124, 127, 140, 146, 147, 158 and 172
38 Queensland Murray-Darling Committee Inc., ibid.
39 Submissions 8, 10 to 18, 20, 21, 25, 27, 29 to 38, 41 to 46, 48, 51, 55, 58, 60, 69 to 71, 75, 83, 89, 105, 108, 109, 111 to 113, 117, 141, 142, 147, 154, 157, 173, 175, 176, 178, 180, 186, and 194 to 196

4.8.2 Visits to protected areas

Birdlife Capricornia quoted a recent survey commissioned by QPWS, which found that 70 per cent of Queenslanders had visited a national park in the last 12 months.[40] The WWF Australia submission stated that national park visitors spend approximately $4.43 billion a year in Queensland without significant commercial development of national parks.[41] Another submission said that Queensland's national parks attract 27 million domestic visits and 7.9 million international visits each year.[42]

A number of submissions raised concerns that increased commercial and recreational use would put at risk the very reason people currently visit a national park – its unique ecology and experiences.[43] Submissions also stated that once damage had been caused by increased use, the habitats and unique ecology could not be repaired and would be lost forever.[44]

4.8.3 Resource implications of social, cultural and commercial use of protected areas

AgForce Queensland stated that the remoteness of protected areas makes management and access difficult.[45] Birdlife Capricornia stated that commercial use of protected areas is difficult to manage and assess for compliance and sustainability without significantly increasing departmental staff, for example, rangers in-residence who could provide ongoing monitoring of commercial activity.[46]

4.8.4 International and domestic examples of commercial and recreational use

The Bulimba Creek Catchment Coordinating Committee suggested that to promote international and domestic tourism the Government should protect and improve nature conservation, landscape amenity and wilderness experiences.[47] The Townsville Branch of WPSQ suggested that public appreciation of conservation, scientific and aesthetic values of national parks can be achieved through field outings, volunteer conservation and interpretative tours led by QPWS staff.[48] Submissions referred to international examples in New Zealand, United States of America and the United Kingdom and domestic examples, such as Tasmania, where increased access to the natural environment has been achieved.[49]

4.8.5 Decisions about use of protected areas

WWF Australia raised concerns that the Bill does not establish a clear and transparent process to ensure the use of protected areas is consistent with the primary purpose of the NC Act – nature conservation, and not inconsistent with the natural and cultural values of the areas.[50] Gecko and the Far North Queensland Branch of WPSQ stated that there would be inherent conflicts between the objects (as amended by the Bill) and it is not clear how those conflicts would be resolved.[51]

4.8.6 Granting exclusive rights to commercial operators

Submissions raised concerns that granting commercial developers exclusive use of areas of national parks would decrease public access to publicly owned land.[52] Mr Murray Stewart, QORF, raised

40 Birdlife Capricornia, Submission 140, p.2
41 WWF Australia, Submission 147, p.3
42 Bruce Gall, Submission 158, p.1
43 Submissions 2, 75, 100 and 110
44 Submissions 15, 24 and 153
45 AgForce Queensland, Submission 90, p.2
46 Birdlife Capricornia, ibid., p.1
47 Bulimba Creek Catchment Coordinating Committee, Submission 75, p.2
48 Townsville Branch of the WPSQ, Submission 7, p.1
49 Submissions 26, 61, 76, 141 and 167
50 WWF Australia, ibid.
51 Gecko, Submission 146 and Far North Queensland Branch of WPSQ, Submission 50
52 Submissions 4, 63, 104 and 141

concerns that "the situation that may occur where a commercial operator is able to lease or gain exclusive use of a protected area that severely impacts on the enjoyment of other users".[53]

Other submissions stated that private facilities should be built close to national parks, but should not be permitted in national parks.[54]

4.8.7 Lack of certainty about permitted uses of protected areas

Birdlife Capricornia, and other submissions, raised concerns that the Bill does not specify what types of commercial development will be allowed in protected areas; leaving the door open to highly invasive and destructive activities.[55]

A significant number of submissions stated that activities such as cattle grazing, horse riding, four wheel driving, quad bike riding, mountain biking and building structures should not be permitted in national parks.[56] One submission suggested that the amendments would allow logging, mining and grazing in national parks.[57]

4.9 Department's comments

4.9.1 Amendments to objects

The DNPRSR advised the committee that:

> *The NCA covers a broad variety of issues relating to the protection and management of protected areas and wildlife. It is often assumed that protected area management is only about the protection of conservation values and in particular those values on national parks. While this is an important part of what the act provides for, it is not the only thing.*
>
> *Currently, the object of the NCA is the conservation of nature. This narrowly defined object can create impediments for access to protected areas and the use of these areas for other activities, sometimes even to necessary management tools that may assist in the conservation of the values for which the protected area was created. The amendments broaden the object of the act to recognise the variety of activities already allowed for under the NCA In particular, the bill amends the object of the NCA to explicitly provide for some of the most significant uses of a protected area such as for recreation and commercial outcomes.*[58]

4.10 Committee's view

4.10.1 Objects – clarity about permitted activities and uses

The committee understands that the object gives the NC Act its overarching purpose and that more detail about permitted uses for each protected area tenure class are set out in the management principles. The specific use of each area will be guided by the content of the management plan or management statement for the area.

The committee notes DNPRSR's comments that the amendments to the object of the NC Act reflect activities and uses already permitted under the NC Act. The committee notes that commercial and recreational activities are currently permitted in protected areas. The DNPRSR's website states that

53 Murray Stewart, Executive Officer, Queensland Outdoor Recreation Federation, *Public Hearing Transcript*, p.2
54 Submission 4, 7, 84, 191 and 124
55 Birdlife Capricornia, Submission 140, p.1
56 Submissions 1, 2, 4, 7, 52, 58, 61, 63, 68, 74 to 76, 96, 110, 118, 120, 127, 140, 141, 156, 158 and 191
57 Juanita Johnson, Submission 22
58 Jason Jacobi, *Public Briefing Transcript*, p.2

over 400 licensed tourism operators provide opportunities, for visitors to experience the outstanding natural and cultural heritage values of Queensland parks and forests.[59]

The committee is also aware that certain activities are prohibited in protected areas. For example, section 27 of the NC Act provides that mining, geothermal and greenhouse gas storage uses are not permitted in national parks. Section 21 of the NC Act provides that the felling of timber for commercial purposes would be prohibited in regional parks.

However, it is clear from the submissions received by the committee that there is uncertainty about the effect of the amendments to the object of the NC Act, in particular what social, cultural and commercial uses will be permitted in protected areas. The committee therefore considers it important that the DNPRSR promote awareness of the social, cultural and commercial uses that will be permitted in protected areas once the Bill has passed – see Recommendation 3, section 5.8.3 of this report.

4.10.2 Objects – *Involvement* of indigenous people

The committee considers that, on its face, the amendment to clause 24 proposed by Balkanu and the Cape York Land Council may be a useful clarification of the proposed objects of the Act. The committee unanimously recommends that the Minister consider introducing at the second reading stage an amendment such as that proposed and described in section 4.4.

Recommendation 2

The committee recommends that the Minister consider introducing an amendment to clause 24 of the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 to clarify that the 'interest' that indigenous people may have in protected areas is an interest under Aboriginal tradition or Island custom.

59 Department of National Parks, Recreation, Sport and Racing, *Commercial tourism on parks*, accessed 30 September 2013 from http://www.nprsr.qld.gov.au/tourism/index.html

5 Tenures and management principles

5.1 Nature Conservation Act 1992 – tenures and management principles

Section 14 of the NC Act specifies the protected area tenures to which the NC Act applies. The Governor in Council may, by regulation, dedicate a specified area of State land as one of the protected area tenures.[60] The current dedicated protected areas are set out in the *Nature Conservation (Protected Areas) Regulation 1994*.

Section 15 of the NC Act provides that all protected areas are to be managed in accordance with specific management principles for each protected area tenure.[61] Any management plan or management statement for the protected area must be consistent with the management principles.[62] Chapter 7 of this report discusses management plans and statements in more detail.

5.2 Overview of proposed amendments to tenures and management principles

This section of the report discusses the proposed amendments to tenures and management principles which, in combination, provide for the types of uses for each of the types of area managed by the QPWS. The proposed changes to *national parks*, *forest reserves* and other tenures are discussed in more detail in sections 5.4 to 5.13.

To assist readers, the current and proposed tenures and the current and proposed management principles for each tenure are summarised in Table 1 on pages 16–17.

5.2.1 Proposed reduction of tenures

The Bill amends the NC Act to reduce the tenures from fourteen to seven. Clause 114 amends section 14 of the NC Act to reduce the number of protected area tenures from 13 to seven. Clauses 53, 55, 56 and 57 contain amendments to omit any new declaration of the tenure *forest reserve* (discussed in section 5.11 below).

5.2.2 Legislative and regulatory complexity

The Explanatory Notes state that the amendments "will simplify the tenure structure in the NC Act in line with the government commitments to reduce and streamline legislative and regulatory complexity".[63] In his explanatory speech, the Minister stated that:

> *In the future, Queensland's protected areas will be divided into two main classes: national parks and regional parks. The focus of national parks will be around the conservation of natural and cultural values … The focus of regional parks and their management principles will be a broad variety of uses, including commercial and recreational purposes, while still having a focus on the natural and cultural values of the areas.*[64]

At the public hearing, the DNPRSR commented on reducing legislative and regulatory complexity:

> *There is … something to be said in a legislative sense by having two tenure categories that have clearly defined purposes and uses. ….. you can construct the legislation, when talking about tenure, as having two primary purposes that you need to provide for within the act, and for the regulations then to follow suit.*[65]

60 NC Act, section 29
61 ibid., sections 15 to 26
62 ibid., new sections 113 and 117, as inserted by clause 68 and 69
63 Explanatory Notes, p.2
64 Legislative Assembly of Queensland, *Hansard*, 20 August 2013, p.2606 (Hon. Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing)
65 Dr Liz Young, Director, Policy Reform, Queensland Parks and Wildlife Service, Department of National Parks, Recreation, Sport and Racing, *Public Hearing Transcript*, p.27

The DNPRSR noted that over time, some of the legislative complexity of the Act and regulations can be removed.[66]

One submission questioned whether combining tenures would in fact reduce administrative burdens, as the Bill provides that *national park (scientific)* and *national park (recovery)* become *national parks*, and are then automatically declared to be special management areas.[67] Special management areas are discussed in sections 6.1 – 6.2.

5.2.3 Proposed amendments to management principles

Clauses 115 to 118 amend the existing management principles to reflect the proposed reduction in the number of tenures and the amendments to the objects of the NC Act. The Bill also provides for additional management principles for *national parks* and management principles for the new *regional park* tenure.

The Explanatory Notes state that the amendments implement the Government's commitment to achieve "a greater balance between nature conservation and access for recreational and commercial purposes".[68] The DNPRSR advised that the "Management principles will be consistent with the values of the areas, with national parks retaining a strong focus on nature conservation, and regional parks having a greater focus on the use for recreation and commercial purposes".[69]

5.3 Proposed reduction in tenures – stakeholder views

A large number of submissions opposed the amendments to tenures, and described them as a step too far, with minimal gains and some substantial potential losses.[70] The submission from WWF Australia stated that the reduction in tenures is contrary to the International Union for Conservation of Nature guidelines and 20 years of research and development in protected area management.[71]

Other submissions supported the reduction in tenures. For example, the Alliance for Sustainable Tourism and Association of Marine Park Tourism Operators Pty Ltd supported simplification of the protected area tenures.[72] The QTIC also supported most of the proposed tenure changes, except the proposal to abolish the tenure of forest reserve (see section 5.11).[73]

One submission stated that the system of multiple tenures undermines the value of the national park brand; creating unnecessary bureaucracy and regulatory complexity.[74] AgForce also supports the removal of complexity and out dated tenures.[75] The O'Reilly's Rainforest Retreat and Kingfisher Bay Resort Group consider that the amendments do not detract from the conservation of nature and represents good housekeeping.[76]

Stakeholder views and advice from the DNPRSR on specific issues and specific tenures are outlined in the following sections of this report.

66 ibid., p.28
67 Karl Kirsch, Submission 180, p.2 and Heidi Kirsch, Submission 186, p.2
68 Explanatory Notes, p.3
69 Jason Jacobi, *Public Briefing Transcript*, p.3
70 Submissions 8, 10 to 14, 16 to 21, 25 to 27, 29, 30, 32 to 38, 41 to 46, 48, 51, 53, 56, 60, 61, 67, 69, 70, 71, 73, 89, 93, 101, 105, 106, 108, 109, 111 to 113, 117, 122, 123, 127, 128, 130, 134, 142, 146, 154, 156, 178 and 191
71 WWF Australia, Submission 147, p.2
72 Alliance for Sustainable Tourism, Submission 182 and Marine Park Tourism Operators Pty Ltd., Submission 184
73 Queensland Tourism Industry Council (QTIC), Submission 190, pp.3 and 4
74 Peter O'Reilly, Submission 133, p.1
75 AgForce Queensland, Submission 90, p.3
76 Submissions 94 and 152

Table 1 Comparison of current and proposed tenures and management principles

Current tenure and management principles	Proposed national park tenure and future management principles
National park Managed to: • the greatest possible extent, permanent preservation of the areas' natural condition and protection of cultural and natural resources and their values (the cardinal principle) • present the cultural and natural resource and their values • ensure that the only use is nature-based and ecologically sustainable • subject to the principles above, an indigenous joint management area is to be managed as far as practicable in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area. (s.17)	**National park** ***In addition to the current management principles for a national park:*** Managed to: • provide opportunities for educational and recreational activities in ways consistent with the natural and cultural values • provide opportunities for ecotourism in a way consistent with natural and cultural values If declared a special management area (controlled action), may include: • manipulation of natural and cultural resources to protect or restore natural or cultural values • continuation of an existing use of the area consistent with maintaining natural and cultural values If declared a special management area (scientific), may include: • activities or measures to protect exceptional scientific values • controlled scientific study and monitoring of natural resources • control of threatening processes relating to threatened wildlife (including processes caused by other wildlife) and controlling by manipulating the threatened wildlife's habitat • (proposed amended s.17)

National park (scientific)
Managed to:
• protect the exceptional scientific values, in particular
  • ensure the processes of nature continue unaffected
  • protect biological diversity to the greatest possible extent
• allow controlled scientific study and monitoring of natural resources
• if threatened wildlife is a significant natural resource, may include
• manipulation of the wildlife's habitat, and
• control of threatening processes (including processes caused by other wildlife (s.20)	

National park (recovery) Managed to: • protect or restore, to the greatest possible extent, the park's natural condition and protect its cultural resources and values so it can be dedicated as a national park • provide for manipulation of natural resources to restore conservation values • ensure nay commercial or other use of natural resources to restore conservation values is consistent with an approved regeneration plan • ensure any other use is nature-based (s.19A)	

Table 1 (cont.) Comparison of current and proposed tenures and management principles

Current tenure and management principles	Proposed national park tenure and future management principles
Conservation park Managed to: • conserve and present the area's cultural and natural resources and their values • provide for permanent conservation of the area's natural condition to the greatest possible extent • ensure that any commercial use of the area's natural resources, including fishing and grazing, is ecologically sustainable (s.21)	**Regional park** Managed to: • conserve and present the area's cultural and natural resources and their values • ensure the area is maintained, to the greatest possible extent, in its natural condition • provide for the controlled use of the area's cultural and natural resources • provide opportunities for enjoyment and appreciation of the area and for recreational and commercial activities in the area • the felling of timber for a commercial purpose must not be conducted in a regional park • if also an indigenous joint management area, managed as far as practicable, consistent with Aboriginal tradition of the area, including tradition relating to activities (proposed new s.21)
Resources reserve Managed to: • recognise and if appropriate, protect the cultural and natural resources • provide for controlled use of the cultural and natural resources • ensure the area is maintained predominantly in its natural condition • commercial timber felling must not be conducted in a resources reserve • an indigenous joint management area is to be managed as far as practicable in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.	

Table 2 Proposed abolition and retention of tenures

Tenures proposed to be abolished[77]	Tenures which the Bill retains
Forest reserve	Nature refuge
Wilderness area	Coordinated conservation area
World Heritage management area	State forest
International agreement area	National park (Aboriginal land)
Timber reserve[78]	National park (Torres Strait Islander land)
	National park (Cape York Peninsula Aboriginal land)

77 Includes forest reserve tenure which is 'grandfathered' to retain existing reserves until assessed and designated as either State forest or national park

78 Existing timber reserves will be retained, but none can be declared after 30 June 2014

5.4 National park tenures and management principles – proposed amendments

5.4.1 Proposed combination of three national park tenures

The Bill combines three current tenures – *national park, national park (scientific)* and *national park (recovery)* into a tenure called *national park*. The current tenures of *national park (Aboriginal Land), national park (Torres Strait Island Land)* and *national park (Cape York Peninsula Aboriginal Land)* protected area tenures would be retained.[79]

The *national park (scientific)* tenure is currently used to protected the exceptional scientific values of an area; allow controlled scientific study and monitoring of natural resources; and allow the manipulation of the habitat and control of threatening processes to protect threatened wildlife. The *national park (recovery)* tenure is used to restore an area's natural condition and protected its cultural resources and values so that it can be dedicated as a national park.[80]

Existing areas dedicated as *national park (scientific)* and *national park (recovery)* would become *national parks* and automatically be declared as special management areas (scientific) and special management areas (controlled action), respectively.[81] Sections 6.1 to 6.2 of this report discuss special management areas in more detail.

5.4.2 National park (scientific) and national park (recovery) – stakeholder views

A significant number of submissions argued that the *national park (scientific)* and *national park (recovery)* tenures have an important purpose, and should not be combined with the *national park* tenure.

Submitters highlighted the importance of protection of endangered species, particularly the nailtail wallaby in Taunton National Park (Scientific) and the northern hairy-nosed wombat in Epping Forest National Park (Scientific).[82]

5.4.2.1 National park (recovery)

The *national park (recovery)* tenure permits significant restoration of an area for the purpose of being declared a national park.[83] The WPSQ explained that this restoration may take years and to include such areas as national park prior to restoration is unacceptable.[84]

5.5 Public understanding of national park tenures

When briefing the committee, the DNPRSR advised that the "focus on two tenures (national parks and regional parks) with clearly defined uses will result in visitors to our parks having a better understanding of what areas are being managed for".[85]

At the committee's request, Dr Young expanded on the reasons for combining tenures when commenting on issues raised in submissions and at the public hearing:

> *… a lot of it is about what we are trying to achieve in terms of public messaging around what the purposes are of different tenures …*
>
> *When people ask for clarity around the use of a different tenure type, that is the sort outcome that we believe as park managers assist us in delivering the government's*

79 Clause 114 of the Bill
80 NC Act, sections 19A and 20
81 Clauses 196 and 197 of the Bill
82 Submissions 7, 8, 10 to 18, 20, 21, 25, 27, 29, 30, 32, 33, 35 to 38, 41 to 46, 48, 50, 51, 59, 60, 69 to 71, 88, 89, 103, 105, 108, 109, 111 to 113, 117, 119, 122, 128, 130, 134, 136, 142, 146, 150, 157, 168, 170, 172, 173, 175, 178, 188, 189, 201 and 203
83 ibid.
84 WPSQ, Submission 50, p.2
85 Jason Jacobi, *Public Briefing Transcript*, p.3

> *commitment to ensuring that people understand what the tenures are that they are using. So if they go to a regional park they will understand that that is for a multiple variety of uses and when they go to a nation park they will understand that the primary purpose is around cultural and natural protection. So the benefits of combining tenures from that perspective is less a legal one; it is also one about how people perceive what a park is about and then how they use it.*[86]

The Magnetic Island Nature Care Association Inc. stated that the proposed changes to the tenures do not increase public understanding of the use of protected areas.[87]

5.6 Proposed national park management principles

The management principles for *national parks* are at section 17 of the NC Act. Clause 116 inserts two new management principles for *national parks* – at sections 17(1)(d) and 17(1)(e). Under the Bill, the management principles for *national parks* would be to:

- provide, to the greatest extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values – the *cardinal principle* (existing section 17(1)(a))
- present the area's cultural and natural resources and their values (existing section 17(1)(b))
- ensure that the only use of the area is nature-based and ecologically sustainable (existing section 17(1)(c))
- provide opportunities for education and recreation activities in a way consistent with the area's natural and cultural values (proposed section 17(d)), and
- provide opportunities for ecotourism in a way consistent with the area's natural and cultural values (proposed section 17(e)).

