Parliamentary Committees



Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017

Report No. 40, 55th Parliament
Agriculture and Environment Committee
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Agriculture and Environment Committee

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Abbreviations

the Bill	Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017
the committee	Agriculture and Environment Committee
the department	Department of Environment and Heritage Protection
ILUA	Indigenous Land Use Agreement
NCA / NC Act	*Nature Conservation Act 1992*
QELA	Queensland Environmental Law Association
QLS	Queensland Law Society
SWR	special wildlife reserve

Chair's foreword

This report presents a summary of the Agriculture and Environment Committee's examination of the Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017.

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

It was disappointing that the committee could not reach consensus on this Bill. The Bill proposed a mechanism for increasing protected areas in Queensland at minimal cost to the Government. Queensland is currently working towards the United Nations Convention on Biological Diversity target of 17% terrestrial protected areas coverage. Expanding Queensland's protected area estate through private investment will help to reach this target sooner. There are individuals and organisations that are prepared to invest in protecting areas of outstanding conservation value but the committee heard that these organisations are not prepared to make these investments under the current regulatory framework. This potential investment generally would lead not only to conservation outcomes but would create sustainable employment in areas where this is critically needed. This loss of investment should be of concern to all Members of Parliament.

Government Members acknowledge the concerns raised about the potential loss of land for other purposes, however, under the Bill the declaration of a Special Wildlife Reserve is completely voluntary and the Bill contains safeguards that ensure that only areas of outstanding conservation value will be considered and consideration will only occur with the consent of all parties with an interest in the land being considered.

The concerns raised about pest and weed management issues that may occur on a property that was deemed to be worthy of protection are completely unfounded. The *Biosecurity Act 2014* would apply to these properties and the organisations that are seeking to invest in these properties have a good track record of land management in other states and internationally.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on the Bill. I also thank the committee's secretariat, and the Department of Environment and Heritage Protection.

I commend this Report to the House.

Joe Kelly MP

Chair

1 Introduction

1.1 Role of the committee

The Agriculture and Environment Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility are:

- Agriculture, Fisheries and Rural Economic Development
- Environment, Heritage Protection, and
- National Parks and the Great Barrier Reef.

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

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

The Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017 (the Bill) was introduced into the House and referred to the committee on 14 June 2017. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the committee to report to the Legislative Assembly by 11 August 2017.

1.2 Inquiry process

On 16 June 2017 the committee invited subscribers, and on 21 and 22 June 2017 the committee invited stakeholders, to lodge written submissions. The committee received 34 submissions (see list of submissions at Appendix A).

On 29 June 2017, the committee wrote to the Department of Environment and Heritage Protection (the department) seeking a written briefing on the Bill and a response to specific questions posed by the committee. The committee received a response from the department on 4 July 2017.

The committee held a public hearing and a public briefing from the department on 12 July 2017 (see list of witnesses who appeared at the hearing and departmental officers who briefed the committee at Appendix B).

On 25 July 2017, the committee received written advice from the department in response to matters raised in submissions.

1.3 Policy objectives of the Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017

The objectives of the Bill are to amend:

- the *Nature Conservation Act 1992* to:

[1] *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

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

The key objective of amendments to the *Nature Conservation Act 1992* is to establish a new class of protected area, known as a special wildlife reserve, 'that will allow for the protection of lands of outstanding conservation value from incompatible land uses; essentially a privately managed protected area of equivalent conservation merit and protection to that of a national park'.[2] By providing enduring protection from incompatible land uses, special wildlife reserves are further intended to encourage private investment in Queensland's protected area estate.[3]

The explanatory notes state that areas of outstanding conservation value frequently occur on privately owned or managed land and that it is not feasible or practical to include such areas into the state-owned and managed protected area estate. The *Nature Conservation Act 1992* currently provides for one class of private protected area (i.e. nature refuges). However, nature refuges allow for mixed land uses and provide no protection from a range of incompatible land uses.[4]

2 Explanatory notes, p 1.
3 Explanatory notes, pp 1, 3.
4 Explanatory notes, p 1.

The Bill inserts a new s 21B in the *Nature Conservation Act 1992* that defines the management principles for special wildlife reserves.[5] Each special wildlife reserve will be subject to a legally binding, perpetual conservation agreement, and an associated management program.[6] The conservation agreement and management program will detail management outcomes and actions to ensure permanent protection of the conservation values of each special wildlife reserve.[7] Both documents must be consistent with the management principles outlined in s 21B.[8]

1.4 Consultation on the Bill

As set out in the explanatory notes, consultation on amendments to the *Nature Conservation Act 1992,* the *Land Act 1994* and *Land Title Act 1992* was undertaken with stakeholders during the initial policy development and the release of an exposure draft of the legislation. The explanatory notes advise this occurred primarily through meetings with key stakeholders in the conservation sector to 'assist government in gaining a better understanding of current issues and new directions in private and public land conservation management'.[9]

Following this early consultation, the explanatory notes state that further consultation was undertaken with a broad range of stakeholders in the conservation, resources, forestry, agriculture, Native Title and local government sectors. As a result of this consultation process, a number of changes were made to the special wildlife reserves proposal, including to:

- ensure the that special wildlife reserves are retained in perpetuity
- ensure that the state retains options to continue a special wildlife area on leasehold land should a landholder surrender their lease or allow it to expire
- ensure acknowledgement of risks associated with private ownership of land that has perpetual high level protection/restrictions is considered through the thorough assessment of landholder suitability, and
- ensure that tenure resolution processes are not pre-empted by including provisions that prevent a special wildlife reserve from being declared over transferable land under the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991*.

