

HEALTH AND COMMUNITY SERVICES COMMITTEE
REPORT NO. 31 ON THE
NATURE CONSERVATION AND OTHER LEGISLATION
AMENDMENT BILL (NO. 2) 2013
QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 20 August 2013, the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 (the Bill) was introduced into Parliament.

The Bill was subsequently referred to the Health and Community Services Committee (the committee) for examination, with a report back date of 9 October 2013.

On 9 October 2013, the committee tabled its Report No. 31 in relation to the Bill.

The committee made 20 recommendations. The Queensland Government response to the committee's recommendations is provided below.

RECOMMENDATION 1

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

Government Response

The Government thanks the committee for its timely consideration of the Bill and appreciates the committee's recommendation that the Bill be passed.

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.

Government Response

The Government **accepts the recommendation** and proposes to move amendments during consideration in detail as part of the debate of the Bill in Parliament to address this matter. As per the committee's recommendation, this will be achieved through amending the proposed section 4(a) of the object of the *Nature Conservation Act 1992* (NCA) (under clause 24 of the Bill), to read:

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

This amendment will provide further clarity around the intent to provide that the involvement of indigenous people in the management of protected areas in which they have an interest is a key outcome of the NCA. The amendment will recognise the specific interests that indigenous people have 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.

Government Response

The Government **notes the request for information** on 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. The Minister for National Parks, Recreation, Sport and Racing (the Minister) would be pleased to provide information on this matter to the Legislative Assembly during the second reading debate.

The Government **appreciates the request** to direct the Department of National Parks, Recreation, Sport and Racing to publish the decision making framework, criteria and risk mitigation strategies for permitting activities in protected areas and notes that this information would be helpful in providing greater transparency. Further information on this matter is provided below.

The decision making framework, criteria and risk mitigation strategies for permitting activities in protected areas are set out in legislation, regulation and policy. For example, the Nature Conservation Regulations provide guidance on the types of permits and authorities that can be granted for a protected area and clear criteria in considering applications for such authorities.

This body of information is extensive and the Department of National Parks, Recreation, Sport and Racing is currently reviewing how its availability can be enhanced to support the Government's commitment to achieving improved access to the protected area estate. It should be noted that in the main part, this information is already available on the department's website in the regulations and relevant policies for individual activities and uses.

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.

Government Response

The Government **notes the recommendation** and the Minister would be pleased to provide further information during the second reading debate to provide clarity on the issues around the place of Aboriginal tradition and Island custom in the proposed amendments to management principles for national parks.

In addition, the Government proposes to move an amendment during consideration in detail as part of the debate of the Bill in Parliament. This additional amendment to the management principles of national parks will put beyond doubt that Aboriginal tradition and Island custom should be considered in the context of providing opportunities for education, recreation and ecotourism. To achieve this, it is proposed to amend the two additional management principles of national parks being inserted to section 17 of the NCA (under clause 116 of the Bill), to read:

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

17(e) provide opportunities for ecotourism in a way consistent with the area's natural and cultural resources and values.

This amendment will reflect the definition of "cultural resources" currently under the NCA:

cultural resources of a protected area means places or objects that have anthropological, archaeological, historical, scientific, spiritual or sociological significance or value, including such significance or value under Aboriginal tradition or Island custom.

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.

Government Response

The Government **notes the recommendation** to inform the Legislative Assembly of the outcome of the review of current forest reserves. The Government notes that the reclassification of any forest reserve into a new tenure class will follow the normal tenure dedication processes, requiring Governor in Council approval. This process will include the tabling of the Amendment Regulation dedicating the area in the Legislative Assembly following Governor in Council approval, with the opportunity for disallowance provisions to apply. On this basis, it is not considered necessary to inform the Legislative Assembly of the outcome of the review prior to taking action to reclassify the areas.

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.

Government Response

The Government thanks the committee for consideration of this matter, however **does not accept the recommendation**. Special management areas (SMAs) have been designed to enable flexibility in managing national parks and allowing for required management actions to take place. The committee recommendation to declare an SMA by gazette notice, with the opportunity for disallowance by Parliament, will result in a lengthy administrative process that is not considered appropriate for a decision that relates to management and operational decisions for protected areas. Such a process also has the potential to delay the declaration of an SMA and the implementation of critical management actions.