The committee notes that the amendments to the management principles for national parks apply to the management principles for *national park (Aboriginal land)*, *national park (Cape York Peninsula Aboriginal land)* and *national park (Torres Strait Islander land)*.

5.7 Support for proposed management principles

AgForce Queensland raised no objections to the proposed changes to the management principles on the basis that new management principles still required consideration of an area's natural and cultural values.[88] O'Reilly's Rainforest Retreat supports the amendments to the management principles, which it believes is in accordance with the amendments to the object and notes that the 'cardinal principle' remains.[89]

5.8 Concerns about proposed management principles

5.8.1 The cardinal principle

The Explanatory Notes state that the 'cardinal principle' has been retained as the basis of national park management and the management principles have been expanded to provide for educational, recreational and ecotourism opportunities. Clause 116 defines ecotourism as:

> *Tourism that is ecologically sustainable and primarily focused on experiencing an area in a way that fosters understanding, appreciation and conservation of the area and its natural and cultural values.*

A number of submissions questioned the statement that the "cardinal principle is being retained". Submissions also stated that many of the activities permitted in *national park (scientific) and national*

86 Dr Liz Young, *Public Hearing Transcript*, p.27
87 Magnetic Island Nature Care Association Inc., Submission 176, p.3
88 AgForce Queensland, Submission 90, p.4
89 O'Reilly's Rainforest Retreat, Submission 94, p.3

park (recovery) are contrary to the 'cardinal principle' of national park management. Combining the tenures with *national parks* would, in submitter's view, undermine the protection offered to *national parks* and make a mockery of the 'cardinal principle'.[90]

Submissions opposed the amendments to the management principles for national parks because they reduce the legal effect of, and conflict with, the cardinal principle of national park management. The Townsville Branch of the WPSQ stated that:

> *… by giving equal importance to other management principles, such as the provision of recreational, educational and ecotourism opportunities, the cardinal principle is no longer 'cardinal' but essentially weakened, and potentially even negated.*[91]

Submissions stated that the amendments risked losing the specific focus which can be afforded to areas designated as *national park (scientific)* and *national park (recovery)*.[92]

5.8.2 Potential activities and uses of national parks under proposed management principles

A number of submissions raised concerns about the potential impact on national parks of uses and activities that the proposed management principles would permit. Submissions noted that recreational, education and ecotourism opportunities are broad terms, which cover a wide range of activities that could have significant detrimental impact on national parks.[93]

The WWF Australia stated that the primary purpose of *national parks* should be the protection of wildlife and conservation of nature. The WWF Australia recognised that there may be opportunities for ecologically sustainable commercial uses of *national parks*. However WWF Australia argued these must only be permitted if they do not adversely affect the primary purpose of conservation of wildlife and nature.[94]

In light of concerns raised in submissions about the potential activities that will be permitted and their impact, the committee asked the DNPRSR to provide some examples of each of the following uses referred to in the Bill or Explanatory Notes: social, cultural, commercial, recreational, educational and community purposes. In response, the DNPRSR provided examples of the uses that are already occurring on protected areas in Queensland:

- ***social uses*** *such as walking groups and other group activities aimed at community health and wellbeing*
- ***cultural uses*** *including allowing for Aboriginal tradition or Island custom*
- ***commercial uses*** *including commercial activity permits / agreements for tour operators*
- ***recreational uses*** *including mountain biking, camping, hiking*
- ***educational uses*** *including scientific study and school group visits*
- ***community purposes*** *including charity group events.*

> *Broadening the object of the NCA simply clarifies that the NCA already provides for more than just the conservation of nature and that there are a range of other activities and uses that are already allowed and will continue to be allowed, where appropriate, on the protected area estate. Any new activities or uses would need to be considered in the context of the object of the Act, the management principles of the tenure class and the individual values of the protected area.*[95]

90 Submissions 7, 8, 10 to 21, 25 to 27, 29, 30, 32 to 38, 40 to 46, 48, 50, 51, 55, 59, 60, 61, 67, 69 to 71, 89, 98, 105, 108, 109, 111 to 113, 119, 124, 127 131, 137, 139, 142, 146, 150, 157, 175, 178 to 180, 186, 188, 189, 201 and 203

91 Townsville Branch of the WPSQ, Submission 7, p.1

92 Submissions 19, 115, 120, 122, 124, 144, 160, 163 and 171

93 For example, Townsville Branch of the WPSQ, Submission 7, p.2

94 WWF Australia, Submission 147, p.1

95 Dr Liz Young, *Correspondence*, 23 September 2013, see Appendix E

A recent ministerial media release about the Nerang National Park provides further examples of current and proposed future uses including running events, mountain biking, four wheel driving, and investigation as a possible venue for the Commonwealth Games cross country mountain bike competition.[96]

5.8.3 Committee comment

The committee notes the concerns raised in submissions about the proposal to combine national park, national park (scientific) and national park (recovery). The committee understands that the activities currently permitted under national park (scientific) and national park (recovery) will be permitted in specific areas of national parks declared as special management areas (see Section 6.1).

The committee also notes the concerns of stakeholders that activities detrimental to national park values may be permitted as a result of the amendments to the NC Act in this Bill. The committee also notes the advice from DNPRSR that any new activities of uses would be considered in context of the provisions of the Act, including the management principles, and the values of the particular protected area. To address public concerns, the committee recommends that the Minister provide further information during the second reading debate, and ensure the DNPRSR publish clear information about the framework and criteria for decisions about allowing various types of activity in protected areas.

Recommendation 3

The committee recommends that the Minister address community concerns about the type of activities that will in the future be allowed in national parks and regional parks, specifically:

- that during the second reading debate the Minister describe the types of activity that the Bill will and will not permit in areas of high conservation value, and how those areas will be protected from potentially damaging uses, and
- that the Minister direct the Department of National Parks, Recreation, Sport and Racing to publish as soon as possible in an accessible format:
    - the decision making framework and criteria for permitting activities in protected areas, and
    - the risk mitigation that may be required of commercial, recreational, educational and ecotourism operators.

5.8.4 Proposed national park management principles and Aboriginal tradition

The committee was informed of concerns that the proposed amendment to national park management principles may not give appropriate emphasis to Aboriginal tradition. Mr Terry Piper, Chief Operating Officer, Balkanu Corporation stated that:

> *… we support the additional two management principles for recreation and ecotourism, but historically you have had three management principles plus the requirement to manage a park in accordance with Aboriginal tradition. So the way the management principles will line up now is the requirement to manage the national parks which are Aboriginal land in accordance with Aboriginal tradition will now be seventh – much lower in that hierarchy.*[97]

Mr Piper explained that:

96 Hon. Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing, *Media Release*, accessed 24 September 2013 from http://statements.qld.gov.au/Statement/2013/9/24/nerang-national-park-running-hot

97 Terry Piper, *Public Hearing Transcript*, p.7

> *… managing in accordance with Aboriginal tradition is not so much about protecting cultural values and cultural resources. It is much more about the decision-making processes that are gone through. So our view is that the decision-making process cannot be subservient to the ecotourism and recreation provisions. It has to be higher than that.*[98]

The committee notes the concerns of the Balkanu Corporation and Cape York Land Council about the proposed place of Aboriginal tradition in the hierarchy of management principles. The committee recommends that the Minister respond to those issues during the second reading debate.

Recommendation 4

The committee recommends that the Minister inform the Legislative Assembly of the Government's response to the issues raised about the place of Aboriginal tradition and Island custom in the proposed amendments to management principles for national parks.

5.9 Proposed regional park tenure and management principles

5.9.1 Tenure

The Bill would combine the existing *conservation park* and *resources reserve* tenures into the new tenure called *regional park.*

Current *conservation parks* will become *regional parks (general)* and current *resources reserves* will become *regional parks (resource use area)*.[99] Section 6.3 of this report discusses resource use areas in more detail.

5.9.2 Proposed management principles for regional parks

Clause 117 amends the NC Act to provide management principles for the new *regional park* tenure. New section 21 of the NC Act would provide that management parks are to be managed to:

- conserve and present the area's cultural and natural resources and their values
- ensure the area is maintained, to the greatest possible extent, in its natural condition
- provide for the controlled use of the area's cultural and natural resources, and
- provide opportunities for enjoyment and appreciation of the area and for recreation and commercial activities in the area.

New section 21(2) of the NC Act would prohibit the felling of timber for a commercial purpose in a regional park.

The Explanatory Notes state that the management principles for regional parks "draw heavily from the management principles of the repealed conservation park and resource reserve tenures" and "provide opportunities for recreational activities, reflecting the government commitments to encourage this type of use of protected areas".[100]

5.9.3 Proposed regional park tenure and management principles – stakeholder views

Mr Peter O'Reilly welcomed the establishment of regional parks and suggested that land with conservation values that are relatively less than those of traditional *national parks* could be declared *regional parks*.

A significant number of submissions opposed the proposal to combine existing *conservation park* and *resources reserve* tenures into the new tenure of *regional park*. Submissions argued that the new

98 ibid.
99 Clauses 198 and 199 of the Bill
100 Explanatory Notes, p.3

regional park tenure does not recognise the current purpose and significant differences between the tenures of *conservation park* and *resources reserve*.[101] Submissions argued that combining the two tenures, which have different levels of protection in the current hierarchy of protection levels, would shift the management principles and level of protection for the proposed *regional park* tenure to the lowest common denominator.[102]

The Environmental Defenders Office Queensland stated that recreational and commercial use should not be permitted in *regional parks*. They argued that the management principles should retain the words "permanent conservation" from the current management principle for a *conservation park.*[103]

The QORF recommends that education opportunities be included in the management principles for *regional parks*.[104]

5.9.3.1 The title 'regional park'

Submissions suggested that the name *regional park* was inappropriate, because the areas are not regional. The name suggests that the areas are open to general use, and does not reflect the conservation values and resource protection implications of the area.[105]

The DNPRSR advised that:

> *The term 'national park' is one that the average Queenslander understands as having values that are of national significance, particularly environmental and cultural values. The term 'regional park' builds on the idea that the park is of regional significance, not just in terms of conservation and cultural values but in terms of having a wide range of uses that are important to regional communities and visitors to those communities.*[106]

5.9.3.2 Permitted uses in a regional park

The Townsville Branch of the WPSQ and Balkanu Corporation and Cape York Land Council sought further clarification about the type of commercial activity that would be permitted in a *regional park*.[107] Townsville Branch of the WPSQ recognised that certain activities, for example, guided walks and bus tours on formed roads may be compatible with conservation; however they suggested that horse trails and impact sports are not compatible.[108]

5.9.4 Alternative tenure proposals

Instead of combining the tenures of *conservation park* and *resource reserve,* some submissions suggested alternative approaches. Proposals included establishing a tenure class called 'regional conservation park' with management practices consistent with the level of protection currently afforded conservation parks.[109] Other submissions suggested that the conservation park class should be retained and resources reserves be renamed as regional parks.[110] These issues are discussed in the context of resource use areas in section 6.3.

101 Submissions 53, 56, 146, 149, 152, 157, 164, 170, 176, 182, 184 and 190
102 Submissions 8, 10 to 18, 20, 21, 25, 27, 29, 30, 32 to 38, 41 to 46, 48, 49, 51, 59, 69 to 71, 89, 93, 98, 105, 108, 109, 111 to 113, 124, 128, 130, 134, 142, 150, 154, 157, 163, 168, 170, 172, 173, 175, 178, 188 to 190, 192, 194, 195, 201 and 203
103 Environmental Defenders Office Queensland, Submission 198
104 Murray Stewart, *Public Hearing Transcript*, p.3
105 Submissions 7, 18, 50, 55, 58, 63, 67, 68, 91, 117, 127, 131, 146, 157
106 Jason Jacobi, *Public Briefing Transcrip*t, p.3
107 Townsville Branch of the WPSQ, Submission 7, and Balkanu and Cape York Land Council, Submission 197
108 Townsville Branch of the WPSQ, ibid., p.2
109 Paul Sutton, Submission 88, p.1
110 Submissions 142 and 157

5.10 Abolition of wilderness area, World Heritage management area and international agreement area tenures

5.10.1 Proposed abolition of tenures

The Bill would abolish the wilderness area, World Heritage management area and international agreement area tenures.[111] The DNPRSR advised the committee that those tenures have not been used and that their removal will allow the legislation to be simplified.[112]

5.10.2 Submissions

A significant number of submissions suggested that the *wilderness area*, *World Heritage management area* and *international agreement* area tenures should be retained. While submissions accepted that unused tenures may appear superfluous they argued that there is no administrative, management or financial benefit in removing the tenures. Instead, they argued those tenures should be retained to allow flexibility and future use.[113] The Bulimba Creek Catchment Coordinating Committee commented that the removal of the wilderness areas, World Heritage management areas and international agreement areas tenure would mean Queensland is out of step with the international community.[114]

The WPSQ, the QMDC and the Alliance to Save Hinchinbrook Inc. stated that consideration has been given to use of the tenures in the past and could be in future. It was suggested that removing the tenures reduced future flexibility, and that it would be more cost effective to retain the tenures, rather than revisiting the legislation in future.[115]

Mr Peter Ogilvie, National Parks Association Queensland, stated that there was:

> *… no reason why in the future they could not be applied. We would advocate that they should be retained because they have a purpose and it is a purpose that may exist in the future. Why get rid of them? It is not saving anything at all.*[116]

5.11 Forest reserve tenure – proposed phasing out

5.11.1 Proposed amendments

The *forest reserve* tenure was introduced as an interim holding tenure as part of the 1999 South East Queensland Forest Agreement. The tenure provides for the assessment of the conservation values of an area, prior to it being transferred to one of the protected area tenures, for example a *national park*. Under the NC Act, the assessment process is due to be completed by the end of 2025.[117]

The Bill would prevent further areas from being dedicated as *forest reserves*, while providing for the continued management of existing forest reserves.[118] The Explanatory Notes state that:

> *Following commencement, areas currently dedicated as forest reserve will progressively be reviewed and reclassified under an appropriate tenure class for example a protected area tenure class under the NC Act or State forest under the FA (Forestry Act).*[119]

Clauses 10 and 11 amend the Forestry Act to clarify the process for review and reclassification of *forest reserves* and, where appropriate, facilitate the reclassification of *forest reserves* as *State*

111 Clause 114 of the Bill
112 Jason Jacobi, *Public Briefing Transcript*, p.3
113 Submissions 7, 8, 10 to 14, 16, 17, 20, 21, 25 to 27, 29, 30, 32 to 38, 41 to 46, 48, 50, 51, 69 to 71, 75, 89, 105, 108, 109, 111 to 113, 119, 127 139, 142, 146, 147, 151, 157, 172, 173, 175, 176, 180, 186, 188, 189, 195 and 201 to 203
114 Bulimba Creek Catchment Coordinating Committee, Submission 75, p.2
115 Submissions 50, 60 and 127
116 Peter Ogilvie, Council member, National Parks Association Queensland, *Public Hearing Transcript*, p.18
117 Explanatory Notes, p.54
118 See clauses 52 to 60
119 Explanatory Notes, p.27

forests. Following the review and reclassification of current forest reserves, clause 167 will abolish the *forest reserve* tenure.

5.11.2 Assessment of remaining forest reserves

In response to the many concerns raised in submissions about phasing out of the *forest reserve* tenure, the DNPRSR advised that it is:

> *… actually undertaking an assessment of all the remaining forest reserves that are under that tenure. That assessment is a scientifically based assessment that looks at each area's nature conservation values, its cultural values, its economic values and a variety of values. Based on that, an assessment will be made of those that have the appropriate values to go to national park tenure.*
>
> *An assessment will also be made of those that are appropriate to go back to state forest tenure. A decision will be made about the split, and then based on that assessment those areas will go back into their relevant tenure classes and the forest reserve tenure will be of no use in the future, because we will have decided whether it should all be national park, regional park or whether it needs to go back to state forest. So that is a process that is currently underway.*[120]

5.11.3 Potential risk to areas of high conservation value and tourism

A significant number of submissions stated that the *forest reserve* tenure should be retained.[121] The QTIC highlighted the importance to the tourism industry of areas of high conservation value. Mr Daniel Gschwind noted that commercial tourism operators have a fundamental interest in the availability, accessibility and existence of *national parks* and other conservation areas.[122] He stated that the QTIC believes that:

> *… some of the current forest reserves are of very high conservation value and offer great potential also for future use for recreational and commercial tourism uses. We are keen to see those areas that have this high conservation value retain their current level of protection irrespective of what tenure they might end up falling into. But we certainly do not believe there should be unrestricted transfer of the current forest reserves to other tenures that would reduce, if you like, the conservation value of those areas.*[123]

The Chair of the Community Advisory Committee, Gondwana Rainforests of Australia World Heritage Area stated that a number of *forest reserves* in Queensland have been identified as containing World Heritage values and the loss of the tenure would have an impact on areas with outstanding universal values.[124]

5.11.4 A transitional tenure

A number of submissions contended that the *forest reserve* tenure serves a useful purpose to aid the transition of areas with encumbrances, such as grazing, occupation licenses and apiaries, to *national park* status.[125] Gecko considers that the amendments to grandfather and abolish the *forest reserve* tenure is premature and should not occur until after the Government's review and reclassification

120 Dr Liz Young, *Public Hearing Transcript*, p.29

121 Submissions 7, 8, 10 to 13, 15 to 18, 20, 21, 25 to 27, 29, 30, 32 to 38, 40 to 46, 48, 50, 55, 58, 59, 61, 69 to 71, 89, 101, 105, 108, 109, 111 to 113, 115, 117, 124, 127, 141, 142, 146, 147, 150, 154, 157, 160, 163, 170, 172, 173, 175, 176, 178, 188 to 190, 193, 201 and 203

122 Daniel Gshwind, *Public Hearing Transcript*, p.12

123 ibid., p.13

124 The Chair of the Community Advisory Committee, Gondwana Rainforests of Australia World Heritage Area, Submission 151, p.1

125 Submissions 8, 10 to 13, 15 to 18, 20, 21, 25 to 27, 29, 30, 32 to 38, 41 to 46, 48, 55, 58, 59, 69 to 71, 88, 89, 105, 108, 109, 111 to 113, 117, 127, 128, 130, 134, 142, 147, 168, 172, 173, 175, 178, 188, 189, 201 and 203

process had been completed.[126] Other submissions questioned whether the amendments meant that areas declared as forest reserves would no longer be transitioned to be *national parks*.[127]

AgForce Queensland supported the grandfathering of the *forest reserve* tenure. It stated that over recent years many State forests had been closed and transitioned to national parks despite having limited conservation value.[128]

5.11.5 Committee comments

The committee notes that the DNPRSR is undertaking a review of areas currently declared as *forest reserves*, which will involve a scientific based assessment of each area's nature conservation, cultural and economic values, and that a decision will be made about designating forest reserves as either *national park*, *regional park* or *State forest*.

The committee notes QTIC's concerns about the importance of protecting areas of high conservation value that may be in current *forest reserves*, including their importance to the tourism industry. The committee considers that the outcome of the review of *forest reserves* should be publicly available, and recommends that the Minister advise the Legislative Assembly of the outcome of the review of current *forest reserves*, before action is taken to designate those areas as a different tenure.

Recommendation 5

The committee recommends that the Minister inform the Legislative Assembly of the outcome of the review of current *forest reserves* before action is taken to designate those areas as a different tenure.

5.12 Coordinated conservation area tenure – proposed phasing out

Coordinated conservation areas are made up of privately owned land declared as protected areas under the NC Act. Section 23 of the NC Act provides for multiple landowners to be involved in the environmental management of the coordinated conservation areas.