According to the explanatory notes, the views expressed during consultation were predominantly positive, although some interest groups argued for the continuance of certain activities on special wildlife reserves (e.g. commercial grazing, forest harvesting and mining). However, this was not considered compatible with the intent of the legislation.[10]

It is noted that the Queensland Productivity Commission considered that the proposal was unlikely to result in any significant adverse impacts, and would not benefit from further assessment under the Treasurer's Regulatory Impact Statement guidelines. However, the Commission did recommend that supporting documentation regarding implementation of the proposal be provided to stakeholders through the subsequent consultation process.

During the public hearings held on 12 July 2017, witnesses expressed a high degree of satisfaction with the consultation undertaken by the department.[11]

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5 Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017, cl 7.
6 Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017, cl 12.
7 Explanatory notes, p 3.
8 Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017, cls 12, 25.
9 Explanatory notes, p 8.
10 Explanatory notes, p 9.
11 Queensland Resources Council, public hearing transcript, Brisbane, 12 July 2017, pp 2, 4; AgForce Queensland, public hearing transcript, Brisbane, 12 July 2017, p 13.

The explanatory notes also advise that consultation with external stakeholders on amendments to the *Environmental Offsets Act 2014* occurred through release of the exposure draft, while consultation on amendments to the *Environmental Protection Act 1994* with external stakeholders will be undertaken prior to any subsequent amendments to the Environmental Protection Regulation 2008. To date, consultation on amendments to the *Environmental Protection Act 1994* have been undertaken with State and Commonwealth departments and agencies.

Government Members' comments

The Government Members note and acknowledge the detailed and lengthy consultation process undertaken by the department in regards to the amendments for special wildlife reserves.

In respect to the amendments to the *Environmental Protection Act 1994*, the Government Members note that the department has committed to undertake external consultation prior to any subsequent amendments to the Environmental Protection Regulation 2008. Further comments regarding this consultation are discussed below in section 2.3.

1.5 Estimated costs for government implementation

In relation to the amendments to the *Nature Conservation Act 1992*, the explanatory notes state that private protected areas, such as the special wildlife reserves proposed in the Bill, are extremely cost-effective for government as acquisition and on-going management costs are met by the private sector. Use of public monies to fund government delivery of incentives and landholder services is a significantly cheaper, efficient and more far-reaching means of realising the same conservation outcome, and meeting protected area targets, compared with acquisition and on-going management of state-owned protected areas (e.g. national parks). It is well documented that private protected areas will form an increasingly important component of the protected area system, and investment in this area by government and the private sector should be encouraged.

The explanatory notes state that core costs for government implementation include: assessment and negotiation of a proposed special wildlife reserve (e.g. staffing, field inspections, reporting, administrative checks, drafting of a conservation agreement, assessment and review of management program); on-going monitoring and landholder services (e.g. staffing, provision of advice, property visits, compliance checks); and incentives (e.g. funding for assistance with on-ground threat mitigation measures). The department anticipates that it may require one additional full-time equivalent position for every five to 10 special wildlife reserves that are created.

According to the explanatory notes, initially, the creation and management of special wildlife reserves will be undertaken by the department's staff within the existing *NatureAssist* budget allocation.

In relation to the amendments to the *Land Act 1994* and the *Land Title Act 1994*, the explanatory notes state that these amendments will contribute savings to government through reduced costs due to not having to negotiate new conservation agreements with landholders of perpetual conservation agreements.

The explanatory notes state that there will be no additional costs associated with the amendments to the *Environmental Offsets Act 2014* and *Environmental Protection Act 1994*.

1.6 Should the Bill be passed?

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

After examination of the Bill, including the policy objectives which it will achieve and consideration of the information provided by the department and from submitters, the committee could not reach a majority decision on whether the Bill should be passed.

2 Examination of the Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017

This section discusses the main issues raised during the committee's examination of the Bill.

2.1 Special wildlife reserves

2.1.1 Criteria for declaration of special wildlife reserves

Clause 12 of the Bill inserts a new s 43A in the *Nature Conservation Act 1992* which states that the Minister must consider the 'State interest' in relation to an area of land before being satisfied that the area should be proposed as a special wildlife reserve. The term 'State interest' is defined in s 43A(8) to mean 'an interest the Minister considers to be an economic, environmental or community interest of the State'.

A number of submissions to the committee suggested that there was a lack of clarity and certainty regarding the criteria or matters that the Minister would consider in deciding whether to declare an area of land as a special wildlife reserve.[12]

One submitter said that there should be more specific details of what the 'State interest' is.[13] Another submitter was concerned that the 'State interest' was defined very broadly and that, in effect, there was no criteria which the Minister based his or her decision to declare a special wildlife reserve.[14] In response, the department stated that the definition of 'State interest' is deliberately broad to ensure that all relevant interests are taken into account.

A number of submitters noted that, according to the explanatory notes, the introduction of the special wildlife reserve, as a new class of private protected area, was for the protection of lands of 'outstanding conservation value'. However, the Bill itself does not require that the Minister be satisfied that an area of land have such values before proceeding to declaration.