Committee concerns that the chief executive's decision to declare an SMA over a national park would override the decision of the Governor in Council to declare the area as a national park, are noted. However, each type of SMA will have clearly defined management principles set out in the NCA, and these principles are currently subject to the review of the Legislative Assembly as part of the Bill. In effect, this provides the opportunity for consideration by the Legislative Assembly of the purposes for which an SMA may be declared over a national park in the future.

The provisions of the Bill as currently drafted will continue to require that once a notice is put in place at the entrance of the park, the chief executive will be required to publish a copy of the notice on the department's website and place a notice in the gazette about the declaration. As a matter of policy, the gazette notice would include the limits of the area and the prescribed activities.

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.

Government Response

The Government **accepts the recommendation** and proposes to move amendments during consideration in detail during the debate of the Bill in Parliament to address this matter. The amendments will put beyond doubt that the current restrictions on the granting of a mining interest, geothermal tenure or GHG authority on conservation parks will continue when these areas are transferred into the regional park tenure. This will be achieved by providing that following the initial transfer of areas into the new regional park tenure, a *resource use area* (RUA) can only be declared over a regional park at the time of dedication of the park. This will exclude the opportunity for an RUA to be declared over a former conservation park given that the Bill allows for the automatic transfer of these areas into the regional park tenure without an RUA.

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.

Government Response

The Government **notes the recommendation** to require a commercial operator to prepare an impact assessment and risk mitigation strategy to be provided to the Department of National Parks, Recreation, Sport and Racing in assessing proposed commercial uses. Further information on this matter is provided below.

The decision making framework for assessing commercial uses and activities on protected areas already provides the flexibility to ensure that each commercial operator proposal is assessed appropriately. These provisions are set out in legislation, regulation and policy.

For example, the Nature Conservation (Administration) Regulation 2006 requires the chief executive to have regard to the potential impacts of proposed activities on the natural or cultural resources of a protected area in considering an application for a commercial activity permit. The chief executive may also ask the applicant for any further information reasonably required to decide the application. This could include requesting a formal assessment of impacts and the development of a risk mitigation strategy for the activity prior to being approved. The chief executive also has the power to request that public notice of an application for a commercial activity permit being given.

These discretionary powers ensure that where a large scale or high impact commercial activity is proposed, a more comprehensive assessment process can be undertaken. The decision to request such a formal assessment would be undertaken on a case-by-case basis using a risk-based approach.

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.

Government Response

The Government **notes the request for information** regarding the criteria for, and types of proposed ecotourism facility which would trigger an invitation for public comment before approval.

The Government notes that the recent amendments to allow for the authorisation of ecotourism facilities on national park tenure are outside the scope of the Bill. However, further information on this matter is provided below.

Consistent with current Government policy, public consultation would be triggered for any significant ecotourism facility proposal through the Regulatory Impact Statement (RIS) process. A RIS is required when it is determined that a regulatory proposal's impacts – economic, social and environmental – are likely to be significant.

What constitutes a significant impact is not prescriptively defined but is a matter of careful judgement and is decided on a case-by-case basis taking all relevant factors into consideration. The determination must assess how the regulation impacts stakeholders both directly and indirectly. The Regulatory Assessment Statement System Guidelines provide guidance on the types of factors to be considered in determining whether the impacts of a regulatory proposal are significant. Further information about the RIS process can be found on the Queensland Competition Authority website.

In addition to the RIS process, there are existing third party rights set out in the NCA, which include the ability to seek a court declaration about the grant or construction of an authority granted under the Act, in relation to land in a protected area.

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.

Government Response

The Government **notes the recommendation** and the Minister would be pleased to provide further information during the second reading debate to address concerns around meeting contractual obligations in Indigenous Management Agreements to prepare a management plan.

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.

Government Response

The Government **notes the committee suggestion** that the Minister carefully consider requests for public consultation in determining whether to prepare a management plan. The Government confirms that under the provisions of the Bill, one of the key considerations of the Minister in determining whether a management plan is required is any significant public interest concerns. This means that a comprehensive planning process including public consultation can be undertaken where necessary.

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.