The Bill would 'grandfather' the coordinated conservation area protected area tenure to prevent further areas being dedicated as a coordinated conservation area, while providing for the management of existing coordinated conservation areas.[129]

5.12.1 Submissions

The majority of submissions which commented on the *coordinated conservation area* tenure stated that the objectives of coordinated conservation areas could be achieved through the nature refuge tenure. The WPSQ accepted that the coordinated conservation area tenure is rarely used, but argued that it is a useful mechanism to enable multiple landowners to agree on a management strategy to achieve beneficial outcomes for the conservation of wildlife and habitats.[130]

5.13 Timber reserve tenure – proposed phasing out

5.13.1 Proposed amendments

Clause 12 of the Bill amends section 28 of the Forestry Act to 'grandfather' the *timber reserve* tenure from 30 June 2014. The Explanatory Notes state that "this will leave State forests as the primary

126 Gecko, Submission 146, p.4
127 Submissions 7, 18, 67, 93, 141, 142, 146, 154, 163 and 188
128 AgForce Queensland, Submission 90, p.4
129 See clauses 41 to 54 of the Bill
130 WPSQ, Submission 50, p.2

tenure under the Forestry Act, in line with the government commitment to reduce and streamline legislative and regulatory complexity".[131]

5.13.2 Submissions

AgForce Queensland supported the grandfathering of timber reserves and stated that it looked forward to discussing with the State the future of forestry areas.[132]

5.14 Implementation of protected area, State forest and forest reserve declarations

Clauses 13 and 30 delete amendments to the NC Act and Forestry Act which would be introduced in the *Waste Reduction and Recycling Act 2011* when it automatically commences on 29 October 2013.[133]

The amendments in the *Waste Reduction and Recycling Act 2011* would provide that any declaration, revocation, amalgamation or other change to a protected area, State forest or timber reserve would not have effect until it was registered under the *Land Act 1994*. The deletion of these provisions retains the status quo, that a declaration, revocation, amalgamation or other change to a protected area, State forest or timber reserve takes effect from the making of the regulation.

The Explanatory Notes state that the removal of these provisions reinstates the previous situation to avoid any delays in the registration process that may have unintended consequences.[134]

131 Explanatory Notes, p.9
132 AgForce Queensland, Submission 90, p.5
133 Explanatory Notes, p.18
134 ibid.

6 Special management areas and resource use areas

6.1 Special management areas – proposed amendments

Clause 139 inserts new sections 42A to 42C into the NC Act to provide that the chief executive may declare, by notice, a special management area (SMA) over the whole, or part, of a prescribed *national park*. The chief executive may not delegate the power to declare a SMA.[135] A notice declaring a SMA must be clearly visible and erected or displayed at the entrance to the relevant area, define the area and describe the permitted activities.

A prescribed national park in this instance includes a national park (Aboriginal land), national park (Torres Strait Islander land) and national park (Cape York Peninsula Aboriginal Land).[136]

The Bill provides for two types of SMA:

- a ***special management area (scientific*)** which allows scientific activities to occur on national parks that are contrary to the management principles for national parks, ensuring continuation of uses that previously took place in a national park (scientific).

  The management of a special management area (scientific) may include: activities to protect the area's exceptional scientific values; controlled scientific study and monitoring; and control of threats to threatened wildlife, and
- a ***special management area (controlled action)*** which allows activities, contrary to the management principles for national parks, that previously occurred in a national park (recovery).

  The management of a special management area (controlled action) may include: the manipulation of the area's natural and cultural resources to protect or restore the area's natural and cultural value, and the continuation of *existing use* of the area consistent with maintaining the area's natural and cultural values.

  The term *existing use* is defined in section 17(4) of the NC Act, as a lawful use made of the area immediately before the declaration of the area as a SMA (controlled action).

Proposed new section 42B, inserted by clause 139, provides that the declaration of a SMA ends when the chief executive removes the notice declaring the special management area.

6.1.1 Purpose of special management areas – department's advice

The DNPRSR advised the committee that the primary intention of SMAs:

> *… was to provide for a flexible tool that park managers could use to respond to specific management issues. … in future if we have got a national park where we find that there is a new or emerging issue that needs to be addressed through similar sorts of manipulative practices instead of having to go through a process where the tenure of the park is changed, which is an extensive and time-consuming process, this allows the chief executive to make that decision.*
>
> *While it is a flexible tool, it really can only be used to maintain and enhance the values of the park in the first place. It is very carefully constrained and was deliberately done so within the way that the legislation was drafted.*[137]

In response to a question about time limits on SMAs, DNPRSR advised that the:

> *… time will be specified based on an assessment of what needs to take place. So in declaring an SMA – the policy work is still to be developed around this, but the intention*

135 See clause 150 of the Bill
136 See clause 139 of the Bill
137 Dr Liz Young, *Public Hearing Transcript*, p.28

> *is that an SMA will not be forever, that a time frame will be provided in a very similar way to when we permit a particular activity, and at the end of that particular time frame we could then extend it, renew it.*[138]

6.2 Special management areas – stakeholders' views

AgForce Queensland supports "the Bill's creation of special management areas which can be determined and implemented on a case-by-case situation where science supports it".[139]

The QMDC and WPSQ stated that the proposed establishment of SMAs would not improve what is provided for in the current NC Act. They consider that SMAs add complexity and reduce transparency and accountability.[140] The National Parks Association Queensland and Gecko consider that it would be more efficient to retain the existing *national park (scientific)* and *national park (recovery)*.[141]

Other submissions stated that the definition of SMAs is vague. In particular, submitters were concerned that the term *existing use* may allow grazing to continue in areas declared as a special management area (controlled action).[142] At the public hearing, Mr Peter Ogilvie stated:

> *The other thing special management areas do is allow previous use to continue inside the national park. Now a previous use could be anything. … we would argue that special management areas are unnecessary and add greater complexity than exists at the present moment where you actually have a national park (scientific) and national park (recovery) and a national park. So why have all this complexity?*

The WWF Australia, and other submissions, raised concerns that a SMA can be declared or revoked by the chief executive without any process of public consultation or parliamentary scrutiny.[143] The Balkanu Corporation and Cape York Land Council are concerned that there is no requirement for the chief executive to consult with or gain the consent of traditional owners before declaring a SMA in a *national park (Cape York Peninsula Aboriginal land)*.[144]

Mr Terry Piper, Balkanu Corporation, raised concerns about a lack of consultation with Aboriginal owners before a SMA could be declared on a *national park (Cape York Peninsula Aboriginal Land)*. At the public hearing, Mr Piper stated that:

> *The way it has been explained to use is that special management areas probably will not apply to the parks on Cape York, but what we are saying is that if they do then the traditional owners should be agreeing to those particularly within the national parks which are Aboriginal land.*[145]

6.2.1 Chief executive's decision to declare a special management area

The committee notes the concerns raised in submissions about the potential use of SMAs, in particular, the power to permit an existing use in a national park that has been declared a SMA (controlled action).

The committee notes that SMAs will be used to permit important activities, previously permitted under the *national park (recovery)* and *national park (scientific)* tenures. Such activities may include measures to protect threatened wildlife or to restore an area's natural and cultural value. The

138 ibid., p.31
139 AgForce Queensland, Submission 90, p.4
140 Queensland Murray-Darling Committee Inc, Submission 127, WPSQ, Submission 50 and Sunshine Coast and Hinterland Branch of WPSQ, Submission 117
141 National Parks Association Queensland, Submission 142 and Gecko, Submission 146
142 Submissions 140, 142, 157, 171, 176
143 WWF Australia, Submission 147 and Magnetic Island Nature Care Association Inc., Submission 176
144 Balkanu and Cape York Land Council, Submission 197
145 Terry Piper, *Public Hearing Transcript*, p.10

committee notes DNPRSR's comments about the need for flexibility in order to achieve these aims and to manage national parks effectively.

The committee notes that provisions in the Bill are aimed at ensuring that the public and interested parties are aware of a SMA. For example, in addition to the requirements in the Bill provides for the chief executive to erect or display a notice, the chief executive must also publish a copy of the notice on the department's website and publish a notice in the gazette about the SMA.[146]

While the committee does not disagree with the proposed declaration of SMAs the committee regards those declarations as significant. The committee considers that the chief executive's decision to declare a SMA over a national park would effectively override the decision of the Governor in Council to declare an area a national park. The chief executive's decision would not be subject to scrutiny by Parliament. The chief executive's power therefore raises a fundamental legislative principle issue (see chapter 10).

Given the fundamental legislative principle issue raised by proposed section 42A of the NC Act and the concerns raised in submissions, the committee recommends that the Bill be amended to enable parliamentary scrutiny of the chief executive's decision to declare a SMA over all or part of a national park. The committee does not consider the preparation and tabling of a gazette notice to be a significant burden on the DNPRSR, and it would allow parliamentary scrutiny of these important decisions.

Recommendation 6

The committee recommends that the Bill be amended to provide that the chief executive may, by gazette notice, declare a prescribed national park, or part of a prescribed national park as a special management area (controlled action) or special management area (scientific).

The gazette notice declaring the SMA should include the information currently listed in clause 139 of the Bill (proposed section 42A(2)(c) and (d) of the *Nature Conservation Act 1992*) to identify the limits of the area to which the notice applies and the prescribed activities that may be carried out in the area.

The amendment should provide that while the gazette notice is not subordinate legislation, it must be tabled in the Legislative Assembly and is subject to disallowance provisions under the *Statutory Instruments Act 1992***.**

6.3 Resource use area – proposed amendments

Clause 139 inserts new section 42C into the NC Act to provide for the declaration, by regulation, of a resource use area over all, or part, or a *regional park*. Mining, geothermal activities and greenhouse gas storage activities would be permitted in an area of a *regional park* declared as a resource use area, as section 27 of the NC Act (which prohibits those activities in specified tenures) does not apply to a resource use area in a *regional park*.[147]

The Explanatory Notes state that clause 139 "will allow for the distinction between former resources reserves where resource activity is permitted, and conservation parks where this activity is not allowed, to be maintained when the changes to the tenure structure take place".[148]

While the Explanatory Notes state that clause 139 allows for the distinction between *resources reserves* and *conservation parks,* the Bill does not make a clear distinction. It therefore appears possible that a current *conservation park* which would become a *regional park* could then be

146 NC Act, section 42A(2) and (3), as inserted by clause 139
147 ibid., sections 27 and 42C, as inserted by clause 139
148 Explanatory Notes, p.4

declared as a resource use area by the chief executive. In response to a question taken on notice at the committee's public briefing on 2 September, the DNPRSR advised that:

> *… the Bill as currently drafted allows for the automatic transfer of all conservation parks into regional park tenure **without** a resource use area (RUA) over it. However, further provisions may be required to put beyond doubt that there is no opportunity for an RUA to be declared over a former conservation park in the future. The department proposes to work with the Office of Queensland Parliamentary Counsel (OQPC) to identify options in this regard.*[149]

6.4 Resource use areas – stakeholders' views

Five submissions opposed mining, geothermal activities and greenhouse gas storage in former *conservation parks*.[150] The QTIC stated that:

> *Some conservation parks within Queensland hold exceptional natural and cultural resources and values, including: Mon Repos Conservation Park which is home to the largest concentration of nesting marine turtles on the eastern Australian mainland; Joseph Banks Conservation Park which is where Captain James Cook, with Sir Joseph Banks, made his first landing in Queensland; and well-known tourism destinations such as Fraser Island and South Stradbroke Island.*[151]

The QTIC recommend that further provisions be included in the Bill to put beyond doubt that there is no opportunity for a resource use area to be declared over a current *conservation park*.[152]

Mr Terry Piper, Chief Operating Officer, Balkanu Cape York Development Corporation, said that traditional owners should be consulted before a regional park is declared a resource use area.[153]

6.5 Committee's view

The committee notes that, as currently drafted, the Bill provides that a resource use area may be declared over any *regional park*, and the Bill does not distinguish between *resources reserves* and *conservation parks*, once they become a *regional park*. The committee also notes the concerns raised in submissions about the combining the current *conservation park* and *resources reserves* tenures.

The committee unanimously recommends that the Bill be amended to put beyond doubt that a current *conservation park* could not be declared a resource use area. The committee notes that the DNPRSR advised that it is working with the Office of Queensland Parliamentary Counsel to identify options.

Recommendation 7

The committee recommends that the Bill be amended to guarantee protection of existing *conservation parks* and put beyond doubt that mining, geothermal activities and greenhouse gas storage activities will not be permitted on land formerly dedicated as a *conservation park*, or future areas with similar characteristics, and will be permitted only on land that was formerly a *resources reserve* or future areas that have similar characteristics to a *resources reserve.*

149 Jason Jacobi, Acting Deputy Director-General, Queensland Parks and Wildlife Service, Department of National Parks, Recreation, Sport and Racing, *Correspondence*, 9 September 2013, p.2, see Appendix C

150 Submissions 146, 149, 152, 164 and 190

151 QTIC, Submission 190, p.5

152 ibid.

153 Terry Piper, *Public Hearing Transcript*, p.7

7 Management planning process for protected areas, marine parks and recreation areas

7.1 Introduction

Section 111 of the NC Act currently provides that the Minister must prepare a management plan for every protected area. Sections 29 to 33 of the MP Act and sections 18 to 22 of the RAM Act provide that the Minister must prepare a management plan for marine parks and recreation areas, respectively.

The committee understands that a significant number of protected areas do not currently have a management plan. The Auditor-General's *Report to Parliament No. 2: 2012–13, Follow up of 2010 audit recommendations* indicated that only 98 of 576 protected areas had park management plans.[154]

In his explanatory speech, the Minister stated that "By their [the former Government's] own admission, it would take 30 years and $60 million to complete them all".[155] The Minister stated that "the management planning process that is currently within the Nature Conservation Act will be completely reformed to allow for greater flexibility and resource efficiency in the management of protected areas".[156]

The Bill amends the management planning process for protected areas, under the NC Act, to:

- replace the requirement for all protected areas to have management plans with a requirement for all protected areas to have a management statement, and
- "streamline the management planning process"[157] for the preparation of management plans for protected areas, for which the Minister decides to prepare a plan. Changes include amending the consultation requirements on draft plans, the review of management plans and the process for amending management plans.

The Bill also amends the process for management plans for marine parks and recreation areas.

7.2 Replacement of management plans with management statements for protected areas

The Bill removes the requirement for the Minister to prepare a management plan for each protected area. Instead, the Bill provides that each protected area is to have a management statement prepared by the chief executive.[158] The requirement to prepare a management plan for a marine park and recreation area remains.[159]

The Explanatory Notes state that the current process for preparing management plans is:

> *… extremely resource intensive. By contrast, management statements are a simpler expression of management intent for protected areas without requiring public consultation and are considered a satisfactory planning instrument for many protected areas.*[160]

7.2.1 Support for removal of requirement for management plans

Fraser Coast Opportunities, Kingfisher Bay Resort Group and Brisbane Marketing support administrative streamlining of the development of management plans and the removal of the

154 Queensland Audit Office, Report to Parliament 2: 2012–13, Follow up of 2010 audit recommendations, October 2012, available at http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2012/5412T1304.pdf
155 *Hansard*, 20 August 2013, p.2606 (Hon. Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing)
156 ibid.
157 Explanatory Notes, p.5
158 NC Act, section 111, as amended by clause 65
159 MP Act, section 30; and RAM Act, section 18
160 Explanatory Notes, ibid.

requirement to prepare a management plan for each protected area.[161] The QTIC supports the "amendments to the management planning process under the NCA that will reduce legislative complexity and red tape, including the provision that removes the mandatory requirement for the Minister to prepare a Management Plan".[162]

The O'Reilly's Rainforest Retreat stated that the production of management plans had been a complete failure. It stated that management plans are incredibly slow to produce and out-of-date when documented, or never completed. It considers that replacing management plans with management statements seems a reasonable goal which should be achieved, while providing direction for the management of the park.[163]

AgForce Queensland supported the prioritisation of management plans for those areas with particular cultural or natural resource values.[164]

While they support streamlining management planning processes to reduce red tape and removing the requirement for a management plan for all protected areas, the Alliance for Sustainable Tourism, the Association of Marine Park Tourism Operators Pty Ltd and QTIC raised concerns about the lack of public consultation on management statements[165] (see section 7.3.4 of this report).

7.2.2 Concerns about removal of requirement for management plans

A number of submissions oppose the removal of the requirement for all protected areas to have a management plan.[166] The Sunshine Coast and Hinterland Branch of the WPSQ stated that replacing management plans with a management statement waters down the comprehensive nature of a management plan, and provides little incentive for any future preparation of a plan to ensure best outcomes for the park and protection of key values.[167] Gecko accepts that management plans may be costly to prepare, but stated that in long run management plans will save the government money by preventing harmful activities in protected areas.[168] Other submissions raised concerns that replacing management plans with management statements would mean that the public was not consulted on how protected areas are managed.[169]

The WPSQ supports the need to review the management planning process, but it does not consider that the introduction of management statements is the answer.[170] Other submissions stated that the department should increase staff numbers to complete management plans, and the Bill should not remove important safeguards provided by management plans.[171]

Mr Ogilvie stated that there is some merit in replacing the requirement to prepare a management plan with a requirement to have a management statement; however the amendments go too far, particularly in removing or constraining public scrutiny of the management of protected areas.[172]

Submissions based on material prepared by Mr Ogilvie, and other submissions, noted that while the Bill provides that Minister may prepare a management plan, they argued that there is no compulsion or incentive for Minister to do so.[173]

161 Submissions 149, 152 and 164
162 QTIC, Submission 190, p.5
163 O'Reilly's Rainforest Retreat, Submission 94, p.3
164 AgForce Queensland, Submission 90, p.5
165 Alliance for Sustainable Tourism, Submission 182, p.1, Association of Marine Park Tourism Operators Pty Ltd., Submission 184, p.1 and QTIC, Submission 190, p.5
166 Submissions 53, 56, 93, 113, 115, 117, 119, 122, 124, 127, 146, 151, 156 and 160
167 Sunshine Coast and Hinterland Branch of the WPSQ, Submission 117, p.3
168 Gecko, Submission 146, p.4
169 Submissions 98 and 157
170 WPSQ, Submission 50, p.3
171 Submissions 53, 56 and 143
172 Peter Ogilvie, Submission 157, p.2

7.2.3 Circumstances where Minister may prepare a management plan

The Bill provides that the Minister may prepare a management plan for a protected area, if he or she is satisfied it is appropriate having regard to:

- the importance of the area's natural or cultural resources and values
- any significant or particular threats to the natural or cultural resources and values
- any significant public interest concerns for the area's natural or cultural resources and values, and
- the nature of any proposed commercial or recreational uses of and opportunities for, the area and the proposed management of those uses.[174]

Where a management plan is developed, it supersedes a management statement, and the protected area must be managed in accordance with the management plan. A management plan may be combined with a management plan for another protected area, a management plan for a marine park, or a management plan for a recreation area.[175]

The Explanatory Notes state that "it is intended that management plans be required where there is a significant need for a comprehensive planning process, including a requirement for public consultation and input".[176]

A significant number of submissions, include those based on material prepared by Mr Ogilvie, stated that any park that was subject to activities that are contrary to the cardinal principle, such as tourist resort development and grazing, should have a management plan developed before such an activity could be authorised. Those submissions stated that such an approach would ensure that the key values of the park had been clearly assessed and expressed and the public's views were heard.[177]

7.2.3.1 Committee's view

The committee notes the DNPRSR's comments that the current requirement to prepare a management plan for every protected area is extremely resource intensive. The committee also notes the Minister's comments that:

> *In those situations where there is a particular need for a management plan, for example, where more complex management issues need to be resolved, a management plan can take the place of a management statement.*[178]

The committee notes concerns raised in submissions about the potential impact of commercial and recreation uses on the natural and cultural values of a protected area. The committee recommends that a commercial operator be required to prepare an assessment of the impact of the proposed commercial or recreational use on the protected area's natural and cultural values. The assessment could be limited to the part of the protected area affected. The commercial operator should also be required to produce a strategy to mitigate any risks identified in the assessment. The impact assessment and risk-mitigation strategy should be provided to the DNPRSR, and made available publicly on the department's website.