The Queensland Environmental Law Association (QELA) submitted:

> *QELA acknowledges that section 43A(4)(b) requires a description in the Minister's proposal of "the proposed reserve area's exceptional natural and cultural resources and values". However, this section does not have any direct relationship with the criteria to be used in the Minister's decision to prepare a proposal. Rather, the criteria are set out in the broad definition of "State interest" in section 43A(8) …*
>
> *The effect of the above is that there is no proper criteria on which the Minister bases his or her decision to prepare a proposal to declare an area as a special wildlife reserve. QELA recommends that the criteria should match the stated purpose for which special wildlife reserves are to be created.*[15]

Similarly, the Queensland Law Society (QLS) stated:

> *The drafting effectively allows for the Minister's (essentially unfettered) determination of what might be considered an (any) "economic, environmental [or] community interest".*
>
> *This neutral language gives the Minister a broader, rather than a narrower power, to determine when a "special wildlife reserve" should be declared. The Explanatory Notes are misleading in*

12 See, for example, submissions 10, 14, 15, 29.
13 Submission 10, p 1.
14 Submission 14, p 1.
15 Submission 15, p 2.

> *suggesting that the SWR Bill has anything to do with wildlife or "outstanding conservation value" when that is not actually what the SWR Bill permits.*[16]

While the only criteria in the Bill itself appears to be consideration of the 'State interest', the department sought to make it 'completely clear' at the public briefing that 'the reserves will be based on their exceptional natural and cultural values, not on their State interests.'[17] Similarly, written advice from the department stated that there would be three critical factors to be assessed in determining the suitability of a proposed special wildlife reserve:

- conservation values of the land
- landholder suitability, and
- existing and potential State and third party interests in the land.[18]

Further detail and examples for each of these factors is provided in the department's written advice.

In its written response to submissions, the department argued 'the proposal must describe the area's exceptional natural and cultural resources and values' (as per the proposed new s 43A(4)(b) of the *Nature Conservation Act 1992*) and '[d]ecisions under the NC Act should be read in the context of the purpose and object of the Act, which are focused on the "conservation of nature"'.[19]

Despite assurances from the department that the conservation value of the land will be critical to the decision to declare a special wildlife reserve, under the Bill, there is no explicit requirement for anything other than the 'State interest' to be considered by the Minister. At the public hearing, QLS stated:

> *…the purpose of the legislation, outside the scope of the Bill or outside the ambit of the Bill, is articulated as the preservation of high-value conservation values. If that is what the government wants to do, from a good law perspective, the Law Society makes no comment and takes no position. Our point to the committee is that that is not what the Bill does. It does that, but only to the extent that a narrow part of the state interest, as it is defined in section 43A(10) [sic], includes that as a subset even of the ecological and environmental criterion in that section, but it also includes everything else in the world. … In that context it is dangerous, because if the intent is to preserve high-value conservation and the power that is granted includes a power to do almost anything else, our respectful suggestion to the committee is to ask: is this good law? We do not think it is.*[20]

16 Submission 29, p 2.
17 Public briefing transcript, Brisbane, 12 July 2017, p 2.
18 Department of Environment and Heritage Protection, correspondence dated 4 July 2017, attachment, p 6.
19 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, p 3.
20 Public hearing transcript, Brisbane, 12 July 2017, pp 17-18.

Government Members' comments

The Government Members note that the 'State interest' appears to be the only matter which the legislation requires the Minister to consider before declaring a special wildlife reserve. The 'State interest' is defined broadly and encompasses economic, environmental and community interests. While the Government Members do not consider this to be problematic in itself, the committee notes that the explanatory notes state that the key objective of the amendments is to 'allow for the protection of lands of outstanding conservation value'.[21]

The Government Members consider there is a discrepancy between the stated intent and the drafting of the Bill in respect to the criteria that must be satisfied before an area of land can be declared a special wildlife reserve.

The Government Members recommend that clause 12 of the Bill be amended to insert a requirement that, before declaring, or preparing a proposal for the declaration of, a special wildlife reserve, the Minister must be satisfied that the area to be included in the special wildlife reserve is of 'outstanding conservation value', or words of that nature.

2.1.2 Incompatible land uses

As noted above at section 1.3, the key objective of the Bill is to establish a new class of protected area to allow for the protection of lands of outstanding conservation value from 'incompatible land uses'.[22] According to the Bill and advice from the department, upon declaration of a special wildlife reserve, the following land uses will be restricted:

- timber harvesting will not be able to be undertaken, as the State will be prohibited from getting or selling forest products on the protected area (due to the proposed amendment to the *Forestry Act 1959*)[23]
- the granting of mining, petroleum, geothermal and greenhouse gas authorities will be prohibited,[24] subject to some exclusions which are detailed in s 27 of the *Nature Conservation Act 1992* in relation to some petroleum and gas activities such as pipeline licences
- commercial grazing will not be allowed, however grazing may potentially be authorised as a management tool for the control of pest plants in specific circumstances[25], and
- some conservation-related activities such as low-level ecotourism and scientific and educational activities may be allowed where appropriate.[26]

While some submissions to the committee supported these restrictions, there were also some submitters that objected to some of these restrictions.