Government Response

The Government **does not accept the recommendation**, in light of the overarching policy intent of the Bill to streamline the management planning process and achieve cost and resource savings in the development of management plans. Amending the Bill to require that the Minister takes reasonable steps to notify interested parties will create uncertainty and ambiguity in interpreting the legislation. This will result in park managers adopting a risk adverse approach to interpreting what 'reasonable steps' means, therefore resulting in a continuation of significant public notification requirements.

Under the current drafting of the Bill, publishing a notice on the department's website will become the minimum standard of public notification for draft management plans. This will not impact on the ability for the Minister to publish a notice in a local or State newspaper where necessary, or the continuation of existing policies to notify stakeholders through the department's stakeholder distribution lists.

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.

Government Response

The Government **notes the recommendation** and the Minister would be pleased to provide further information during the second reading debate with regard to steps that will be taken to notify interested parties that a draft management plan is available.

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*.

Government Response

The Government **accepts the recommendation** and proposes to move amendments during consideration in detail as part of the debate of the Bill in Parliament to address this matter. It is proposed that minimum periods of time for making submissions will be made consistent across the three pieces of legislation by amending:

- section 31 of the *Marine Parks Act 2004* to require a stated period of at least **20 business days** for making submissions on a draft management plan for a marine park; and

- section 36 of the *Marine Parks Act 2004* to require a stated period of at least **20 business days** for making submissions on a draft amendment to a management plan for a marine park.

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.

Government Response

The Government **does not accept the recommendation** given that it is not in line with the overarching policy intent of the Bill to streamline the management planning process. Given that management plans are intended to be a management tool that addresses operational concerns and issues, it is not considered appropriate to require a lengthy approval process involving tabling in the Queensland Parliament and providing for disallowance. In addition, the requirements under the *Statutory Instruments Act 1992* are only intended to apply to the tabling of subordinate legislation. Given that management plans for protected areas, marine parks and recreation areas are not subordinate legislation, this requirement is considered overly burdensome and unnecessary, particularly when it can delay the approval and implementation of critical management actions for an area.

RECOMMENDATION 15

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

Government Response

The Government confirms that **no further action is required** with regard to this recommendation. The section numbering under clause 77 of the Bill which amends section 133 of the NCA is accurate. The provisions have been drafted on the basis that provisions under the *Waste Reduction and Recycling Act 2011*, which is set to commence on 29 October 2013, also amend section 133 of the NCA. This drafting approach reflects that the Bill is not anticipated to receive passage and assent prior to 29 October 2013.

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.

Government Response

Consistent with the Government response to Recommendation 11, the Government **does not accept the recommendation**, in light of the overarching policy intent of the Bill to streamline the management planning process. Amending the Bill to require that the Minister takes reasonable steps to notify interested parties will create uncertainty and

ambiguity in interpreting the legislation. This will result in park managers adopting a risk adverse approach to interpreting what 'reasonable steps' means, therefore resulting in a continuation of significant public notification requirements.

Under the current drafting of the Bill, publishing a notice on the department's website will become the minimum standard of public notification for draft amendments to management plans. This will not impact on the ability for the Minister to publish a notice in a local or State newspaper where necessary, or the continuation of existing policies to notify stakeholders through the department's stakeholder distribution lists.

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.

Government Response

The Government **does not accept the recommendation** in order to ensure that overarching policy intent to streamline the management planning process is achieved. Amending the Bill to further define the exemption from consultation for changes to ensure consistency with State Government policy will create uncertainty and ambiguity in interpreting the legislation. This is because it is impossible to anticipate and define every circumstance or situation that this provision may apply to. Such an approach would result in park managers adopting a risk adverse approach to interpreting the definition, therefore resulting in the provision being poorly used.

The Bill as currently drafted reflects the need for management plans to be flexible and remain contemporary, by allowing amendments to be made in a timely manner without lengthy administrative processes. The use of this provision is not intended to apply to every amendment to a management plan – only those broad State Government policy decisions that are relevant to the management of multiple areas. Transparency and accountability around the decision to amend a management plan without consultation will still be maintained, with the Minister required to publish a notice on the department's website about the amendments made and the reasons for the change.

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.

Government Response

The Government **notes the recommendation** and the Minister would be pleased to provide examples during the second reading debate of the types of amendments to management plans that would not require consultation.