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173 Submission 8, 10 to 14, 16 to 21, 25, 27, 29, 30, 32 to 38, 41 to 46, 48, 50, 59, 69 to 71, 83, 89, 105, 106, 108, 109, 111 to 113, 122, 123, 128, 130, 134, 142, 168, 172, 173, 175, 176, 178, 188, 189 and 203

174 NC Act, section 112, as inserted by clause 67

175 ibid., section 119, as inserted by clause 70; MP Act, section 32A, as inserted by clause 18; and RAM Act, section 22A, as amended by clause 86

176 Explanatory Notes, p.29

177 Submissions 8, 10 to 14, 16 to 18, 20, 21, 25, 27, 29, 30, 32 to 38, 41 to 46, 48, 59, 69, 70, 71, 83, 89, 105, 108, 109, 111 to 113, 122, 128, 130, 134, 142, 168, 172, 173, 175, 178, 188, 189 and 203

178 *Hansard*, 20 August 2013, p.2607 (Hon. Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing)

At the public hearing, the Mr Murray Stewart, Executive Officer, Queensland Outdoor Recreation Federation was invited to comment on the above approach. In response, Mr Stewart explained that most operators usually want access to only part of a national park. He said:

> *If you said that the processes for a full management plan are too long and let's just look at a specific area that then gets developed or comes across into the management plan that would definitely be workable. As I said, most of these user groups are after a particular spot; they are not after the whole area.*[179]

The committee also notes suggestions in submissions that a management plan be required for an area, if commercial or recreational activities are proposed that are contrary to the cardinal principle of national parks. When deciding whether to prepare a management plan, the Bill requires the Minister to have regard to the nature of any proposed commercial or recreational uses of the area and the proposed management of those uses. The committee considers that an assessment of the impact of the proposed commercial or recreational use on a protected area may assist the Minister to decide whether a management plan is required.

Recommendation 8

The committee recommends that a commercial operator be required to:

- prepare an assessment of the impact of the proposed commercial or recreational use on the protected area's natural and cultural values. The assessment could be limited to the part of the protected area affected, and
- prepare a strategy to mitigate any risks identified in the assessment
- provide the assessment and strategy to the Department of National Parks, Recreation, Sport and Racing.

The committee recommends that after an operator's activity has been approved, the impact assessment and risk-mitigation strategy are published on the department's website.

The committee notes stakeholders' concerns about opportunities for public input to management plans in the context of the Government's policy to increase access to national parks. Irrespective of whether there is a management plan in place, to reassure stakeholders, the committee considers that it would be desirable for members of the public to have the opportunity to comment on proposals for significant ecotourism facilities. The committee suggests that work is required to develop criteria to determine which proposals for ecotourism facilities would trigger an invitation for members of the public to comment on a proposed ecotourism facility before it is considered by government.

179 Murray Stewart, *Public Hearing Transcript*, p.5

Recommendation 9

The committee recommends that the Minister inform the Legislative Assembly during the second reading debate of the criteria for and types of proposed ecotourism facility which would trigger an invitation for public comment on the proposal before approval is considered.

7.2.4 Management plans for national park (Aboriginal land) and national (Cape York Peninsula Aboriginal land)

7.2.4.1 Potential inconsistency with Indigenous Management Agreements

The Balkanu Corporation and Cape York Land Council stated that there is a contractual obligation on the State to prepare a management plan for *national parks (Cape York Peninsula Aboriginal Land)* in existing Indigenous Management Agreements (IMAs) between the State and Aboriginal landowners.[180] The Carpentaria Land Council Aboriginal Corporation stated that a management plan is required where there is a native title determination or registered native title claim over an area.[181] At the public hearing, Ms Marita Stinton, Legal Officer, Cape York Land Council advised the committee that:

> *… the Bill as it stands will create these legal inconsistencies between the provisions that are in the Indigenous Management Agreements that are in place for a number of parks. There will be obligations on both the State and traditional owners in those agreements that will be inconsistent with what will be in the Act. We do not really see how that can be addressed unless consideration is given to it and it is dealt with now.*[182]

The Explanatory Notes stated that section 112 of NC Act "retains existing provisions regarding the processes for the preparation of any management plans for national park (Cape York Peninsula Aboriginal land) and indigenous joint management areas".[183] From the current wording of the Bill and content of the Explanatory Notes, it is not clear to the committee how this is to be achieved.

7.2.4.2 Committee's view

Given the lack of clarity about the impact of the removal of the requirement to prepare a management plan on existing IMAs between the State government and Indigenous owners, the committee recommends that the Minister make a statement at second reading about what action he proposes to take to resolve the apparent inconsistencies.

180 Balkanu and Cape York Land Council, Submission 197, p.5
181 Carpentaria Land Council Aboriginal Corporation, Submission 187, p.6
182 Marita Stinton, Legal Officer, Cape York Land Council, *Public Hearing Transcript*, p.8
183 Explanatory Notes, p.29

Recommendation 10

The committee recommends that the Minister inform the Legislative Assembly during the second reading debate what action is proposed in response to concerns that the proposed removal of the requirement to prepare a management plan is consistent with contractual obligations in an Indigenous Management Agreements.

7.3 Management plans and management statements for protected areas

7.3.1 Introduction

The Explanatory Notes state that "management statements are a simpler expression of management intent for protected areas without requiring public consultation and are considered a satisfactory planning instrument for many protected areas".[184]

The committee notes that management statements are currently prepared for many protected areas, but they are only administrative documents and are not formally recognised under the NC Act.[185] The DNPRSR advised the committee that there were 98 management plans and 338 management statements in place at 6 September 2013.[186]

The Bill provides that any existing, non-statutory management statements prepared and published on the department's website prior to commencement of the Bill, are to be considered as a management statement for the purpose of section 111 of the NC Act, so long as they comply with certain requirements.[187]

7.3.2 Differences and similarities between management plans and management statements

The committee sought further information from the DNPRSR about the similarities and differences between a management plan and a management statement. The DNPRSR's written response stated that the Bill provides that both a management plan and a management statement must:

- be consistent with the management principles for the protected area tenure class, and
- state management outcomes for the protection, presentation and use of the area and the policies, guidelines and actions to achieve the outcomes.[188]

7.3.2.1 Consultation

The DNPRSR stated that the key differences between management plans and management statements are the consultation requirements and approval processes.[189] There is no requirement to consult on a management statement, unlike during the preparation of a management plan. A management plan must be approved by gazette notice by the Governor in Council, while the chief executive must notify the making of a management statement by gazette notice.[190]

7.3.2.2 Relative weight of a management plan and management statement

The committee notes that there are differences in the weight given to management plans and management statements in the management of a protected area. For example, if a management plan is in place, a protected area 'must be managed in accordance with' the plan. In contrast, if a protected area has a management statement, the management of the protected area must

184 ibid., p.5
185 ibid.
186 Jason Jacobi, *Correspondence*, 9 September 2013, p.2, see Appendix C
187 NC Act, section 191, as inserted by clause 82
188 Dr Liz Young, *Correspondence*, 23 September 2013, see Appendix E
189 ibid.
190 NC Act, section 118, as inserted by clause 70; and NC Act, section 113A, as inserted by clause 68

'have regard to' the management statement and the statement must be considered in managing the area.[191] Further, where a management plan is in place:

- any licence, permit or other authority issued to take, use keep or interfere with a cultural or natural resource of a protected area must be consistent the management plan[192]
- if the management plan was given effect by regulation, it overrides any planning scheme for the area[193]
- local government must not issue or give approval, consent, permit or other authority for use of, or development on the land that is inconsistent, if the management plan was given effect by a regulation.[194]

The DNPRSR's fact sheet on the proposed amendments to the NC Act states that "… given the nature of management statements as a less comprehensive planning process, it is not intended to extend full powers to these planning instruments".[195]

7.3.3 Concerns about the effectiveness of management statements

Submissions raised a number of concerns about management statements. Gecko considered that a simple management statement, without any public consultation, will be inadequate to ensure enduring protection of the natural values of national parks when conflicting uses are imposed, especially if uses that conflict with the conservation of nature are imposed on national parks.[196]

Other submissions argued that management statements significantly weaken the planning required to manage a national park for its intended purpose, and that management statements are toothless.[197] Several submissions including WWF Australia said that management statements will not guarantee preservation of the conservation values in a protected area. Those submissions pointed out that management statements need only be considered in managing an area, including the assessment of applications for use of the area, they do not need to be adhered to.[198]

In response to a request from the committee for further information about management statements, the DNPRSR advised the committee that the final template for management statements is still under development. The DNPRSR stated that the broad topics covered by both a management plan and a management statement may include:

- *the strategic direction for park management including documenting key values and approaches for managing natural and cultural values; improving access; facilitating ecotourism, recreation and heritage experiences; providing for partnerships with Traditional Owners and Indigenous communities; managing protected area permits and interests; and enabling management effectiveness evaluation*
- *approaches to monitoring and evaluation of park management, and*
- *a forward schedule for implementing supporting strategies and determining priorities for management.*[199]

The DNPRSR stated that:

191 ibid., sections 5 and 15, as amended by clauses 25 and 27
192 ibid., section 137
193 ibid., section 122
194 ibid., section 123
195 Department of National Parks, Recreation, Sport and Racing, *Nature Conservation Act proposed amendments – Frequently asked questions,* accessed 20 September 2013 from http://www.nprsr.qld.gov.au/about/legislation/pdf/nc-act-ammend-faq.pdf
196 Gecko, Submission 146, p.4
197 Submissions 18, 88 and 137
198 Submissions 58, 147 and 197
199 Dr Liz Young, *Correspondence*, 23 September 2013, p.2, see Appendix E

> *"While both documents will cover similar topics, a management statement is designed as a simpler expression of the management intent for an area, with a management plan addressing key management issues in a more detailed and comprehensive manner, including addressing issues raised by stakeholders.*[200]

7.3.4 Concerns about lack of consultation on management statements

A significant number of submissions stated that there should be at least a single round of consultation during the preparation of a management statement.[201] Gecko stated that national parks belong to Queenslanders, not the government of the day; it considered that excluding the public from decision making is unacceptable.[202]

Other submissions stated that the public consultation on a management statement would: reduce the risk of corruption by developers and lobbyists;[203] ensure management statements are legitimate and useful[204] and well informed by experts and interested members of public[205]; and ensure the public is engaged and public views on potential commercial and recreational activities in a protected area are heard and taken into account.[206] Submissions suggested that any public consultation on management statements should include adequate public notice to allow public to comment[207] and be transparent and accountable.[208]

7.3.5 Committee's view

The committee notes the concerns raised in submissions about the content of management statements and their effectiveness as an instrument for managing protected areas. The committee also notes suggestions in submissions that there should be at least one round of public consultation during the preparation of a management statement.

New section 112 of the NC Act provides that the Minister may prepare a management plan in light of any significant public interest concerns for the area's natural or cultural resources and values (see Section 7.4 of this report). The committee suggests that the Minister consider carefully any requests for public consultation on the management of a protected area, as part of his or her consideration of whether to prepare a management plan for the protected area.

Committee comment

The committee suggests that the Minister consider carefully any requests for public consultation on the management of a protected area when considering whether to prepare a management plan for a protected area.

7.4 Public consultation on draft management plans

The Bill removes the requirement, under the NC Act, for two rounds of public consultation on a draft management plan for a protected area (a draft plan): consultation on the intention to prepare a draft plan;[209] and consultation of the draft plan after it has been prepared.[210] The Bill requires one round of

200 ibid.
201 Submission 8, 10 to 14, 16 to 18, 20, 21, 25, 27, 29, 30, 32 to 38, 40 to 46, 48, 53, 56, 59, 67, 69, 70, 71, 89, 94, 105, 106, 108, 109, 111, 112, 115, 117, 119, 122 to 124, 127, 128, 130, 134, 139, 142, 144, 146, 147, 149, 150, 152, 157, 163, 164, 172, 173, 175, 178, 180 to 184, 188 to 190, 195, 201, 202 and 203
202 Gecko, Submission 146, p.4
203 Submissions 63 and 83
204 Submissions 67, 101 and 127
205 Submissions 98 and 147
206 Submissions 53, 56, 115
207 Submissions 113 and 157
208 Submission 18
209 NC Act, sections 113 and 114
210 ibid., sections 115 and 116

public consultation on a draft plan. This approach is consistent with the public consultation requirements for marine park and recreation area management plans.[211]

The Explanatory Notes state that the reforms to the management planning process for protected areas will result in significant time, cost and resource savings for government in administering and managing the planning process; and for business and community members in their participation in consultation processes.[212] The Alliance to Save Hinchinbrook Inc. stated that the costs of consultation are nothing more than the cost of living in a parliamentary democracy. They stated that responding to consultation is not mandatory, so costs to the community are not a relevant consideration in this context.[213]

Submissions raised concerns about the removal of two-stage public consultation during the preparation of management plans. The Townsville Branch of the WPSQ and other submitters, were deeply concerned about removing opportunities for public consultation, input and review of management plans.[214] The QMDC stated that reducing the current two-step consultation would disempower local communities, key stakeholders and the public from exercising their public interest rights.[215] Mr Ogilvie, National Parks Association of Queensland, told the committee that one stage of consultation would be acceptable, but expressed concerns about adequate advertising of the consultation"[216]

At the public hearing, Mr Murray Stewart, Queensland Outdoor Recreation Federation stated that:

> *We understand the complexities and inefficiencies of the current management plan process, but believe that community consultation should be the starting point of any planning process. Management plans should be developed from within the community. The local community has an intimate understanding of the protected areas and, in many cases, have a unique bond with these areas. There is real scepticism among our members as to how flexible an already written draft plan will be once community input is given community consultation must guide development of draft plan.*[217]

7.4.1 Notice of draft plan and invitation to make submissions

The Minister must prepare the draft plan, publish a notice about the draft plan on the department's website and ensure the draft plan is available for inspection. The notice must state:

- the area to which the draft plan relates
- where a copy of the draft plan is available to view during business hours
- that the draft plan is available on the department's website, and
- invite written submissions within a specified period, from the public, including landholders and indigenous people with an interest in the area.[218]

The requirements above are similar to those currently in the NC Act, MP Act and RAM Act. The main difference is that the Bill replaces the current requirement in the NC Act to publish the notice in a newspaper, with a requirement to publish the notice on the department's website.

In his submission, Mr Peter Ogilvie stated that "there can be few more covert ways to invite public submissions than to hide the invitation somewhere in a large website that the public would not regularly consult".[219]

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211 MP Act, section 31; and RAM Act, section 19
212 Explanatory Notes, p.11
213 Alliance to Save Hinchinbrook Inc., Submission 19, p.6
214 Submissions 7, 65 and 91
215 Queensland Murray-Darling Committee Inc., Submission 127, p.9
216 Peter Ogilvie, *Public Hearing Transcript*, p.16
217 Murray Stewart, *Public Hearing Transcript*, pp.1 and 2
218 NC Act, section 115A(2)), as inserted by clause 68

Other submitters stated that the requirement to publish a public notice about a draft plan including in a newspaper should remain.[220] The QORF stated that its "members do not sit in front of computers and this needs to be considered in future notices and communications".[221] At the public hearing, Mr Stewart, QORF, stated that:

> *While we understand that it is the minister's intent to email registered stakeholders of a notification, it is not formalised in these amendments. We believe that simply posting a notice on the department's website is not adequate and a more formal notification process is definitely needed.*[222]

7.4.2 Exemptions from the requirement to publish a notice and seek submissions

Under the Bill, the Minister would not be required to publish a notice and seek submissions about a draft plan, if the draft plan:

- is substantially uniform or complementary with another Act or a law of the Commonwealth or another State
- adopts an Australian or international protocol, standard, code or intergovernmental agreement or instrument and an assessment of the benefits and costs associated with the plan has already been made for, or is relevant to, Queensland, or
- the Minister considers there has been adequate other public consultation about the matters in the plan.[223]

The Kedron Brook Catchment Branch of the WPSQ stated that "These loopholes are an encouragement to deliberately ignore public concerns in the pursuit of narrow agendas, and will be far too easy and tempting to abuse. Leave them out". It was particularly concerned about the exemption which provides that the Minister is not requirement to publish a notice and seek submissions, if he or she considers there has been adequate consultation about matters in the plan.[224]

The committee notes that the exemptions provided for in the amendments to the NC Act are similar to the current exemptions that apply to consultation on draft management plans for marine parks and recreation areas.[225]

7.4.3 Committee's view

The committee considers that the proposal to reduce the current two-stage public consultation on management plans to one round of public consultation is appropriate. However, the committee considers that it is important that the consultation undertaken by the department is transparent and inclusive.

The committee notes comments in submissions about the limitations of relying on the department's website to notify interested parties about a draft plan. The committee considers that similar arguments can be made about the effectiveness of relying solely on newspapers to notify interested parties. The potential fundamental legislative principles issues raised by this amendment are discussed at chapter 10 of this report.

The committee recommends unanimously that the Bill be amended to provide that the Minister must take reasonable steps to notify interested parties that a draft management plan is available for comment. Such steps may include publishing a notice on the department's website and/or in a

219 Peter Ogilvie, Submission 157, p.2
220 Submissions 58, 140, 142, 143, 154, 157 and 176
221 Queensland Outdoor Recreation Federation, Submission 143, p.2
222 Murray Stewart, ibid., p.2
223 NC Act, section 115A(5), as inserted by clause 68
224 Kedron Brook Catchment Branch of the WPSQ, Submission 67, p.2
225 MP Act, section 31(4) and (5); and RAM Act, section 19(4)

newspaper, emailing stakeholders and interested parties or some other form of communication. The committee considers that web-based notification should be made as accessible as possible, for example, creation of a management plan consultation page to which people can subscribe to receive notification of any changes to the content of the page. The committee considers that the Minister should have the discretion to decide the best communication method in each circumstance.

Recommendation 11

The committee recommends that the Bill be amended to require the Minister to take reasonable steps to notify interested parties that a draft management plan is available for comment.

The steps taken by the Minister and his or her department may include publishing a notice on the department's website, emailing stakeholders and publishing in a local newspaper.

Recommendation 12

The committee recommends that the Minister inform the Legislative Assembly during the second reading debate of the steps that will be taken to notify interested parties that a draft management plan is available for comment, including any plans for a management plan consultation page to which people may subscribe to receive updates.

The committee notes that the specified period for seeking submissions on a draft plan or amendments to a management plan is different in the NC Act and RAM Act (at least 20 business days) and MP Act (at least 28 days).[226] On the face of it, 20 business days and 28 days appear to provide for the same minimum time for submissions. However, if the consultation was undertaken during public holidays, for example over Christmas, interested parties providing submissions on a management plan for a recreation area or protected area may be given more time than those commenting on a management plan for a marine park.

Recommendation 13

The committee recommends that the Bill be amended to provide consistent minimum periods of time for making submissions on draft management plans and amendments to management plans in the *Nature Conservation Act 1992*, *Marine Park Act 2004* and *Recreation Areas Management Act 2006*.

7.5 Final management plan

The Minister must consider all submissions made about the draft plan when finalising the management plan for a protected area, marine park or recreation area.[227]

A final management plan for a protected area, marine park and recreation area is to be approved by gazette notice by the Governor in Council. The gazette notice must state where a copy of the management plan is available for inspection.[228]

The chief executive must publish a copy of each management plan, as amended, on the department's website and keep a copy of each management plan available for inspection, without

226 NC Act, section 115A(4) and 120A, as inserted by clauses 68 and 72 RAM Act, sections 19(3) and 26(3) and MP Act, section 31(3) and 36(3)

227 Section 116 of the NCA (as inserted by clause 68), section 32 of the MP Act and section 21 of the RAM Act

228 NC Act, sections 118 and 119, as amended by clause 70, MP Act, section 29 and RAM Act, section 22

charge, by members of the public.[229] Section 133 of the NC Act provides that the chief executive must keep a register of management plans.

The Bill would remove the current requirement for a gazette notice approving a management plan for a marine park to be tabled in the Legislative Assembly.[230] The Explanatory Notes state that the amendments "streamline the provisions applying to the approval of management plans and provides consistency with equivalent provisions in the NCA and RAM Act".[231]

7.5.1 Committee's view

The committee notes that there are currently two different mechanisms in NC Act, MP Act and RAM Act to formalise and give effect to a management plan. The Bill makes those mechanisms consistent, by removing the requirement for a gazette notice approving a marine park management plan and the management plan, to be tabled in the Legislative Assembly. Parliamentary scrutiny of a management plan is therefore removed. Section 10 of this report discusses fundamental legislative principles issues.

In the future, potentially difficult decisions will need to be made to balance the conservation of nature with recreational and commercial outcomes in the management of protected areas, marine parks and recreation areas. The committee considers that it is important for management plans, which will guide those decisions, to be subject to appropriate parliamentary scrutiny.