AgForce Queensland opposed the exclusion of grazing:

> *Given the increasing food and fibre needs that will be required in the future, we oppose this Bill permanently removing land from agricultural production...*
>
> *For some properties, the fact is that grazing is already co-existing with the values that may be identified through the process of declaring a special wildlife reserve, if it did not, the values would not exist. We argue that farming and protecting the environment is not incompatible and can*

21 Explanatory notes, p 1.
22 Explanatory notes, p 1.
23 Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017, cl 49.
24 Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017, cl 8.
25 Department of Environment and Heritage Protection, correspondence dated 4 July 2017, attachment, p 5.
26 Department of Environment and Heritage Protection, correspondence dated 4 July 2017, attachment, p 5.

> *occur simultaneously and this had been encouraged and proven through schemes like the Nature Refuges program.*[27]

The department, however, considered that the continuance of commercial grazing was not compatible with the intent of the legislation. The department advised that an assessment of the significance of land for agricultural purposes will be undertaken prior to a proposal for a special wildlife reserve proceeding. This will include areas recognised by the Department of Agriculture and Fisheries as strategic or high value agricultural land. The department stated that the removal of land from agricultural production will only occur after an assessment of the relative agricultural and conservation values of the land.[28]

The committee heard further concerns regarding the potential impact the Bill could have on economic development and employment in Queensland. At the committee's public hearing, Balkanu stated it was concerned:

> *that there is the potential to misuse strategic wildlife reserves to lock up country from economic development… Generally our position overall is that for traditional owners in [Cape York] meaningful employment and economic opportunities are critical. We have always been about looking at conservation while also ensuring that we protect economic opportunities for traditional owners in the Cape. It is the most impoverished area of Queensland, and a job in the Cape is probably very hard to come by compared to jobs down here. Our experience has been that the conservation sector does not provide much in the way of meaningful employment opportunities. It is important, but the grazing sector and other options are also very important.*[29]

In contrast, the committee received submissions that discussed the alternative economic and employment opportunities that the Bill would support. South Endeavour Trust stated that the legislation would:

> *give Queensland a significant comparative advantage in terms of attracting conservation capital such as our own. More particularly for ourselves … as a landholder who is very much focused on our land as an investment, we do want to be able to get a good return on that investment, and the first and best use of our land is a combination of nature conservation and nature based tourism; however, under current legislation in Queensland we do not have security over our assets. Even though we either have freehold title over this land or are about to have freehold title, we do not have security over our assets which would justify us making very, very substantial investments in tourism infrastructure.*[30]

The department also emphasised again that the Minister is required to consider State interests prior to a proposal for a special wildlife reserve proceeding, and that these would include the economic and community interests identified by submitters and witnesses such as Balkanu.[31]

The Queensland Resources Council expressed concerns regarding the risk that land use interests, other than conservation, could potentially be 'blocked by vexatious [special wildlife reserve] proposals'.[32] The department advised the committee that the Bill contains provisions to prevent the vexatious use of the mechanism—the Minister must consider State interests and materially affected interest holders are required to consent to the conservation agreement for the special wildlife reserve.[33]

The department provided a list of State and third party interests which would be assessed, where appropriate, before any special wildlife reserve can be declared. These interests included mining,

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27 Submission 28, p 1.

28 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, p 2.

29 Public hearing transcript, Brisbane, 12 July 2017, p 8.

30 Public hearing transcript, Brisbane, 12 July 2017, p 20.

31 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, p 2.

32 Submission 8, p 2.

33 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, p 1.

energy, forestry, agriculture, planning, transport infrastructure, water resources, native title, registered mortgagors, sub-lessees, easement holders and defence. A draft Memorandum of Understanding (MOU) between the department and other departments responsible for Queensland's mining, quarrying, water, apiculture, agriculture and forestry interests' details roles, responsibilities, administrative arrangements and procedures to be followed in assessing a proposed special wildlife reserve.[34]

The Queensland Resources Council requested that the MOU be referenced in the Bill 'to ensure that Government follows due process in assessing the interests of the land'.[35] The department considered that it was not appropriate to reference this administrative arrangement within legislation.[36] It was also not necessary because the 'safeguards in relation to interest holders exist within the Bill itself'.[37]

The Queensland Resources Council also requested that the explanatory notes be amended to clarify that special wildlife reserves will not be declared over land where there is an active exploration, prospecting and resource extraction interest unless granted by consent. This is despite acknowledgement that the explanatory notes already state that 'the Minister must not enter into a conservation agreement, the precursor to a special wildlife declaration, without the written consent of persons mentioned in [s] 43A(5) whose rights or interests will be materially affected by the agreement.'[38] In written advice to the committee, the department confirmed that a special wildlife reserve would not be declared over land with an active resource tenure without the consent of the resource tenure holder.[39]

Submitters were also concerned that fossicking on General Permission Areas would be prohibited on special wildlife reserves.[40] In response, the department stated that the legislation will have no impact upon activities undertaken in State forests or other State managed land, such as fossicking and prospecting.[41]

The committee received submissions that expressed objection to beekeeping being prohibited on special wildlife reserves.[42] The department stated that beekeeping would not be consistent with the management principles and therefore would not be permitted on special wildlife reserves, other than as a short-term continuing use under the proposed new s 43H.[43]

Some submitters suggested that the service facility activities mentioned under s 27 of the *Nature Conservation Act 1992* should also be regarded as an 'incompatible land use' and not allowed on special wildlife reserves.[44] In response, the department maintained that the provisions in s 27 will apply to special wildlife reserves 'to deliver the intent of national park equivalent protection' for these reserves.[45]

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34 Department of Environment and Heritage Protection, correspondence dated 4 July 2017, attachment, p 8.
35 Submission 8, p 5.
36 Public briefing transcript, Brisbane, 12 July 2017, p 2.
37 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, p 1.
38 Explanatory notes, p 13.
39 Department of Environment and Heritage Protection, correspondence dated 4 July 2017, attachment, p 4.
40 Submissions 24, 32.
41 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, p 7.
42 Submissions 10,17.
43 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, p 6.
44 See, for example, submissions 9, 23, 26, 31.
45 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, p 6.