The committee recommends unanimously that the Bill be amended to provide that a gazette notice approving a protected area, marine park or recreation area must be tabled in the Legislative Assembly and be subject to the disallowance provisions in sections 49 to 51 of the *Statutory Instruments Act 1992*. The amendment to the Bill should also require that a copy of the management plan be tabled at the same time as the gazette notice.

Recommendation 14

The committee recommends that the Bill be amended to provide that a gazette notice approving a management plan for protected area, marine park or recreation area must be tabled in the Legislative Assembly and be subject to the disallowance provisions in sections 49 to 51 of the *Statutory Instruments Act 1992*.

The amendment to the Bill should also require that a copy of the management plan be tabled at the same time as the gazette notice.

The committee notes that there appears to be a drafting error in clause 77 of the Bill which amends section 133 of the NC Act. The intention of the amendment is to provide that the chief executive must keep a register of management statements, management plans and conservation plans. Clause 77 currently refers to section 133(1)(a) of the NC Act, however, the correct reference appears to be section 133(1)(c) of the NC Act.

229 NC Act, section 120D, as inserted by clause 72, MP Act, section 40 and RAM Act, section 32

230 RAM Act, section 29(2) to (4), omitted by clause 16

231 Explanatory Notes, p.20

Recommendation 15

The committee recommends that the Bill be amended to correct drafting error in clause 77 of the Bill.

7.6 Review mechanism for management plans

The Bill would retain the current requirement under the NC Act, MP Act and RAM Act to review management plans every 10 years. The Bill would, however, remove the current requirement in the NC Act and RAM Act to publish a notice and invite submissions on the Minister's intention to review a management plan.[232]

After reviewing the management plan, the Minister may prepare a new management plan, amend the existing management plan, or leave the existing management plan unchanged.[233] In addition, the Minister may decide that a management plan for a protected area, under the NC Act, should be replaced by a management statement.[234]

7.7 Amendment of management plans

7.7.1 Consultation on proposed amendments to a management plan

The Bill would provide that before amending a management plan for a protected area, marine park or recreation area, the Minister must:

- prepare the draft amendment
- publish a notice about the draft amendment on the department's website
- ensure the draft amendment is available for inspection, and
- invite interested parties to make a submission within a specified period.[235]

Submissions raised similar comments about the public notice of draft amendments to those raised about public notice on draft plans.

The committee recommends unanimously that the Bill be amended to provide that the Minister must take responsible steps to notify interested parties that a draft amendment to a management plan is available for comment. The potential fundamental legislative principles issues raised by these amendments are discussed in chapter 10 of this report.

Recommendation 16

The committee recommends that the Bill be amended to require the Minister to take reasonable steps to notify interested parties that a draft amendment to a management plan is available for comment.

The steps taken by the Minister and his or her department may include publishing a notice on the department's website, emailing stakeholders and publishing in a local newspaper.

7.7.2 Exemptions from requirement to publish a notice and seek submissions

The Bill would amend the NC Act, MP Act and RAM Act to provide that the requirement to publish a notice and invite submissions on an amendment to a plan does not apply, if the amendments:

232 NC Act, section 125 and RAM Act, section 31

233 NC Act, section 120G, as inserted by clause 72, MP Act, section 39, as amended by clause 21 and RAM Act, section 31, as amended by clause 90

234 NC Act, section 120G, as inserted by clause 72

235 NC Act, 120A, as inserted by clause 72, MP Act, section 36, as amended by 20, RAM Act, section 26, as amended by clause 87

- are to correct an error, make a change other than a substantive change, or are permitted by the current plan or regulation
- are to make a change to ensure the plan is consistent with State government policy
- are needed to ensure a management plan remains substantially uniform or complementary with another Act or a law of the Commonwealth or another State
- only adopt an Australian or international protocol, standard, code or intergovernmental agreement or instrument and an assessment of benefits and costs has already been made and was made for or is relevant to Queensland, or
- the Minister considers there has already been adequate other public consultation.[236]

Submissions raised concerns about the exemptions to a requirement to publish a notice to invite submissions. The National Parks Association of Queensland, Balkanu and Cape York Land Council and the Magnetic Island Nature Care Association Inc. stated that all of the exemptions to the requirement to publish a notice and seek submissions on a draft amendment should be removed.[237]

7.7.2.1 Amendment of a management plan to ensure consistency with State government policy

Of particular concerns to submitters was the exemption which provides that the Minister is not required to seek submissions on an amendment, if the amendment is to make a change to reflect the policy decisions of Government.[238]

The Explanatory Notes state "To ensure that management plans remain contemporary, the Bill will enable the Minister to make changes to a management plan to reflect policy decisions of Government without going through this process and the administrative burden it creates".[239]

In response to a question at the committee's public briefing on the Bill the DNPRSR gave the following example of an amendment to a management plan to ensure consistency with government policy:

> *…say, as part of our procurement policy we decided that all signs now had to go from being five metres high to seven metres high. At the moment the way that the planning process is established is that if we want to translate that into a management plan it has to go through a full process – through a consultation process and all of those other things – to enable that to happen. So we have a choice: we either have a management plan that has things in it that are inconsistent with government policy or we have to go through a significant process to make that change.*[240]

At the public hearing, Mr Ogilvie questioned what 'government policy' means in this context and asked whether it meant:

> *…Government policy that was advertised at a previous election or government policy that was simply thought of a few days ago? The public does not know if the plan is amended to so-call meet government policy. Parliamentary Counsel has also said that that is in breach of fundamental legislative principles, and we believe that that should not happen.*[241]

If the Minister amends a management plan to reflect policy decisions of Government without public consultation, the Minister must publish a notice on the department's website stating the

236 NC Act, section 120A, as inserted by clause 72, RAM Act, section 27, MP Act, section 36
237 Submissions 142, 157, 176 and 197
238 Submissions 50, 67, 142 and 157
239 Explanatory Notes, p.5
240 Dr Liz Young, *Public Briefing Transcript*, p.16
241 Peter Ogilvie, ibid., pp.16 and 17

amendments to the management plan and the reasons for the amendments.[242] The Explanatory Notes state this provides "greater transparency in the decision making process".[243] The Alliance to Save Hinchinbrook Inc. stated that "A post-facto unchallengeable statement of reasons published on the website says nothing about transparency".[244]

7.7.3 Committee's view

The committee notes that concerns raised in submissions about the broad scope of the exemptions to the requirement to publish a notice and seek submissions on a draft amendment to a management plan.

The committee considers that the exemption which provides for amendments to ensure that a management plan is consistent with State government policy raises potential fundamental legislative principles issues (see chapter 10 of this report). The committee notes that amendment of management plans to achieve consistency with Government policy could range from amendments with broad and significant impacts on the management of a protected area, to amendments to a management plan that are minor and have very limited impact on the natural and cultural values of a protected area.

Given the concerns raised in submissions, the committee proposes that the exemption from consultation on an amendment to a management plan be clarified, so that the scope of "State government policy about the management of the area to which the plan applies" in proposed section 120A of the NC Act is clear. The committee considers that consultation should be undertaken if the proposed amendments to a management plan to ensure it is consistent with government policy may affect the natural and cultural values of the park. The committee does not consider that consultation should be required on amendments that would not affect the natural and cultural values of the protected area. It is therefore recommended that the Bill be amended to more clearly specify the types of State government policy which would enable a management plan to be amended without seeking comments on the amendments.

Recommendation 17

The committee recommends that the Bill be amended to more clearly define the exemption from consultation when the proposed change is to ensure the plan is consistent with State government policy about the management of the area to which the plan applies.

The committee also invites the Minister to provide more information during the second reading debate about the types of amendments to a management plan that would not be consistent with Government policy and would therefore be subject to the requirement to invite submissions on the amendments to a management plan.

242 NC Act, section 120A(3), as inserted by clause 72, MP Act, section 36(7), as inserted by clause 20, and RAM Act, section 27(3), as inserted by clause 88

243 Explanatory Notes, p.5

244 Alliance to Save Hinchinbrook Inc., Submission 19, p.6

Recommendation 18

The committee recommends that the Minister provide examples during the second reading debate of amendments to management plans that would not require consultation.

7.7.4 Approval for amendments to management plans

The Bill provides that the Minister must consider all submissions received when preparing the final amendments to the management plan.[245]

Currently, any amendment to a management plan must be approved by Governor in Council.[246] The Bill would provide that an amendment, where no public notice or invitation to make submissions was made, may be approved by gazette notice by the Minister. All other amendments to a management plan must be approved by the gazette notice by Governor in Council.[247]

The Explanatory Notes state that these amendments remove "the need for Governor in Council approval of minor amendments to a management plan, allowing the decision to be made by the Minister by gazette notice".[248]

7.8 Conservation Plans

Section 120H of the NC Act enables the Minister to prepare or require a conservation plan for any native wildlife, class of wildlife, native wildlife habitat or area that is, in the Minister's opinion, an area of major interest.

In line with the amendments to the preparation of management plans, the Bill would amend the NC Act to remove the requirement for two rounds of public consultation for making conservation plans.

The Alliance to Save Hinchinbrook Inc. stated that the removal of the requirement for two rounds of public consultation on conservation plans is an undemocratic exclusion of the community from decisions about protection of listed species and is unlikely to result in better outcomes.[249]

245 NC Act, section 120A, as inserted by clause 72, MP Act, section 36, as amended by clause 20, RAM Act, section 26, as amended by clause 87

246 NC Act, section 124 (applies NC Act, section 119), MP Act, section 34 and RAM Act, section 29

247 NC Act, section 120B, as inserted by clause 89, MP Act, section 34, as amended by clause 19, and RAM Act, section 29, as amended by clause 85

248 Explanatory Notes, p.5

249 Alliance to Save Hinchinbrook Inc., Submission 19, p.6

8 State's exposure to liability

8.1 Introduction

The Bill contains amendments to the Forestry Act, MP Act, NC Act and RAM Act to reduce the liability of the State for proceedings for personal injury (including death), property damage or economic loss. The amendments protect the State and nominated officials from civil liability for acts or omissions made that constitute negligence, with specified exceptions.

The clauses and sections of the Acts proposed to be amended regarding immunity from liability are:

- clause 14 amends section 96E of the Forestry Act
- clause 22 amends section 147 the MP Act
- clause 80 amends section 142 of the NC Act,
- clause 97 amends section 228 of the RAM Act
- clause 7 amends the *Civil Liability Act 2003* (Civil Liability Act) to insert a note in section 7 of the Act about the sections of the Acts listed above.

8.2 Civil liability – current legislation

The NC Act currently provides that the Minister, the chief executive, a conservation officer or a person acting under the direction of those people, is not civilly liable for an act or omission that is done honestly and without negligence.[250] The NC Act also provides conservation officers acting under the direction of the Minister or the chief executive with immunity from prosecution for an offence against the Act.[251] There are similar provisions in the other Acts which this Bill amends. Such protection from liability is generally considered necessary to enable Government and officials to administer legislation without incurring personal liability, provided they have not acted dishonestly or negligently.

8.2.1 Civil Liability Act

8.2.1.1 No liability for personal injury from obvious risks and dangerous recreational activities

Section 19 of the Civil Liability Act provides that a person is not liable in negligence for harm suffered by another person as a result of the obvious risks of a dangerous recreational activity. The protection from liability applies irrespective of the person's awareness of the risk.

Under section 14 a plaintiff is presumed to have been aware of an obvious risk, unless they prove that they were not aware of the risk. In addition, section 15 provides that there is no proactive duty to warn of an obvious risk, unless the person has asked about the risk.

8.2.1.2 Liability arising from roads

The Civil Liability Act currently provides that a public authority is not liable in a legal proceeding for a failure to repair a road, keep in it repair or inspect a road to decide whether repairs are needed, unless the authority had actual knowledge of the particular risk at the time of the alleged failure to repair, maintain or inspect the road.[252] The proposed immunity from liability for damaged allegedly resulting from failure to repair, maintain or inspect a road "will operate differently to section 37 part 2 of the *Civil Liability Act 2003* (CLA) and how it applies to roads, as it (the Nature Conservation Act amendments) will apply even when prior knowledge of a risk exists".[253]

250 NC Act, section 142
251 ibid., section 143
252 *Civil Liability Act 2003*, section 37
253 Jason Jacobi, *Public Briefing Transcript,* p.4

8.3 State protection from liability for negligence – proposed amendments

The Bill provides that the State and officials are not civilly liable for negligent acts or omissions that result in death, injury property damage or economic loss.[254] The Bill also provides for exceptions to the proposed civil immunity, which are outlined in section 8.4 below.

The proposed immunity from civil liability in the NC Act would apply to:

- the Minister
- the chief executive
- the indigenous landholder with whom an indigenous management agreement has been entered into for the land
- a conservation officer
- a public service employee or another State employee authorised to perform functions under the NC Act, and
- a person acting under the direction of any of those listed above.[255]

The proposed amendments to the Forestry Act also provide with the same protection from liability to a person acting under a delegation under section 96B of that Act, which includes a licensee or sub-licensee, including HQPlantations Pty Ltd.[256]

For each of the Acts that would be amended, the Bill extends the current immunity from civil liability (described in 8.2 above) for an act or omission, including a negligent act or omission in:

- the performance (or purported performance) of a function under the relevant Act
- the exercise (or purported exercise) of a power under the Act, and
- the management or operation of a national park or other protected area, State forest, timber reserve, marine park or recreation area.[257]

8.4 State liability retained for specific matters

The proposed amendments do not provide immunity for the State or an official for liability arising from:

- the construction, installation or maintenance of a *State fixture* or State road, that is defective other than because of a natural event (e.g. a storm, flood, period of heavy rain)
- failure to give adequate notice of a defective State fixture or road, other than because of a natural event
- carrying out a State management activity, for example programmed shooting or poisoning of animals or programmed burning or poisoning of vegetation
- an injury for which compensation is payable under the *Workers' Compensation and Rehabilitation Act 2003,* and
- injury to which the *Motor Accident Insurance Act 1994* applied.[258]

A *State fixture* is defined to mean a building, structure or other thing constructed or installed by the State, including for example: a boardwalk, jetty, lookout or mooring; a stairway; a fence or other barrier; a thing used for a recreational purpose. The definition includes examples of a *recreational purpose* such as a flying fox ride and an anchor point for rock climbing.

Those amendments would mean that the State would continue to be liable for death, personal injury or loss that arose from a defect in the construction, installation or maintenance of a State road or fixture (e.g. a lookout point, fence, jetty or boardwalk), unless it was caused by a natural event.

254 Explanatory Notes, p.6
255 See clause 80 of the Bill
256 Explanatory Notes, p.9, clause 14 and section 96B, *Forestry Act 1959*
257 See clauses 14, 22, 80 and 97
258 ibid.

Workers' compensation and motor accident claims would not be affected by the proposed amendments.

8.5 Personal injury claims and potential increased risk of claims

8.5.1 Reason for amendments

In his explanatory speech, the Minister described the proposed amendments as "a practical response to the growing trend in large personal injury claims, ensuring the state is not exposed to frivolous claims".[259]

The Explanatory Notes state that there have been:

> *… dramatic increases over the last decade in the liability of, and compensation paid by, public authorities for personal injuries incurred on land owned or occupied by that authority. Even where signs provide a warning to visitor, claims of negligence have been brought against the State. Given the Government's commitment to extend access to national parks and other areas for recreational and commercial purposes, there are increased potential risks that the State will be exposed to large personal injury claims.*[260]

The Queensland Law Society (QLS) commented on the potential risk of claims from commercial activities, and suggested that commercial operators would enter into contractual arrangements and expected that QPWS would "insist upon an indemnity for public liability directly occurring as a result of that commercial activity and require those commercial operators to carry their own public liability insurance".[261]

The committee sought information from the DNPRSR about the expenditure from litigation, and asked for an example of how much would ordinarily be paid in a year. The DNPRSR's written response noted that expenditure depends on claims made, claims settled and claims decided in the courts, and noted that costs include payments of compensation and investigation and legal costs. The DNPRSR advised that:

> *In the last 20 years, over $2 million has been paid by the State as compensation for deaths and personal injuries sustained in national parks. There are nine current claims against the State relating to death and personal injury in national parks for which the Queensland Government Insurance Fund (QGIF) has expended approximately $500,000 in investigation and legal costs to date. These claims are for in excess of $11.9 million dollars. However, a claimant may not be successful in recovering the entire amount of the claim.*[262]

The department also noted that, if no action was taken to reduce the State's liability, "the increasing trend towards large litigation claims and any increases in large successful claims, may impact on the department with regard to increases or changes to insurance arrangements over time".[263]

8.5.1 Assessment of risk

The DNPRSR advised the committee that:

> *A risk assessment was undertaken by the Queensland government based on its experience of increasing costs due to claims of negligence against the QPWS. ….. If you*

259 *Hansard*, 20 August 2013, p.2607 (Hon. Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing)
260 Explanatory Notes, p.12
261 Queensland Law Society, Submission 174, p.6
262 Jason Jacobi, *Correspondence*, 9 September 2013, p.1, see Appendix C
263 ibid.

> *start from the premise that we have been exposed to increasing risk over the last 10 years and the quantum has more than trebled ….*[264]

As noted above, the Government's commitment to extending access to national parks and other areas for recreational and commercial purposes is seen to potentially increase the risk of personal injury claims.

8.5.2 Claims in last decade – settled or determined by courts

The committee sought information from the Minister about the number of claims arising in QPWS managed land over the last decade that were decided in the courts and the number settled out of court. It is important to note that the information requested is for all QPWS managed land, which is broader than national parks, to which the figures quoted in 8.5.1 above apply.

In response to the committee's request, the Minister advised that records are incomplete and it is therefore not possible to provide definitive information. Based on the available information, the Minister provided the following about claims arising in QPWS managed land for 2003-2013:

- *National parks – fourteen claims*
    - four claims were settled
    - three claims for volunteer medical expenses were paid under a personal accident policy
    - Five claims were discontinued, lapsed or withdrawn
    - two claims – liability was denied or another defendant accepted liability
    - $1 million – approximate total for settlements, legal and investigations costs
- *Other QPWS managed land – six claims*
    - three claims were settled
    - two claims lapsed
    - one claim – liability was denied
    - $200,000 – approximate total for settlements, legal and investigation costs[265]

In summary, none of the finalised claims have been determined by the courts. Seven claims were settled, and the settlements, legal and investigation costs for all twenty claims totalled approximately $1,200,000 during 2003-2013.

In response to the committee's question the Minister advised that the State has not been able to successfully rely on sections 16 and 19 of the Civil Liability Act.

8.6 Concerns about protection of State from liability

The amendments to protect the State from civil liability for acts or omissions that are negligent, except in relation to a *State fixture* or a State road, raise an issue of fundamental legislative principles. The committee was required to consider whether those provisions of the Bill have sufficient regard to the rights of individuals (see chapter 10 of this report).[266]

The QLS, in its submission and in evidence at the committee's public hearing, argued that the common law and the Civil Liability Act provide adequate protection for the State in circumstances of obvious risk, contributory negligence and dangerous recreational activities. The QLS was concerned about the breach of fundamental legislative principles in the Bill and did not consider that adequate justification had been presented to deny individual rights.[267]

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264 Dr Liz Young, *Public Briefing Transcript*, p.12

265 Hon Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing, *Correspondence*, 25 September 2013, see Appendix F

266 *Legislative Standards Act 1992*, section 4

267 Queensland Law Society, Submission 174, p.4

8.6.1 Current law

The QLS argued that the Civil Liability Act provides adequate protection for the State in relation to obvious risks, dangerous recreational activity. Mr Brown, Vice-President, QLS, said that:

> *… there seems to be a fundamental misconception that a person making a claim is automatically entitled to compensation. That seems to be the way that the media portrays these types of incidents that occur and people's entitlement to compensation. It is by no means as simple as that.*[268]

Mr Brown elaborated on relevant provisions of the Civil Liability Act:

> *There is no liability on the part of the state for a person who is engaging in a dangerous recreational activity in circumstances where the risk is an obvious one. There is no duty on the part of the state to warn individuals of obvious risk, then they are undertaking dangerous recreational activities.*

In addition:

> *… in circumstances where an individual is injured as a result of the manifestation or occurrence of an inherent risk, again there would be no liability on the part of the state. An inherent risk is one that could not be avoided by reasonable care and skill. That does not obviate the duty to potentially ward of inherent risks, but that is a separate issue.*[269]

Mr Brown concluded that the existing law "is quite sufficient to deal with incidents that occur in national parks".[270]

8.6.2 Justification for conferring immunity from civil liability

The QLS asserted that there should be adequate justification to confer immunity from civil liability on the State. The QLS submission includes an analysis of information obtained from annual reports of the former Department of Environment and Resource Management and the DNPRSR about litigation in national parks and elsewhere. The QLS submission suggested that it would be desirable for any agency to justify claims in the Explanatory Notes about increases in claims numbers or expenditure to support those statements.[271] The QLS stated:

> *It would appear that these figures do not support a contention that there has been a consistent "dramatic increase" in the State's exposure to liability on QPWS managed areas in recent years.*[272]

In addition, the QLS was not convinced that the introduction of commercial operators would increase the risk of claims against the State (see 8.5.1 above).