Government Members' comments

The Government Members note the advice from the department regarding land uses that will be allowed on special wildlife reserves. The Government Members accept that some land uses will be prohibited or restricted to ensure that the intent of the legislation to protect areas of 'outstanding conservation value' can be achieved.

The Government Members are satisfied with the department's advice that the assessment of State interests prior to proceeding with a declaration of a special wildlife reserve will ensure protection of non-conservation interests.

2.1.3 Native title rights and interests

In its written submission to the committee, the Cape York Land Council Aboriginal Corporation expressed concerns that if a special wildlife reserve was declared over an area of land by the process proposed in the Bill, 'it would prohibit new mining and other development opportunities in that area, and native title parties would consequently lose the potential for economic benefit without their agreement.'[46]

The Cape York Land Council Aboriginal Corporation expressed the vies that the declaration of a special wildlife reserve should only occur following consent from native title parties. It stated:

> *If the declaration of a SWR required the consent of native title parties through an [Indigenous Land Use Agreement (ILUA)] then native title parties could decide whether they support the potential loss of mining or other opportunities in exchange for any potential benefits associated with a SWR.*[47]

The Cape York Land Council Aboriginal Corporation further submitted to the committee that it considered the Bill to be contrary to s 10 of the *Racial Discrimination Act 1975* (Cth):

> *In essence the NCA for nature refuges, and in future for SWRs if the SWR Bill is enacted in its present version, does not require native title holders to give their consent to the creation of the protected area in all circumstances. This is in contrast to the position of a freehold owner or pastoral lessee under the Land Act 1994 (Qld), whose consent is a mandatory prerequisite to the declaration of the protected area. The State has previously asserted that native titles holders' consent is not required because native title rights are not "materially affected" by a declaration of a nature refuge. But that position overlooks the less favourable treatment of native title holders. Freehold owners' and pastoral lessees' consent is required regardless of the degree to which their interests will be affected by a proposed declaration. By failing to afford native title holders the same protection as that of freehold owners or pastoral lessees, the NCA (and the provisions of the SWR Bill if enacted) will violate s.10 of the Racial Discrimination Act 1975 (Cth).*[48]

The Cape York Land Council Aboriginal Corporation recommended that the Bill's definition of 'landholder' be amended to include native title holders.[49] Under the Bill, landholders must agree to the declaration of a special wildlife reserve.[50] The Cape York Land Council Aboriginal Corporation commented that if the definition of 'landholder' was not expanded, 'the fall back option would be to

46 Submission 27, p 2.
47 Submission 27, p 2.
48 Submission 27, attachment, p 1.
49 Submission 27, p 3.
50 Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017, cl 12.

acknowledge that Indigenous people's interests are materially affected by the declaration and, therefore, their consent should be required through that mechanism.'[51]

The explanatory notes state: 'a conservation agreement does not impact on the rights and/or interests of other relevant parties, including Native Title holders, without consent'.[52]

At the public briefing, the department told the committee:

> *… a number of stakeholders have raised concerns regarding the impact of the proposal on native title. Conservation agreements—and it is the same for the nature refuge ones—are worded so that they do not impact upon native title rights and interests. This ensures that no obligations or restrictions are placed on native title parties which would interfere with the exercise or enjoyment of native title rights. All native title holders or claimants will be contacted and will be required to provide consent if they consider that they are materially impacted by the special wildlife reserves, as it will be for any other person with an interest in the land who is materially affected. The consent may take the form of an Indigenous Land Use Agreement if that was the preferred means for the native title holder in question.*
>
> *With respect to the Racial Discrimination Act, the distinction made by the provision of the Bill is not one based on race but upon different interests in the land. That is, the Bill distinguishes between persons holding an interest in the land within the scope of a landholder, such as the lessee, and persons holding other interests in the land. There is no discrimination based on race, and native title holders who have an interest in the land are treated the same as non-native title holders—namely, the right to give or withhold their consent for the conservation agreement. It also should be noted that the future grant of mining interests by the state is not a landholder's right and nor is it a native title right.*[53]

Under the proposed new s 43A of the *Nature Conservation Act 1992*, the Minister must provide written notice of a proposal to declare a special wildlife reserve to 'each person who has an interest in land in the proposed reserve area' and provide them the opportunity to make submissions about the proposal.[54] The department advised that, under this provision, holders of native title determinations, native title claimants and parties to any ILUAs over the land will be notified.[55]

In its written response to submissions, the department made the following further comments:

> *Indigenous Land Use Agreements are not required for new national parks, although they are used as part of the Cape York Tenure Resolution Program (CYTRP). The CYTRP is a program which aims to return ownership and management of identified lands on Cape York Peninsula to local Aboriginal Traditional Owners, while ensuring the protection of Cape York Peninsula's iconic natural areas and significant natural and cultural values.*
>
> *The Minister is required to consider State interests prior to a proposal for a Special Wildlife Reserve proceeding. As well as environmental interests, these include economic or community values, as mentioned in [Cape York Land Council Aboriginal Corporation's] submission.*
>
> *The right to approve, refuse or restrict mining activities does not rest with either the landholder or native title holder but with the State.*
>
> *The Minister will be required to assess the potential loss of mining and other State interests as they relate to the public benefits of a Special Wildlife Reserve.*

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51 Public hearing transcript, Brisbane, 12 July 2017, p 2.