In his evidence to the committee Mr Brown of the QLS emphasised the advantages of the common law of negligence in being able to adapt to the particular circumstances of a case. He said the disadvantage of legislation is that it does not adapt to the particular circumstances of each case.[273]

8.6.3 Clarification or expansion of protection from liability for negligent acts

Several stakeholders sought clarification or extension of the protection from liability for negligent acts. The QORF asked whether volunteers who are working with the permission of the department, for example, as part of a trail care group, could be held liable for negligent acts.[274] The Cape York

268 Ian Brown, Vice-President, Queensland Law Society, *Public Hearing Transcript*, p.22
269 ibid.
270 ibid, p.23
271 ibid, p.6
272 Queensland Law Society, Submission 174, p.5
273 Ian Brown, ibid., p.23
274 Murray Stewart, *Public Hearing Transcript*, p.2

Land Council noted that while the protection from liability applies to indigenous landholders who have Indigenous Management Agreements (IMA) it does not to traditional owners who do not yet have an IMA, but may have an Indigenous Land Use Agreement.[275]

AgForce asked whether the State would be protected from liability in situations where landholders suffer damage when they access protected areas adjacent to their land, such as mustering escaped cattle, constructing firebreaks or assisting with burn-offs. It argued that the State should not be granted immunity from liability in those situations.[276]

The submission from SEQwater advised that it provides extensive areas for recreation in its catchments. SEQwater suggested that the *Water Supply (Safety and Reliability) Act 2008* should be amended to protect registered service providers and officials from civil liability.[277]

8.7 Committee's view

The committee notes the QLS' view that the existing law provides sufficient coverage for matters of civil liability for the State. It also notes the QLS' contention that the evidence presented in the Explanatory Notes was not sufficient to justify removing an individual's right to take action against the State for negligence.[278]

The committee notes that the amount of $11.9 million claimed in three matters currently before the courts is significant, and is more than the history of claims finalised over the last decade. While the amount claimed is relatively high, the committee notes that the outcome of those claims is not known, and may ultimately be less than claimed by the plaintiffs. The committee also notes that none of the claims from 2003-2013 were determined by a court.

Noting the DNPRSR's advice that Government undertook a risk assessment, based on its experience of increasing costs, and that increased access for recreation and commercial activities is seen to increase exposure to claims, the committee recommends that the Minister provide further information to the Legislative Assembly. The committee considers it would assist members if the Minister responds to the issues raised by the QLS and informs the Legislative Assembly about the assessment of risk that informed the proposed amendments. The committee recommends further that this information be provided to assist members of the Legislative Assembly to understand the basis for protecting the State from liability.

Recommendation 19

The committee recommends that during the second reading debate the Minister provide more detailed information to the Legislative Assembly to:

- respond to the concerns raised by the Queensland Law Society
- explain the reason that the provisions about civil liability are required, and
- explain the parameters and outcomes of the risk assessment undertaken by Government to inform the amendments to protect the State from civil liability.

275 Marita Stinton, Public hearing transcript, p.8
276 AgForce Queensland, Submission 90, p.5
277 Submission 159, p.2
278 Queensland Law Society, Submission 174, p.4

9 Other proposed amendments

9.1 Conservation officers and proof of identity

Currently, the NC Act provides that a conservation officer or an honorary protector must produce his or her identity card before exercising any power under that Act.[279] The Explanatory Notes state that, in some circumstances, it may be impractical for a conservation officer or honorary protector to comply with this requirement.

> *An example of such a situation might include a vehicle owner who has been observed driving on a restricted access track within a protected area.*
>
> *Under the current act, the strict interpretation could prohibit the admissibility of any information gathered through such means [an enforcement letter requesting information] if an identity card had not been presented in advance of the enforcement action.*[280]

Clause 75 amends section 131 of the NC Act to provide that a conservation officer or honorary protector may produce his or her identification card at the first reasonable opportunity.

The Explanatory Notes state that the "amendment will allow the admissibility of any information provided in response to such an enforcement letter if the conservation officer had not presented his/her identity card for inspection prior to the delivery of the enforcement letter".[281]

9.2 Offence for selling meat or other products from dugongs or marine turtles from commercial premises Fundamental legislative principles

9.2.1 New office and reasons

Clause 61 inserts new section 88BA into the NC Act to provide that it is an offence to sell or give away at a commercial food premise dugong or marine turtle meat or products. The offence attracts a substantial penalty – a maximum of 3000 penalty units ($330,000) or two years imprisonment.

The offence applies to premises on or from which food is sold or given away as a part of a business operating from the premises, for example a restaurant, café, recreation club. The Bill states that "commercial food premises" does not include premises being used in association with a public event, from which the selling or giving away of food takes place only occasionally (for example, at a temporary stall at a community fair).[282] During the public briefing, Mr Geoff Clare, DEHP, explained that "…for the purposes of the offence, a commercial premises essentially means a restaurant".[283]

The Explanatory Notes state that "This provision is not meant to apply to trade undertaken on the basis of traditional custom, not involving an exchange of money and not occurring from commercial premises.[284]

9.2.2 Department's comments

Sections 88 to 94 of the NC Act currently place restrictions on activities relating to protected wildlife, including dugongs and marine turtles. The committee therefore sought clarification about why the amendments at clause 61 are considered necessary. In response, Mr Geoff Clare stated that:

279 NC Act, section 131
280 Explanatory Notes, p.7
281 ibid.
282 See clause 61 of the Bill
283 Geoff Clare, Executive Director Nature Conservation Services, Department of Environment and Heritage Protection, *Public Briefing Transcript*, p.7
284 Explanatory Notes, p.28

> *… the policy objective of this amendment is to increase the penalty for a particular action—the selling of turtle and dugong meat—that is already part of a broader offence provision, meaning the take, use and keep of dugong and turtle. But, because of the drafting considerations, it is necessary to create an additional offence to which that higher penalty would apply.*[285]

9.2.3 Submissions – Native Title

The Balkanu and Cape York Land Council stated that in the light of two recent native title decisions – *Akiba v State of Queensland* (No 2) [2012]1[1] and *Akiba v Commonwealth* [2013]2[2], the new offence, at clause 61, may diminish the rights of native title holders on the Cape York Peninsula. They stated that:

> *Under section 24HA of the Native Title Act 1993 the non-extinguishment principle would apply for the purposes of the amendment and the state government would be required to pay compensation to native title holders in accordance with Division 5 of the Act*[286]

At the public hearing, Mr Piper, Chief Operating Officer, Balkanu Cape York Development Corporation, clarified that the Balkanu and Cape York Land Council was not advocating for the commercial sale of dugong or marine turtle meat. Mr Piper said "… that it is not that we are advocating that people should be able to sell dugong meat at all. We are just raising that it is a possible legal issue, but we are not necessarily advocating that that is something people will want to seek".[287]

During the public hearing, the DEHP made the following comments about the recent native title decisions:

> *On face value it does bring into question the legal advice upon which the amendment is based. It may mean that there is a potential native title right to sell. The implications of that for the amendment are unclear.*
>
> *We are seeking legal advice on that matter. I am not in a position to advise further at this time on whether, if the amendment was made in its current form, that would create issues or generate a liability for compensation. But what I can emphasise—and this is reflected in the explanatory notes—is that the government's intention with this amendment is not to infringe in any way native title rights, and that remains the case. At the committee's discretion, once we have firm legal advice we can provide further information to the committee.*[288]

The committee has not to date received the legal advice mentioned by the DEHP. The committee recommends that the Minister inform Members of the Legislative Assembly during the second reading debate how any inconsistencies between the proposed offence and native title rights will be resolved.

Recommendation 20

The committee recommends that the Minister inform the Legislative Assembly during the second reading debate about the resolution of any inconsistency between native title rights the proposed offence to sell or give away dugong or marine turtle meat or products at a commercial food premise.

285 Geoff Clare, *Public Hearing Transcript*, p.32
286 Balkanu and Cape York Land Council, Submission 197, pp.6–7
287 Terry Piper, *Public Hearing Transcript*, p.9
288 Geoff Clare, ibid.

9.3 Giving false or misleading information to departmental officers

The Bill amends section 158 of the NC Act and relocates it to section 143A of the NC Act. The amendment broadens the existing offence of giving a document containing information that a person knows is false, misleading or incomplete in a material particular to an authorised person.

Currently, section 158 of the NC Act applies to the giving of information to a conservation officer. The amendment broadens the provision to provide that it applies to the giving of information to an authorised person – defined as the chief executive, public service employee of the department or a conservation officer.

The Explanatory Notes state that the amendment is necessary to improve the proper administration of the NC Act by responding to the increasingly common manner in which a person may provide information to the department, including by way of online application.[289]

9.4 Commercial activity permits

To ensure consistency with other regulations, the Bill amends the RAM Act to exempt filming or photography from the requirement to hold a commercial activity permit where it involves no more than two persons and does not involve the erection, construction or use of a *prescribed structure,* for example a tower, platform or generator to facilitate filming or photography.[290]

Seven submissions supported the exemption for certain filming or photography from the need to hold a commercial activity permit.[291]

The Bill would also amend the RAM Act to allow for a single (combined) commercial activity permit or commercial activity agreement across more than one tenure.[292] The Explanatory Notes state that this amendment reflects complementary amendments to Nature Conservation and Marine Park regulations.[293]

Two submissions supported the amendment to allow single (combined) commercial activity permit or commercial activity agreement across more than one tenure.[294] The Magnetic Island Nature Care Association Inc. stated that while the single permit is an attractive concept, there are different use considerations for each tenure and it is unlikely a single desk could address then all in other than a 'tick and flick' manner.[295]

9.5 Guide, hearing and assistance dogs

The Bill amends the RAM Act to expand references to a "guide, hearing or assistance dog" to include a "guide dog, hearing dog, assistance dog or trainee support dog" to ensure consistency with references in other legislation.

10 Fundamental legislative principles

10.1 Introduction

Section 4 of the *Legislative Standards Act 1992* 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

289 Explanatory Notes, p.14
290 RAM Act, Schedule (Dictionary)
291 Submission 62, 149, 152, 164, 190, 182, 184
292 RAM Act, sections 55A and 69, as inserted by clauses 91 and 92
293 Explanatory Notes, p.10
294 Submissions 182 and 184
295 Magnetic Island Nature Care Association Inc., Submission 176, p.7

- the institution of Parliament.

The committee considered the application of fundamental legislative principles to the Bill. The committee makes the following comments about potential fundamental legislative principles identified in the Explanatory Notes and other potential fundamental legislative principles issues identified by the committee.

10.2 Potential fundamental legislative principles issues

10.2.1 Reducing the State's exposure to liability for negligent acts – rights and liberties of individuals

As outlined in Section 8 of this report, clauses 14, 22, 80 and 97 would amend the Forestry Act, MP Act, NC Act and RAM Act to reduce the State's exposure to liability on QPWS managed land.

The committee considers that the amendments raise potentially significant fundamental legislative principles issues because they may:

- confer immunity from a proceeding without adequate justification
- remove the common law rights of State citizens in circumstances where the resources of the State are a relevant consideration in determining the extent, if any, of the State's duty of care, and
- fail to have sufficient regard to the rights and liberties of individuals.

The Queensland Law Society (QLS) considers that common law and the Civil Liability Act already provide adequate protection for the State and that the Government has provide insufficient justification for the amendments. Recommendation 16 is that the Minister provides more detailed information to the Legislative Assembly to respond to the concerns raised by the QLS; explain the reason why the provisions about civil liability are required; and to explain the parameters and outcomes of the risk assessment undertaken by the Government to inform the amendments to protect the State from civil liability.

10.2.2 Amendment of object, management principles, management plans and proposed offence to sell dugong or marine turtle products – sufficient regard to Aboriginal tradition and Island custom

A number of the Bill's provisions have the potential to impact on Aboriginal tradition and Island custom – see sections 4.4, 5.8.4, 7.2.4 and 9.2.4. The committee's recommendations 2, 4, 9 and 17 are about sufficient regard to Aboriginal tradition and Island custom. The recommendations relate to the amendment of the NC Act's object, national park management principles, management plans and the proposed offence to sell dugong or marine turtle products. The DNPRSR advised that it is seeking legal clarification on the potential impact of the Bill's provisions.[296]

10.2.3 Public notice of a draft management plans or amendments to a management plan – rights and liberties of individuals

Clauses 17, 20, 68, 85 and 87 of the Bill replace the requirement to publish a notice about a draft management plan or an amendment in a newspaper, with a requirement to publish a notice on the department's website.

The committee considers that these amendments raise potential fundamental legislative principles issues, as they may fail to adequately ensure interested parties have sufficient notice to make comments on the management of public land. In light of concerns about potential fundamental legislation principles issues, and comments made in submissions, the committee has recommended that the Bill be amended.

296 Dr Liz Young, *Correspondence*, 23 September 2013, p.3, see Appendix E

Recommendations 11 and 14 are to amend the Bill to require the Minister to take reasonable steps to notify interested parties that a draft plan or amendment to a plan is available for comment. The steps taken by the Minister, and his or her department, may include publishing a notice on the department's website, emailing stakeholders and publishing in a local newspaper.

10.2.4 Consultation on amendments to a management plan – rights and liberties of individuals

Clauses 20, 72 and 88 of the Bill provide that consultation is not required on an amendment to a management plan if the amendment is to ensure consistency with Government policy. After amendment, the Minister must publish a notice of the amendments and the reasons on the department's website. This issue was also raised in submissions, at the departmental briefing and during the public hearing.

The amendments raise potential fundamental legislative principles issues, as they would restrict the ability of individuals and organisations to comment on and contribute to the management of public land. The committee notes that Government policy resulting in amendment of a management plan could be very broad. If a broad Government policy was announced it could allow a wide variety of amendments to a management plan without public consultation.

The committee has recommended that the Bill be amended to more clearly define the exemption from notifying a draft amendment to a management plan and inviting submissions when the proposed change is to ensure the plan is consistent with State government policy about the management of the area to which the plan applies (see Recommendation 15, section 7.7.3).

10.2.5 Public consultation on management statements – rights and liberties of individuals

Clause 65 of the Bill replaces the current requirement for the Minister to prepare a management plan for each area with a requirement for the chief executive to prepare a management statement. The absence of consultation on a management statement may affect individual rights to comment on the management of public land.

The committee notes that while there is no requirement to consult on a management statement, the Minister must consult on a management plan. The committee has suggested that the Minister consider carefully any requests for public consultation on the management of a protected area, as part of his or her consideration of whether to prepare a management plan for the protected area (Committee comment, see section 7.3.5).

10.2.6 Offence to give false, misleading or incomplete information to departmental officials – rights and liberties of individuals

Section 158 of the NC Act provides that it is an offence to give a document containing information that a person knows is false, misleading or incomplete in material particular to a conservation officer. Clause 81 would broaden this offence, so that it applies to giving the above information to the chief executive, a public service employee of the department or a conservation officer.

The Explanatory Notes state that the amendment is necessary to improve the proper administration of the NC Act by responding to the increasingly common manner in which a person may provide information to the department, including by way of online application.[297]

The committee considers that, on balance, clause 81 has sufficient regard to the rights and liberties of individuals.

10.2.7 Parliamentary scrutiny of management plans – sufficient regard to the institution of parliament

Clauses 16 and 19 amend sections 29 and 34 of the MP Act to remove the requirement for a gazette notice approving a marine park management plan and a copy of the management plan to be tabled

297 Explanatory Notes, p.14

in Parliament. The amendments raise potential fundamental legislative principles issues as they remove parliamentary scrutiny of management plans, in particular, they remove parliament's power to disallow a management plan.

The Explanatory Notes state that the amendments "… streamline the provisions that apply to the approval of management plans and provide consistency with equivalent provisions in the NCA and RAM Act.[298]

The committee considers that difficult decisions will need to be made to ensure recreational, commercial and educational opportunities are consistent with an area's natural and cultural values. The committee considers that parliamentary scrutiny of management plans, which will guide these decisions, should therefore be increased, rather than decreased.

The committee has recommended that the Bill be amended. Recommendation 13 is to amend the Bill to provide that a gazette notice approving a management plan for a protected area, marine park or recreation area, and a copy of the management plan, should be tabled in the Legislative Assembly and be subject to the disallowance provisions in the *Statutory Instruments Act 1992*.

10.2.8 Declaration of a special management area in a national park – delegation of legislative power and sufficient regard to the institution of parliament

Clause 139 of the Bill allows the chief executive to declare all or part of a national park a special management area (SMA). Clause 139 raises potential fundamental legislative principles issues because the chief executive's decision to declare a SMA would effectively override the decision of the Governor in Council and Parliament to declare an area as a national park and that it be managed in a specific way. Clause 139 would also provide that a decision by the chief executive to declare all or part of a national park a SMA would not be subject to scrutiny by Parliament.

The Explanatory Notes state that alternative approaches would be an "unacceptable level of regulatory burden, creating a cumbersome administrative decision making process".[299] The Explanatory Notes state that the Bill provides for the management principles for a SMA and therefore Parliament has, in effect, approved the alternative purposes for which a national park declared as a SMA may be used.[300]

The committee acknowledges that, if the Bill is passed, the Parliament will have approved the management principles for a national park declared as a SMA. The committee notes, however, that the decision about which national parks those management principles may apply to would not be subject to parliamentary scrutiny.

In light of the concerns about potential fundamental legislative principles and comments in submissions, the committee has recommended that the Bill be amended. Recommendation 6 is to amend the Bill to require the chief executive to declare a SMA in a national park by gazette notice. The gazette notice would be tabled in the Legislative Assembly and subject to the disallowance provisions under the *Statutory Instruments Act 1992*.

10.2.9 Transitional regulation making power – amendment of an Act only by another Act

Clause 153 inserts section 205 into the NC Act to allow a regulation to be made for saving or transitional matters. New section 205 of the NC Act would allow a regulation to amend an Act of Parliament and have retrospective effect.

The former Scrutiny of Legislation Committee (SLC) routinely voiced its opposition where an Act was purportedly amended by a statutory instrument (other than another Act) in circumstances that were not justified. The SLC raised objections when a provision: allowed for a regulation that could override

298 ibid.
299 ibid., p.13
300 ibid., p.13

an Act; was so general as to allow for a provision about any subject matter; or was not subject to any other control mechanism, for example an expiry date (sunset clause).

The committee notes that the power at section 205 is limited to saving or transitional matters about changes in protected area tenure classes and for which the Bill does not make provision or sufficient provision. The committee also notes that the power to make transitional regulations would expire one year after the commencement of section 205.

In his letter of 25 September 2013, the Minister explained that while transitional provisions in the Bill attempt to cover all circumstances or issues in the tenure transfer process, it is impossible to predict every situation. The Minister stated that "Given the scope of changes under this Bill, and the potential practical requirement of making amendments to address immediate issues, these provisions (section 205 of the NC Act) are considered necessary". The Minister also stated that any changes will need to be made by regulation, thus requiring approval by Governor in Council.[301]

The committee notes the Minister's response and considers the need for a transitional regulation to be reasonable in the circumstances.

10.2.10 Clear and precise drafting

Section 4(3)(k) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation is unambiguous and drafted in a sufficiently clear and precise way. As outlined in section 2.2, the structure of the Bill makes it difficult for Members of the Legislative Assembly and the community to understand the Bill's provisions and their effect.

10.3 Explanatory Notes

Section 23 of the *Legislative Standards Act 1992* provides that Explanatory Notes for a Bill must provide information about the Bill in clear and precise language. The Explanatory Notes state in broad terms the policy objectives of the Bill. From the information provided in the Explanatory Notes, the committee considers that it is difficult to discern how the policy objectives are to be achieved and the rationale for the policy which the Bill would put into effect. The committee notes the comments from QLS and other submitters about the Explanatory Notes (see sections 2.2 and 8.6.2).

Given the complex structure of the Bill, the committee considers that clear information explaining the approach taken and the policy reasons for the commencement of provisions of the Bill may have helped Members of the Legislative Assembly and the public.

For future legislation the committee expects the DNPRSR to prepare Explanatory Notes with sufficient detail and clear explanations so that understanding the policy impact of legislation does not require the level of effort that was necessary for this Bill. Presentation of this Bill would have been better served if the Explanatory Notes catered more directly to the need to explain the structure of the Bill and the policy that it is intended to put in place.

301 Hon Steve Dickson MP, *Correspondence*, 25 September 2013, pp.3 and 4, see Appendix F

Appendices

Appendix A – List of Submissions

Sub #	Submitter	Sub #	Submitter
001	Kay Kelly	054	Gisela Matt
002	Keith and Kay Bedford	055	Dr Gayle Johnson
003	Ben Ocallaghan	056	Adrian Jansen
004	Richard Mottershead	057	John Kehoe
005	Anna Bourke	058	Helen Kershaw
006	Brian Vernon	059	Christian Hearn
007	Townsville Branch of the Wildlife Preservation Society of Queensland	060	Stuart Olver
008	Brisbane Branch of the Wildlife Preservation Society of Queensland	061	Barbara Brindley
009	John Morison	062	Jeff Close
010	Lisa Domagala	063	Suzette Pelt
011	Luke and Jean Daglish	065	Lyn Laskus
012	Andrew Gardiner	066	Frances Guard
013	Howard and Dita Petersen	067	Kedron Brook Catchment Branch of the Wildlife Preservation Society of Queensland
014	Livingstone Remnant Vegetation Study Group	068	WS Egerton
015	Ronald and Christine Fraser	069	Nadia O'Carroll
016	Alison O'Sullivan	070	Kerry O'Carroll
017	Bronwyn Elliott	071	Tamborine Mountain Natural History Association
018	Ellen Bock	072	Wildlife Tourism Australia Inc
019	Alliance to Save Hinchinbrook Inc	073	Tully & District Branch of the Wildlife Preservation Society of Queensland
021	Chrissi Hobba	074	Mark Cheney
022	Juanita Johnston	075	Bulimba Creek Catchment Coordinating Committee
023	Jonathan Peter	076	Rosalie Eustace
024	Charles Colman	077	Sally and Michael Undery
025	Name supressed	078	Brad Cox
026	Carmel Kerwick	079	Margaret and Mike Buck
027	Kelly Matthews	080	Rensche Schep
028	Rob Taylor	081	Professor Ralf Buckley
031	Olivia Whybird	082	Peter Dawson
032	Troy Warry	083	North Queensland Conservation Council
033	Amber Alexander	084	Dr Ron Farmer
034	Dean Chaloner	085	Timothy Lawrence
035	Heather Zeppel	086	Ann Tracey
036	Greg Johnstone	087	Colin Chapman
037	Peter Maslen	088	Paul Sutton
038	Carolina Haggstrom	089	DS and W Miller
039	Geoff Speakman	090	AgForce Queensland
040	Gary Opit	091	Mena Stoke
042	Dr Deborah Mills	092	Magnetic Island Community Development Association – Heritage Infrastructure and Planning Group
043	Name supressed	093	Jennifer Watts and Peter Duck
044	Lynn Roberts	094	O'Reilly's Rainforest Retreat
045	Troy Price	095	Deborah Pergolotti
047	Margaret Robertson	096	Gretchen Evans
048	Shealagh Walker	097	Don and Evelyn Pratley
049	Lynn Kelly	098	Cynthia Rosenfield
050	Wildlife Preservation Society of Queensland	099	Judith Mackay
051	Bayside Branch of the Wildlife Preservation Society of Queensland	100	Robert Clemens
052	Mike Downes	101	Cathie Duffy Masters
053	Trish Gardner	102	Australasian Touring Caravan, Motorhome & Camping Club

103	Dr JB Hacker and Mrs JLF Hacker	155	Meredith Tucker
104	Graham Lee	156	Carol Muller
105	Gaby Ricketts	157	Peter Ogilvie
106	Trish Pontynen	158	Bruce Gall
107	David Sansom	159	SEQwater
108	Pam Ison	161	Jennifer Peat
109	Maria O'Connell	162	Denise Seabright
110	Tamborine Mountain Progress Association	163	Mrs J S Chamberlain
111	Keith Armstrong	164	Brisbane Marketing
112	Maureen Schmitt	165	Liz Mackenzie
113	Ray Ison	166	Upper Dawson Branch of the Wildlife Preservation Society of Qld
114	Peter Smith	167	Queensland Conservation Council
115	Daryl Dickson	168	Capricorn Conservation Council
116	National Association of Caravan Clubs Limited	169	Campervan & Motorhome Club of Australia
117	Wildlife Preservation Society of Queensland – Sunshine Coast & Hinterland Inc	170	Genevieve Gall
118	Yvonne Cunningham	171	Protect the Bush Alliance
119	E Kirsch	172	Bat Conservation & Rescue Qld Inc
120	Margaret Sakrzewski	173	Joanne Towsey
121	BirdLife Southern Queensland – withdrawn	174	Queensland Law Society
122	David Jinks	175	Gold Coast & Hinterland Branch – Wildlife Preservation Society of Queensland
123	Greg Miller	176	Magnetic Island Nature Care Association Inc
124	Fraser Coast Branch of Wildlife Preservation Society of Queensland	177	Elizabeth Crotty
125	Leanne J. Bowden	178	Wildlife Preservation Society of Queensland – Logan Branch
126	Chris and Glenice Ballantyne and Tim and Sol Thornton	179	Bribie Island Environmental Protection Association Inc
127	Queensland Murray-Darling Committee Inc	180	Karl Kirsch
128	Wendy Shaw	181	Melissa Burrows – not published
130	Glen Shaw	182	Alliance for Sustainable Tourism
131	Dr Michael Gourlay	183	Australian Climbing Association (Qld)
132	Queensland Trust for Nature	184	The Association of Marine Park Tourism Operators Pty Ltd
133	Peter O'Reilly	185	Lynne Porter
134	Stella Bartlett	186	Heidi Kirsch
135	Margaret Thorsborne AO	187	Carpentaria Land Council Aboriginal Corporation
136	Natalie Hoskins	188	Paislie Hadley
137	Cairns and Far North Environment Centre	189	Franklin Bruinstroop
139	Dr Bernard Kirsch	190	Queensland Tourism Industry Council
140	BirdLife Capricornia	191	Sheila Davis
141	DM and MJ and IR Aitken and KM Lennon and SG & A Palmer	192	Dr Greg Bamford & Ms Margie Ferguson
142	National Parks Association of Queensland	193	The Wilderness Society (Qld)
143	Queensland Outdoor Recreation Federation	194	Liz Horler
144	Doug McGregor	195	Connie Kerr
145	Gail Podberscek	196	Chantelle James
146	Gold Coast and Hinterland Environment Council (Gecko)	197	Balkanu and Cape York Land Council
147	WWF-Australia	198	Environmental Defenders Office (Qld) Inc
149	Fraser Coast Opportunities	199	EQUATHON Holdings
150	Far North Queensland Branch of WPSQ		
151	Community Advisory Committee, Gondwana Rainforests of Australia World Heritage Area	201	Sunshine Coast Environment Council
152	Kingfisher Bay Resort Group	202	Harley West
153	Paul Bambrick	203	Pamela Alick
154	DI Marshall		

Appendix B – Witnesses at public briefings and hearings

Public briefing – 2 September 2013
Department of National Parks, Recreation, Sport and Racing • Mr Jason Jacobi, Acting Deputy Director-General, Queensland Parks and Wildlife Service • Dr Liz Young, Director, Policy Reform, Queensland Parks and Wildlife Service
Department of Environment and Heritage Protection • Mr Geoff Clare, Executive Director, Nature Conservation Services and Conservation and Sustainability Services
Department of Agriculture, Fisheries and Forestry • Mr Barry Underhill, Acting Director, Forestry

Public hearing – 20 September 2013
Mr Murray Stewart, Executive Officer, Queensland Outdoor Recreation Federation
Mr Terry Piper, Chief Operating Officer, Balkanu Cape York Development Corporation
Ms Marita Stinton, Legal Officer, Cape York Land Council
Mr Les Harrigan, Traditional owner
Mr Daniel Gshwind, Chief Executive Officer, Queensland Tourism Industry Council
Mr Peter Ogilvie, Council member, National Parks Association of Queensland
Queensland Law Society • Mr Ian Brown, Vice-President • Mr Matthew Dunn, Principal Policy Solicitor
Department of National Parks, Recreation, Sport and Racing • Mr Ben Klaassen, Deputy Director-General, Queensland Parks and Wildlife Service • Dr Liz Young, Director, Policy Reform, Queensland Parks and Wildlife Service
Mr Geoff Clare, Executive Director, Nature Conservation Services, Conservation and Sustainability Services, Department of Environment and Heritage Protection
Ms Sybil Smith, Acting Manager, Forestry Industry Development, Department of Agriculture, Fisheries and Forestry

Appendix C – Correspondence – Mr Jason Jacobi – 9 September 2013

Queensland Government

Department of
National Parks, Recreation, Sport and Racing

9 September 2013

Mr Trevor Ruthenberg MP
Chair
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: hcsc@parliament.qld.gov.au

Dear Mr Ruthenberg

Thank you for the opportunity for the Department of National Parks, Recreation, Sport and Racing to present at the recent public briefing on the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 (NCOLA Bill). As part of this briefing there were five questions taken on notice, with a response required from the department by 9 September 2013.

I am pleased to provide the following responses to each of these questions to assist the Health and Community Services Committee in its inquiry into the NCOLA Bill.

Question #1

The Committee requested information on the average cost of litigation paid per year by the State Government as a result of personal injuries sustained in national parks. The Committee further queried whether the savings from not being sued would go back into infrastructure, upkeep and management of tracks such as the Great Walk in Springbrook or Purlingbrook Falls.

Department Response

Advice from the department's In-house Legal team confirms it is not possible to provide a realistic average yearly figure for litigation because a large payment amount for a single claim in any one year will skew the statistics. What is expended yearly depends on claims made, claims settled and claims decided in the courts. A difference also exists between the investigation and legal costs that the State incurs and the payout amounts for successful claims. In the last 20 years, over $2 million has been paid by the State as compensation for deaths and personal injuries sustained in national parks. There are nine current claims against the State relating to death and personal injury in national parks for which the Queensland Government Insurance Fund (QGIF) has expended approximately $500,000 in investigation and legal costs to date. These claims are for in excess of $11.9 million dollars. However, a claimant may not be successful in recovering the entire amount of the claim.

Consistent with comments made at the public briefing, investigation and legal costs and compensation payouts are paid by the State Government through QGIF and are not directly linked to the budget of the Department of National Parks, Recreation, Sport and Racing. The department is required to pay insurance premiums to QGIF and a $10,000 excess payment for each claim. As such, any reduction in compensation payouts as a result of the proposed liability provisions under the NCOLA Bill would not influence the budget of the department in undertaking its management responsibilities for the protected area estate. However without taking action to reduce the State's liability, the increasing trend towards large litigation claims and any increases in large successful claims, may impact on the department with regard to increases or changes to insurance arrangements over time.

Question #2

The Committee requested confirmation on whether areas currently under the conservation park tenure will be opened up for activities including mining, coal seam gas (CSG) and grazing as a result of the proposed tenure changes under the NCOLA Bill.

Department Response

Mining and CSG

Under the current provisions of the *Nature Conservation Act 1992* (NCA), the granting of a mining interest, geothermal tenure or GHG authority is specifically prohibited on a conservation park. This includes a mining interest granted for Coal Seam Gas (CSG) exploration or production activities. There is however a specific exemption that allows for the grant of an authority for a CSG pipeline to traverse a conservation park.

Under the proposed tenure structure, all conservation parks will transfer directly into the new tenure of regional park. It is intended that the proposed changes to the NCA and the associated transfer process will not change the current restrictions on the granting of a mining interest, geothermal tenure or GHG authority on conservation parks. As such, the Bill as currently drafted allows for the automatic transfer of all conservation parks into regional park tenure **without** a *resource use area* (RUA) over it. However, further provisions may be required to put beyond doubt that there is no opportunity for an RUA to be declared over a former conservation park in the future. The department proposes to work with the Office of Queensland Parliamentary Counsel (OQPC) to identify options in this regard.

Grazing

Under the current provisions of the NCA, the management principles of the conservation park tenure require that any commercial use of the area's natural resources, including fishing and grazing, is ecologically sustainable. As such stock grazing permits can currently be granted for a conservation park.

As above, under the proposed tenure structure, all conservation parks will transfer directly into the new tenure of regional park. This transfer process is not intended to result in any change to the current types of activities and uses that can be authorised on a conservation park. As such, opportunities for the granting on stock grazing permits will continue to be available on those areas that were former conservation parks. The management principles of the regional park tenure will clarify that these areas allow for the controlled use of cultural and natural resources and that the area should be maintained, to the greatest possible extent, in its natural condition.

Question #5

The Committee noted that in the 2010 Auditor-General's report, the former department commented that under current legislative requirements it would take 30 years and $60 million to complete management plans for all protected areas. The Committee requested clarification on what had changed during the period from 2010 to 2012 to allow for the majority of areas to now be covered.

Department Response

Currently, under the NCA there is a statutory requirement for a management plan to be prepared for protected areas as soon as practicable after the dedication / declaration of an area. Given the significant time and resources required to prepare a management plan, management statements have been prepared as an alternative planning tool for many protected areas as a simpler expression of management intent. Management statements are not currently recognised under the NCA, however are considered an appropriate planning tool for many areas, without the same lengthy and resource intensive process.

The adoption of management statements as an alternative planning tool has allowed for a significant number of protected areas to now be covered by an appropriate management instrument - either a management plan or management statement.

Changes proposed under the NCOLA Bill will recognise management statements under the NCA. Management statements will become the minimum planning tool for all protected areas, with the option for the Minister to decide that a management plan is required to be developed instead. Changes under the Bill will further streamline the process of planning for the management of protected areas, ensuring that all protected areas can be covered by an appropriate management instrument in a timely manner.

Please do not hesitate to contact me on telephone (07) 3330 5270 or via email jason.jacobi@nprsr.qld.gov.au should you require any further clarification or information on the above.

Yours sincerely

9/9/13

Jason Jacobi
A/Deputy Director-General
Queensland Parks and Wildlife Service
Department of National Parks, Recreation, Sport and Racing

Enc
Attachment 1 – Current status of management instruments for protected areas

N.B. Attachment 1 is not published in this report. It is published on at
http://www.parliament.qld.gov.au/documents/Committees/HCSC/2013/NatureCon2-2013/que-02Sep2013.pdf

Appendix D – Correspondence – Dr Liz Young – 17 September 2013

Queensland Government

Department of
National Parks, Recreation, Sport and Racing

17 September 2013

Ms Sue Cawcutt
Research Director
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: hcsc@parliament.qld.gov.au

Dear Ms Cawcutt

Thank you for your inquiry regarding the commencement of provisions under the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 (NCOLA Bill). As you are aware the Bill is structured according to the timing for commencement of the provisions, with amendments falling into one of three categories:

- Amendments commencing on assent
- Amendments about tenure commencing by proclamation
- Amendments about forest reserves commencing by proclamation

This distinction is necessary given that some of the proposed amendments require other supplementary processes, such as amendments to subordinate legislation, to be completed prior to commencement of the provision.

A summary table of the proposed timing for commencement of each of the key amendments is enclosed as Attachment 1 for the Committee's reference. I hope that this information is of assistance to the Health and Community Services Committee in its inquiry into the NCOLA Bill.

Please do not hesitate to contact me on telephone (07) 3330 5180 or via email liz.young@nprsr.qld.gov.au should you require any further clarification or information on the above.

Yours sincerely

Dr Liz Young
Director, Policy Reform
Queensland Parks and Wildlife Service
Department of National Parks, Recreation, Sport and Racing

Enc
Attachment 1 – Summary of NCOLA Bill provision commencement

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

Summary of Bill provision commencement

Provided below is a summary of the proposed timing for the commencement of amendments under the NCOLA Bill.

Proposed Amendments		Commencement	Rationale for Timing
Broaden the object of the *Nature Conservation Act 1992* (NCA)		**Assent** Provisions included in Part 2 of the NCOLA Bill	Amendments relating to the object of the NCA can commence immediately following the passage of the Bill. Any subsequent updates to policies, procedures and materials can occur following assent.
Reduce the number of tenure classes under the NCA and FA	Abolish the wilderness area, World Heritage management area and international agreement area tenures	**Assent** Provisions included in Part 2 of the NCOLA Bill	While regulatory amendments will be required to reflect the changes in tenure, these three tenure classes are not currently in use. As such, the abolishment of the tenure classes can occur immediately following passage of the Bill, with regulatory amendments occurring subsequently.
	Grandfather the coordinated conservation area, forest reserve and timber reserve tenures	**Assent** Provisions included in Part 2 of the NCOLA Bill	These tenure classes are being grandfathered, prohibiting the future declaration of an area, while still maintaining current legislative and regulatory provisions around the management of existing areas. As such, no regulatory amendments are required prior to commencement of these provisions.
	Combine tenures into the national park and regional park tenures	**Proclamation (I)** Provisions included in Part 3 of the NCOLA Bill	In order to give effect to the proposed tenure changes for the creation of the national park and regional park tenures, significant regulatory amendments will be required prior to commencement. These amendments will be prepared following the passage of the Bill. Commencing on a date set by Proclamation will allow time for the necessary amendments to subordinate legislation to be made.
	Abolish the forest reserve tenure	**Proclamation (II)** Provisions included in Part 4 of the NCOLA Bill	The abolishment of the forest reserve tenure is proposed to take place once the review of all remaining forest reserves has been undertaken and each area has been reclassified under either a protected area or State forest tenure. Commencing on a date set by Proclamation will allow time for the review to be completed. As it is anticipated that the review will be concluded sometime after matters finalised at the time of Proclamation I, a second proclamation date (Proclamation II) is provided for in the Bill. Drafting protocols required these measures to be included in a different part of the Bill.
Revise the management principles for protected areas		**Proclamation (I)** Provisions included in Part 3 of the NCOLA Bill	These amendments give further effect to the proposed changes for the creation of the national park and regional park tenures. As such these amendments will commence on a date set by Proclamation, in line with the timing for the proposed tenure changes.

Proposed Amendments	Commencement	Rationale for Timing
Provide for the creation of special management areas (SMAs) and resource use areas (RUAs)	**Proclamation (I)** Provisions included in Part 3 of the NCOLA Bill	These amendments give further effect to the proposed changes for the creation of the national park and regional park tenures. As such these amendments will commence on a date set by Proclamation, in line with the timing for the proposed tenure changes.
Streamline the management planning processes for protected areas, marine parks and recreation areas	**Assent** Provisions included in Part 2 of the NCOLA Bill	No subsequent regulatory amendments are required to give effect to provisions relating to management planning processes under the NCA. As such amendments can commence immediately following the passage of the Bill. Any subsequent updates to policies, procedures and materials can occur following assent.
Reduce the State's exposure to liability arising out of incidents on State protected areas, State forests, timber reserves, marine parks and recreation areas	**Assent** Provisions included in Part 2 of the NCOLA Bill	No subsequent regulatory amendments are required to give effect to provisions relating to the reduction of State liability on Queensland Parks and Wildlife Service (QPWS) managed lands and the reduction of the delegate's (pursuant to Part 6D of the *Forestry Act 1959*) liability on State plantation forests. As such amendments can commence immediately following the passage of the Bill. Any subsequent updates to policies, procedures and materials can occur following assent.
Reform conservation officer proof of authority requirements	**Assent** Provisions included in Part 2 of the NCOLA Bill	Amendments relating to conservation officer proof of authority requirements can commence immediately following the passage of the Bill. Any subsequent updates to regulations, policies and procedures are not required prior to assent.
Streamline the Conservation Plan development process	**Assent** Provisions included in Part 2 of the NCOLA Bill	Amendments relating to conservation planning under the NCA can commence immediately following the passage of the Bill. Any subsequent updates to regulations, policies and procedures are not required prior to assent.
Reform provisions regarding the supply of false or misleading information	**Assent** Provisions included in Part 2 of the NCOLA Bill	Amendments relating to the supply of false or misleading information can commence immediately following the passage of the Bill. Any subsequent updates to regulations, policies and procedures are not required prior to assent.
Create a new offence for selling dugong or marine turtle meat or other products	**Assent** Provisions included in Part 2 of the NCOLA Bill	Amendments relating to the sale of dugong and marine turtle meat from commercial premises can commence immediately following the passage of the Bill. Any subsequent updates to regulations, policies and procedures are not required prior to assent.
Other miscellaneous amendments	**Assent** Provisions included in Part 2 of the NCOLA Bill	No subsequent regulatory amendments are required to give effect to other miscellaneous provisions. As such amendments can commence immediately following the passage of the Bill.