52 Explanatory notes, p 3.

53 Public briefing transcript, Brisbane, 12 July 2017, p 2.

54 Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017, cl 12.

55 Department of Environment and Heritage Protection, correspondence dated 4 July 2017, attachment, p 5.

Additionally, as the declaration of a new Special Wildlife Reserve would be made through regulation, the Regulatory Impact Assessment process will be followed for each proposal in consultation with the Queensland Productivity Commission. Impacts on state interests will also be assessed through this process.

No new rights or interests will be granted to a lease holder through the conservation agreement or declaration of a Special Wildlife Reserve (to the contrary, existing rights or interests will be restricted). As such, it is not considered necessary to include native title consent through an ILUA.

However, if native title rights were affected then native title consent would be required, and this could be done through an ILUA if desired by the affected party.

Where native title exists or may exist for a proposed Special Wildlife Reserve area, relevant native title parties will be notified and may provide a submission to the Minister on the proposal. This process will ensure transparency.

A conservation agreement is intended to primarily bind (and thereby restrict the rights and interests) of "landholders" as defined in the NC Act. Other interest holders may be bound by consent. Where the State wishes to restrict or extinguish the native title rights and interests of a native title party it would be required to enter into an ILUA with that party.

The Bill does not distinguish on the base of race but upon different proprietary interests in land. The provisions distinguish between persons holding an interest in land who fall within the scope of a 'landholder', and persons holding other interests in land. In that regard, native title holders are given the same rights as holders of other non-native title interests who do not fall within the scope of 'landholder', namely the right to give or withhold their consent if the conservation agreement materially affects their interest.[56]

Government Members' comments

The Government Members note the serious concerns expressed by the Cape York Land Council Aboriginal Corporation with respect to the potential impacts of the Bill on native title rights and interests. In particular, the committee notes that Cape York Land Council Aboriginal Corporation considers the Bill to violate s 10 of the *Racial Discrimination Act 1975* (Cth).

The Government Members note the detailed advice provided by the department, particularly the advice that, relevant native title parties will be notified and given submission rights in respect of special wildlife reserve proposals and, should native title rights and interests be affected, the State will enter into an ILUA with the native title party. However, the Government Members remain concerned that the Bill does not provide any clarity regarding the circumstances in which it will be considered that native title interests or rights will be 'materially affected' such that the Minister is required to obtain the consent of the native title holder before making a conservation agreement.

The Government Gembers recommend that the Minister, in the second reading speech for the Bill, assure the House that native title rights and interests will be adequately considered and protected in the special wildlife reserve declaration process.

2.1.4 Compliance and enforcement

Some submissions raised questions regarding the compliance and enforcement mechanisms which will be available to ensure the maintenance of conservation and management standards on special wildlife reserves.

[56] Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, pp 2-3.

The Wildlife Preservation Society of Queensland commented that 'there is no apparent head of power for the landholder to be penalised for not complying with the conservation agreement and the management program…'.[57]

Queensland Farmers' Federation was concerned that the Bill 'does not detail the compliance requirements for SWRs' and considered that 'this must be clearly articulated so that landholders are completely informed when choosing to enter in to an agreement'.[58]

Under s 62 of the current *Nature Conservation Act 1992*, there is an offence for unauthorised taking, using, or keeping of, or the interference with, a cultural or natural resource on a protected area. However, a person is exempted from an offence if that person was acting in accordance with a conservation agreement or management program for a special wildlife reserve.[59]

The department advised the committee as follows:

> *Regulations relating to compliance, including restrictions and offences are proposed should this Bill be enacted.*
>
> *A head of power for penalties relating to not complying with a conservation agreement will require further consultation with existing nature refuge landholders, as they would be directly affected by such provisions subsequent to entering into a conservation agreement.*
>
> *The requirement for a regular review of the management program for a Special Wildlife Reserve (section 120GA) will require an assessment of the effectiveness of management under the existing management program. This will establish baseline for evaluation of management effectiveness.*[60]

Government Members' comments

The Government Members consider that there is a need for a broad range of compliance and enforcement tools to provide for the ongoing conservation and protection of special wildlife reserves. The Government Members note that, other than a restriction on taking, using, keeping or interfering with cultural and natural values of special wildlife reserves, there are no provisions in the *Nature Conservation Act 1992* or Bill for any penalties to be prescribed for special wildlife reserves. The department has advised that it intends to implement compliance mechanisms through regulations. The absence of offence provisions in the Bill is discussed in more detail below in section 3.1.

The Government Members recommend that the Minister, in the second reading speech, inform the House on what compliance and enforcement mechanisms will be implemented to ensure the protection of special wildlife reserves.

2.1.5 Impact on neighbouring properties

The committee heard concerns regarding the impact that the management of special wildlife reserves could have on adjacent land.[61] AgForce Queensland commented that there was a 'potential impact to neighbouring properties if the potential pest, weed and fire risks of the special wildlife reserves are not managed appropriately into the future.'[62]

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57 Submission 20, p 4.