Note: Consequential and minor amendments to other primary legislation are also included in the Bill under Schedule 1 in order to reflect the proposed reforms. The timing for the commencement of these consequential and minor amendments aligns with the timing for the relevant provisions as above.

Appendix E – Correspondence – Dr Liz Young – 23 September 2013

Queensland Government

Department of
National Parks, Recreation, Sport and Racing

23 September 2013

Mr Trevor Ruthenberg MP
Chair
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: hcsc@parliament.qld.gov.au

Dear Mr Ruthenberg

Thank you for the opportunity for the Department of National Parks, Recreation, Sport and Racing to present at the recent public hearing on the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 (NCOLA Bill). As part of this hearing the department provided responses to key issues identified in the public submissions and the Committee's analysis of the Bill. There were two matters where the department agreed to provide further written information following the hearing.

I am pleased to provide the following information to assist the Health and Community Services Committee in its inquiry into the NCOLA Bill.

Permitted activities in protected areas

In correspondence dated 19 September 2013, the Committee requested some examples of the types of activities that will be permitted in protected areas as a result of broadening the object of the *Nature Conservation Act 1992* (NCA).

Department Response

At the public hearing, I confirmed that broadening the object of the NCA is intended to reflect Government commitments to achieving recreational and commercial outcomes in the management of protected areas. In addition, this change to the object is primarily aimed at better reflecting what the NCA **currently provides for** in regard to providing access and use of protected areas.

For the Committee's reference, I have provided below some examples of the range of uses that are already occurring on protected areas across Queensland:

- **social uses** such as walking groups and other group activities aimed at community health and wellbeing

- **cultural uses** including allowing for Aboriginal tradition or Island custom
- **commercial uses** including commercial activity permits / agreements for tour operators
- **recreational uses** including mountain biking, camping, hiking
- **educational uses** including scientific study and school group visits
- **community purposes** including charity group events.

Broadening the object of the NCA simply clarifies that the NCA already provides for more than just the conservation of nature and that there are a range of other activities and uses that are already allowed and will continue to be allowed, where appropriate, on the protected area estate. Any new activities or uses would need to be considered in the context of the object of the Act, the management principles of the tenure class and the individual values of the protected area.

Management plans and statements

In correspondence dated 19 September 2013, the committee sought clarification on the current minimum content of management plans and the likely minimum content of management statements.

Department Response

From a legislative perspective, the NCOLA Bill provides that both a management plan and management statement must:

- be consistent with the **management principles** for the class of the area; and
- state **management outcomes** for the protection, presentation and use of the area and the policies, guidelines and actions to achieve the outcomes.

Key differences between the two management instruments under the NCOLA Bill are the consultation requirements and approval processes.

From a policy perspective, the final template for management statements is still under development, however the broad topics that will generally be covered in both a management plan and a management statement include, where relevant:

- the **strategic direction for park management** including documenting key values and approaches for managing natural and cultural values; improving access; facilitating ecotourism, recreation and heritage experiences; providing for partnerships with Traditional Owners and Indigenous communities; managing protected area permits and interests; and enabling management effectiveness evaluation;
- approaches to **monitoring and evaluation** of park management; and
- a forward schedule for **implementing supporting strategies** and determining priorities for management.

While both documents will cover similar topics, a management statement is designed as a simpler expression of the management intent for an area, with a management plan addressing key management issues in a more detailed and comprehensive manner, including specifically addressing issues raised by stakeholders. For this reason, the Minister may determine that a management plan is required in circumstances where there are significant natural and cultural values and/or threats to these values, significant public interest concerns or the significant nature or management of proposed commercial or recreational uses. This will provide the

opportunity for a comprehensive planning process that includes public consultation, to be progressed where necessary.

It is worth noting that the final inclusions in a management plan or statement for an area will also be subject to the individual planning requirements for each area. For an example of a management plan please visit the department's website at http://www.nprsr.qld.gov.au/managing/plans-strategies/index.html.

Further to discussions at the public hearing, I can confirm that the department is also working towards addressing two additional issues raised by invited witnesses:

- seeking legal clarification around the concerns raised by Balkanu and the Cape York Land Council on the potential impact of the NCOLA Bill provisions; and
- identifying any additional information that can be provided to address concerns raised by the Queensland Law Society with regard to increases in claims made against the State for incidents in protected areas.

I hope this information is of assistance. Please do not hesitate to contact me on telephone (07) 3330 5180 or via email liz.young@nprsr.qld.gov.au should you require any further clarification or information on the above.

Yours sincerely

Dr Liz Young
Director, Policy Reform
Queensland Parks and Wildlife Service
Department of National Parks, Recreation, Sport and Racing

Appendix F – Correspondence – Hon Steve Dickson MP – 25 September 2013

Hon Steve Dickson MP
Member for Buderim

Queensland Government

Minister for National Parks, Recreation, Sport and Racing

Our Ref: CTS 22986/13
Your Ref: 11.1.18

25 SEP 2013

Mr Trevor Ruthenberg MP
Chair
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Ruthenberg

Thank you for your letter of 19 September 2013 relating to the Health and Community Services Committee's examination of the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 (the Bill). I note the Committee's request for further information to assist its consideration of potential fundamental legislative principle issues in the Bill.

I am pleased to provide the following responses to each of these questions to assist the Committee in its inquiry.

Reducing the State's exposure to liability

1. The Committee requested information on how many claims arising in Queensland Parks and Wildlife Service (QPWS) managed land over the last decade were decided in the courts compared to how many were settled out of court.

Department Response

As the records are incomplete, it is not possible to give a definitive answer. In sum, based on the information available in the last decade (2003-2013):

- there were approximately 20 finalised claims
- no finalised claims were decided in the Courts
- 10 matters were settled out of Court
- no settlement was made in a further 10 claims because the claim lapsed or liability was denied and the claim was not pursued.

It is not possible to obtain completely accurate figures for claims over the last decade. These approximations are only estimates based on the records held by Queensland Government Insurance Fund (QGIF) and In-house Legal, Department of National Parks, Recreation, Sport and Racing and these records are not complete.

Level 7
111 George Street Brisbane Qld 4000
PO Box 15187 City East
Queensland 4002 Australia
Telephone +61 7 3224 7477
Facsimile +61 7 3012 7725
Email NPRSR@ministerial.qld.gov.au

While these approximations may be useful as a guide, they should not be quoted as statistical facts. Information provided previously related specifically to national parks and not to all QPWS managed land. Additional information relates to QPWS managed land, including under the *Forestry Act 1959*, *Marine Park Act 2004* and *Recreation Areas Management Act 2006*, however, these records are incomplete. Also, it is not possible for finalised claims to establish which claims in State forests were on QPWS managed land and which were on land managed by other agencies.

Finalised Claims

- *National Parks*
  Of the 14 claims relating to death/injury in national parks between 2003-2013, the following were listed as the "Finalisation Reason":
  - resolved/settled: four claims
  - payment of claim: three claims (In-house Legal checked with QGIF these claims were paid under the Personal Accident Policy for volunteer medical expenses for injuries and did not involve a court decision)
  - lapsed/closed due to inactivity: three claims
  - other defendant accepts liability: two claims
  - discontinued/ claim withdrawn: one claim
  - liability totally denied: one claim.

  Based on the information available, it appears that seven claims were settled out of Court, either by payment of the initial claim without Court proceedings commencing or by settlement as part of Court proceedings.

  The total cost of claim settlements and legal and investigation costs for QGIF for these 14 claims was approximately $1 million.

- *Other Areas*
  Of the six claims relating to death/injury in possible QPWS managed areas (excluding national parks) 2003-2013, the following were listed as the "Finalisation Reason":
  - resolved/settled: three claims
  - lapsed/closed due to inactivity: two claims
  - liability totally denied: one claim.

  It appears that three claims were settled out of Court, either by payment of the initial claim without Court proceedings commencing or by settlement as part of Court proceedings.

  The total cost of claim settlements and legal and investigation costs for QGIF for these six claims was approximately $200,000.

- *Totals*
  Of the 20 claims relating to death/injury in all possible QPWS managed areas 2003-2013, the "Finalisation Reason" was listed as follows:
  - resolved/settled: seven claims
  - payment of claim: three claims
  - lapsed/ closed due to inactivity: five claims
  - other defendant accepts liability: two claims
  - discontinued/ claim withdrawn: one claim
  - liability totally denied: two claims.

  It appears that 10 claims were settled out of Court, either by payment of the initial claim without Court proceedings commencing or by settlement as part of Court proceedings.

  The total cost of claim settlements and legal and investigation costs for GQIF for these 20 claims was approximately $1.2 million.

Current Claims

Of the nine current claims relating to death/injury in possible QPWS managed areas (including National Parks):

- one is before the Court of Appeal (judgement was given in the Supreme Court and the case has been appealed by the State)
- two are in the Supreme Court
- six are in pre-Court proceedings.

The amount claimed in the three matters currently before the Courts is $11.9 million. The amounts claimed in the other six matters have not been quantified. To date, QGIF has paid approximately $500 000 in legal and investigation costs for these nine claims.

2. The Committee requested information on how many claims have been received on which the State was unable to rely, either wholly or partly, on sections 16 and 19 of the *Civil Liability Act 2003* (CLA).

Department Response
In relation to sections 16 and 19 of the *Civil Liability Act 2003*, the State has never been able to successfully rely on these sections in defence of a claim.

Transitional regulation-making power

3. The Committee requested examples of the anticipated use of the proposed transitional regulation-making power being inserted into the *Nature Conservation Act 1992* (NCA) by clause 153 of the Bill. This includes examples of provisions which would need to have a retrospective effect.

Department Response
Clause 153 of the Bill inserts a new section 205 into the NCA to provide for a transitional regulation-making power for matters the Bill does not make provision, or sufficient provision, relating to:

- a change in the classes of protected area under the NCA; or
- any matter related to the changes in the classes of protected areas under the NCA.

Under the Bill, a transitional regulation under section 205 may have retrospective operation. This retrospective effect cannot be earlier than the day the section commences. In addition, this regulation-making power will expire one year after the commencement of the section.

The transitional regulation-making power is required to address any unforeseen consequences of the changes to the protected area tenure classes being made under the Bill. It is intended that the proposed changes to the NCA and the tenure transfer process will not impact on the current types of activities and uses that are (a) authorised or (b) restricted on the existing tenure types. As such, the transitional provisions included in the Bill under clause 153 (new sections 195 - 204) are being inserted to facilitate the transfer process and ensure that it does not impact on any current interests or activities.

While these transitional provisions attempt to cover all circumstances or issues in the tenure transfer process, it is impossible to predict every situation. The transitional regulation-making power allows for any unintended consequences of the tenure transfer process that weren't anticipated to be managed and resolved appropriately. For example, if the initial tenure transfer process resulted in an unintended consequence of restricting access for a previously authorised use of a protected area, the transitional regulation-making power could be used to make a transitional regulation to ensure this is immediately resolved. In this instance, it would be necessary for the transitional regulation to have retrospective operation to the date the tenure transfer occurred, in order to ensure the activity was and continues to be an authorised use.

Given the scope of changes under this Bill, and the potential practical requirement of making amendments to address immediate issues, these provisions are considered necessary. Under these provisions, changes will still need to be made by regulation, thus requiring a Governor-in-Council approval process.

A similar provision was included in the *Recreation Areas Management Act 2006* when it was first introduced in order to facilitate the transfer of recreation areas and associated management arrangements from the repealed *Recreation Areas Management Act 1988* into the new Act. In this case, the transitional regulation-making power was never required to be used.

Should the Committee's officers have any questions or concerns about the proposed provisions, please have them contact Dr Liz Young, Director, Policy Reform, Queensland Parks and Wildlife Service, on telephone (07) 3330 5180 or via email Liz.Young@nprsr.qld.gov.au.

Yours sincerely

Steve Dickson MP
Minister for National Parks, Recreation, Sport and Racing

Dissenting report – Mrs Jo-Ann Miller MP

Dissenting Report

The Deputy Chair of the Committee, Member for Bundamba, Jo-Ann Miller MP, submits this dissenting report to the Health and Community Services Committee's examination of the *Nature Conservation and Other Legislation Amendment Bill (No.2) 2013*. Bill Byrne MP, Member for Rockhampton, and Desley Scott MP, Member for Woodridge, who also participated in the committee examination concur with this statement.

The *Nature Conservation and Other Legislation Amendment Bill (No.2) 2013* is a deeply flawed piece of legislation that should never have even been countenanced by the Newman Government. It fundamentally undermines the purpose of the existing *Nature Conservation Act 1992* by altering its objectives, a development which should not be supported by anyone with a desire to protect nature. The Opposition is highly sceptical of the bill's provisions to reduce the number of protected area tenures, weaken the management planning process, and alter the state's liability for personal injuries that occur in the protected area estate.

It is clear from submissions to the committee that Queensland Labor is not alone in its opposition to the bill. A broad range of interest groups and private citizens took the time to notify the committee of their views on the bill with the overwhelming majority voicing significant objections. The Opposition is disappointed that the committee has chosen to ignore the obvious public opinion that this bill is completely unwarranted.

Object of the Act

It is obvious that there is a philosophical difference between members of the Liberal National Party and the general public on the purpose of the protected area estate. The Opposition and the general public hold the view that the preservation of the natural condition of national parks must always take precedence over other activities. While it may be appropriate for educational, recreational, cultural and even commercial activities to take place within protected areas it must always be recognised that these are secondary activities and not the primary purpose of protected area management.

The Newman Government has also made its views clear; that protected areas must be opened up to much greater commercial use. However the idea that national parks have not been available for community use is patently untrue. A recent Newspoll survey conducted for the Queensland Parks and Wildlife Service showed that 67% of Queenslanders had visited a national park within the last year. While it would be welcome to see this number increase further, it is evident that the Government's own data disproves its claims.

The Queensland Murray Darling Basin Commission submission highlighted the shoddiness of the Newman Government's argument on this matter when it stated;

> *"These areas are not "locked up" without purpose or value. They are safeguarded for current and future uses e.g. research and scientific discovery."*

There is a real danger to broadening the object of the act to include other purposes, particularly in the introduction of a 'commercial use' clause. The Opposition has been unable to find a comparable object in relevant legislation in any Australian jurisdiction or in New Zealand. The Wildlife Preservation Society of Queensland's submission detailed the legal effect of these changes;

> *"It is surprising that a Minister of the Crown does not appreciate that expanding and broadening the objects of the Act all components must be considered. Social, cultural and commercial use of national parks must be taken into*

consideration and legally have standing when interpreting any provisions of the Act."

The changes to the object of the *Nature Conservation Act 1992* are dangerously short-sighted and show that the Newman Government and Minister Dickson have no understanding of or appreciation for the conservation of nature.

Tenure Classes

The drastic changes to protected area tenures are also highly problematic and entirely unwelcome. While the government has suggested these tenure changes are designed to streamline the current tenure system they threaten to undermine existing protections. They either stem from a misguided and confused attempt to simplify the tenure process or they are a deliberate strategy to weaken the conservation regimes of Queensland's protected area estate. In either case these reforms should not proceed in their current state.

The abolition of the National Park (Scientific) and National Park (Recovery) tenure classes and their automatic replacement with special management areas provides absolutely no simplification of the existing system. If, as the Government suggests, all activities and protections of the current system are retained the legislation simply removes two tenure classes and replaces them with what are essentially two new classes of sub-tenure.

The fact that these special management areas can be declared or revoked by the chief executive without public consultation or parliamentary approval is extremely worrying. This essentially overrides the power of the Governor in Council to declare a national park. While the Opposition does not believe the abolition of the National Park (Scientific) and National Park (Recovery) tenure classes is necessary, if this legislation is to proceed the Minister should move amendments to give effect to Recommendation 6 of the Committee Report.

The decision to roll Conservation Parks and Resource Reserves into one tenure type, Regional Parks, is seriously flawed. The current tenures are designed for different purposes and have different levels of protection. Therefore it is undesirable to merge these two classes as this will most likely result in inappropriate protections for existing protected areas.

The proposed changes to the tenure system will also take Queensland out of step with the accepted international guidelines established by the International Union for Conservation of Nature; this is a disturbing development. The Opposition will outline further concerns with the suggested tenure regime during parliamentary debate.

Management planning of protected areas

The changes to the management planning process for protected areas can only be seen as an embarrassing admission from Minister Dickson that he is unable to fulfil the requirements of the *Nature Conservation Act 1992.* Moreover it is a breath-takingly hypocritical move given the Minister's constant, and incorrect, claims that the previous government left office with just 17% of protected areas covered by a management instrument. The Minister is well aware that some 47% of protected areas were covered by a management instrument at March 2012. This was due to significant work undertaken by the previous Labor Government. The Minister then sought to take credit for this figure rising to over 70% in the six months after the change of government, due to the process put in place by Labor. It is disappointing that the pace of new management instruments seems to have stalled over the last year.

The Opposition accepts that some revision of the current management planning process may be required, however, it is concerned with the form of the suggested changes as they potentially weaken the current process and may leave areas uncovered by appropriate

instruments. In addition the Opposition is worried that staffing cuts within the department may have undermined its ability to develop management plans and is disappointed that no information on staffing levels has been provided to the committee.

Civil Liability

The Opposition does not believe the Government has provided sufficient evidence to show that there has been a growing number of personal injury claims against the Department of National Parks, Recreation, Sport and Racing. It has also failed to prove that the size of payouts has increased. According to the government's own figures approximately two million dollars has been paid out by the state for death and personal injuries in national parks over the last twenty years. This is a relatively small figure that would not be cause for undue concern. While there are nine current claims against the state totalling $11.9 million these are yet to be determined and may very well result in a much lower amount of compensation.

The Queensland Law Society has used publically available information on the number of civil claims, while acknowledging this will include claims for incidents that did not occur within national parks or protected areas, which shows a marked decrease over the last four years.

The Office of the Queensland Parliamentary Counsel has identified the provisions of the bill concerning civil liability are a potential breach of fundamental legislative principles. The explanatory notes state in response to this review.

> *"These reforms are considered justified in terms of the dramatic increases over the last decade in the liability of, and compensation paid by, public authorities for personal injuries incurred on land owned or occupied by that authority."*

The Opposition does not consider this an adequate justification, particularly in light of the Government's inability to show a large or sustained increase in compensation payments for deaths or personal injuries which occurred within national parks. While the Government may be concerned that the extension of activities within national parks may result in more injuries or even deaths this does not constitute a reason to alter civil liability provisions. Rather it would be another reason to properly manage what activities are allowed within protected areas.

Conclusion

The *Nature Conservation and Other Legislation Amendment Bill (No.2) 2013* should not be passed by the Queensland Parliament as it contains a number of seriously misguided amendments to the *Nature Conservation Act 1992*. The amendments to the object of the act fundamentally alter its purpose and are inconsistent with comparable legislation in other jurisdictions. The changes to the number and type of tenure classes do not achieve their supposed objective to streamline the system and may very well weaken protections. The changes to the management planning process are flawed and the civil liability provisions are entirely unjustified. The Opposition will be opposing this legislation during parliamentary debate on these and other grounds.

Jo-Ann Miller MP
Deputy Chair
Member for Bundamba