58 Submission 33, p 3.

59 *Nature Conservation Act 1992*, s 1(b) and Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017, cl 16.

60 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, p 8.

61 See, for example, submissions 18, 28, 33.

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

Queensland Farmers' Federation raised concerns regarding restrictive management practices on special wildlife reserves:

> *Management of SWRs will have flow on effects to the management of adjacent productive agricultural land. It is therefore essential that restrictive management practices imposed on SWRs do not negatively impact productive agricultural land and the overall management of the farming system.*
>
> *For example, the management of pests and weeds on crown land have created ongoing issues for landholders that abut these government-managed lands. The management practices used can be restrictive and frequently do not manage pests and weeds effectively.*[63]

As special wildlife reserves are intended to be perpetual, there are specific concerns that successors in title may not share the same commitment or values towards conservation as the original landholder. The ongoing management capacity, including financial capacity, of private landholders is also a concern in light of the perpetual nature of special wildlife reserves—there are risks that the management capacity of the landholder may diminish over time. These concerns particularly arose in the context that revocation of a special wildlife reserve requires a resolution of the Legislative Assembly requesting that the Governor in Council makes the revocation by way of regulation.[64]

The department provided information to the committee which stated that the department will assess landholder suitability when considering a proposal for a special wildlife reserve in order to minimise the risk of land on which a special wildlife reserve has been declared from being inadequately managed. According to the department:

> *A prospective special wildlife reserve landholder must be able to demonstrate a high-level of expertise (or access to it) and capacity to resource high-level conservation management of their land in the long-term. Furthermore, prospective landholders must have clear governance and accountability structures and/or succession planning which provide assurance of continuing prioritisation of conservation management as the key intent for the land in the long-term.*[65]

While this landholder suitability assessment would not seem to apply to successors in title, the conservation agreements for special wildlife reserves will be binding on successors in title and enforceable against both the original landholder and successor in title.

In response to concerns regarding impacts on neighbouring properties, the department stated:

> *It is intended to pass regulations to detail restrictions and offences in relation to Special Wildlife Reserves, should this Bill be enacted.*
>
> *Fire management regimes would be a typical component of an approved management program for a Special Wildlife Reserve. Further, landholders will be required to comply with the Fire and Emergency Services Act 1990.*
>
> *Special Wildlife Reserve landholders would also be required to abide by existing pest (including wild dog) management legislation, in the Biosecurity Act 2014.*
>
> *In addition, due to the effects of pests on natural values, pest management will form a typically prominent part of an approved management program for a Special Wildlife Reserve. The obligations placed on Special Wildlife Reserve landholders to manage these issues will be greater than those on other landholders.*

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63 Submission 33, p 3.

64 Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017, cl 12.

65 Department of Environment and Heritage Protection, correspondence dated 4 July 2017, attachment, pp 6-7.

As such, the intensive management obligations placed upon landholders of a Special Wildlife Reserve, including the management of pests and weeds should result in benefits to neighbouring properties.

An assessment of a proposed area's agricultural values, current and potential, including its location within identified areas such as strategic cropping or other high value agricultural areas, will be assessed.[66]

Government Members' comments

The Government Members note the department's advice that the suitability of a landholder to undertake perpetual management of a special wildlife reserve will be undertaken as part of a risk assessment process prior to declaration of a special wildlife reserve.

The Government Members further note the department's advice that there will be intensive management obligations imposed on landholders of a special wildlife reserve and that this should result in benefits to neighbouring properties. The Government Members are satisfied with this advice and considers that landholder's obligations should act as a safeguard to prevent the types of impacts on neighbouring property that submitters, such as AgForce Queensland and Queensland Farmers' Federation, have raised.

2.1.6 Consent of affected parties

During the committee's inquiry, concerns were raised regarding the wording of the proposed new s 43B of the *Nature Conservation Act 1992* (inserted by cl 12 of the Bill). Section 43B(2) states ' … if the rights and interests of a person mentioned in section 43A(5) will be materially affected *by the conservation agreement*, the Minister must not enter into the agreement without the person's consent' (emphasis added). Section 43A(5) mentions persons who have an interest in land in the proposed reserve area and holders of an exploration permit, authority to prospect, mining interest, geothermal tenure or greenhouse gas authority.[67]

QLS submitted that, the rights and interests of a person will not be materially affected 'by the conservation agreement'. Rather, it will be the declaration of a special wildlife reserve which will materially affect the rights and interests of a person. For example, under proposed amendments to s 27(1) of the *Nature Conservation Act 1992*, no one will be able to be granted a resource tenure over land declared a special wildlife reserve.[68]

In response to this submission, the department pointed to new s 43C(2)(e), which states that the conservation agreement may contain terms prohibiting a stated use of land in the special wildlife reserve.[69] The implication seems to be that the conservation agreement, and not just the declaration, will materially affect rights and interests. However, it is noted that, the proposed new s 43C(2)(e) states that conservation agreements 'may' (not must) contain the relevant terms. Therefore, there does not appear to be a clear guarantee that the conservation agreement will contain the prohibition.

In response to questions from the committee, the department stated that an amendment to s 43A(5) to reference the declaration of a special wildlife reserve could have implications in its interactions with s 69 of the *Nature Conservation Act 1992*, which provides safeguards to landholders' interests for all classes of protected areas. The department commented:

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66 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, pp 4-5.

67 Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017, cl 12.

68 Submission 29, p 3.

69 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, p 3.

A preferred option would be to focus on the specific process associated with special wildlife reserves that is the subject of Queensland Law Society's submission, by including (or "bringing forward") the statutory impacts of the declaration into the conservation agreement document for special wildlife reserves.

This could be done by requiring terms in a conservation agreement that apply restrictions on activities that will be statutorily prohibited upon declaration of the protected area. For instance, s43C(2) could be amended to include a subsection that states that a conservation agreement must contain terms prohibiting the granting of authorities etc. that are prohibited on a special wildlife reserve, including:

1. *granting a mining interest, geothermal tenure or GHG authority (see s27 of the [Nature Conservation Act 1992]);*
2. *getting or selling forest products (see s46 & s48 of the Forestry Act 1959); and*
3. *granting fossicking licences or designating fossicking areas (see s9 of the Fossicking Act 1994).*[70]

Some submissions also expressed concerns regarding the meaning of the term 'materially affected' in the new ss 43B(2) and 43E(3). Submitters stated that it was unclear what 'materially affected' means.[71] This is cause for concern because, under s 43B(2), without clarity regarding who is 'materially affected', it is unclear who the Minister is required to obtain written consent from before entering into a conservation agreement for a special wildlife reserve.

The department stated 'the term "materially affected" can be readily understood by reference to its plain English meaning and as informed by the text, purpose and context of the NC Act so it is not considered necessary to define the term'.[72]

Government Members' comments

The Government Members consider that under the Bill as drafted there may be some possibility that a person may be materially affected by the declaration of a special wildlife reserve, but not by the conservation agreement. The Government members are concerned that this person would not appear to have the same consent rights as a person materially affected by the conservation agreement. The Government Members consider that if there are going to be restrictions on land use in special wildlife reserves, such as prohibitions on forestry activities and the granting of resource tenures and fossicking licences, there should be a requirement that the Minister not enter into conservation agreements for the special wildlife reserves without the consent of any person mentioned in s 43A(5) whose rights or interests will be materially affected by such restrictions. This could be achieved in effect by amendments to the proposed new s 43C(2) to require the conservation agreement to contain terms about any activities to be prohibited on a special wildlife reserve, including the getting or selling of forestry products, granting of resource tenures and granting of fossicking licences.

The Government Members recommend that clause 12 of the Bill be amended so that the proposed new s 43C states that a conservation agreement must contain terms regarding the land uses prohibited on the relevant special wildlife reserve, including the getting or selling of forestry products, granting of resource tenures or fossicking licences and designation of fossicking areas.

The Government Members accept the department's advice that it is not necessary to define the term 'materially affected'.

70 Department of Environment and Heritage Protection, correspondence dated 1 August 2017, pp 1-2.

71 See, for example, submissions 10, 29.

72 Department of Environment and Heritage Protection, correspondence dated 25 July 2017, attachment, p 3.

2.2 Amendment of the *Environmental Offsets Act 2014*

Clauses 40-45 of the Bill amend the *Environmental Offsets Act 2014*. As noted above in section 1.3, the objective of these amendments are to:

- recognise the new class of protected area (special wildlife reserve) under the *Nature Conservation Act 1992*, and
- clarify administrative arrangements for approving offset proposals under part 6 of the *Environmental Offsets Act 2014* in relation to offsets that have or may be granted under the *Planning Act 2016*.

The amendments are consequential to the recent commencement of the new planning legislation and will improve the effectiveness and efficiency of decision-making under that legislation.[73]

Government Members' comments

The Government Members accept advice from the department that the amendments to the *Environmental Offsets Act 2014* are considered to be of a technical administrative nature.

2.3 Amendment of the *Environmental Protection Act 1994*

Clause 47 amends s 19 of the *Environmental Protection Act 1994* to prescribe additional circumstances in which an environmentally relevant activity may be prescribed in a regulation. The amendment allows a regulation to prescribe an activity carried out partly within Queensland and partly outside Queensland, but within the Great Barrier Reef Marine Park.

The department advised the committee that this amendment will enable implementation of a government commitment to not support trans-shipping activities adversely affecting the Great Barrier Reef.[74]

Schedule 2 of the Environmental Protection Regulation 2008 currently sets out prescribed environmentally relevant activities. It is unclear in the Bill or explanatory notes which environmentally relevant activities the proposed regulation amendments are to apply to and how these environmentally relevant activities will be further regulated. In response to submissions to the committee requesting clarity,[75] the department advised 'a detailed proposal to implement the Reef 2050 commitment is being developed and will be the subject of consultation in due course'.

[73] Public briefing transcript, Brisbane, 12 July 2017, pp 2-3.
[74] Department of Environment and Heritage Protection, correspondence dated 4 July 2017, attachment, p 2.
[75] Submission 8, p 8.

Government Members' comments

The Government Members note the lack of information in the Bill and explanatory notes regarding the purpose and detail of this amendment. The Government Members note the commitment from the department that a detailed proposal will be developed and released for consultation. The Government Members expect this proposal will provide clarity in respect to which environmentally relevant activities will be affected and how these environmentally relevant activities will be further regulated.

The Government Members recommend that the Minister, in the second reading speech for the Bill, assure the House that consultation will be undertaken with affected businesses, organisations and individuals to allow them to provide comments and advice on the proposed amendments to the Environmental Protection Regulation 2008 and details regarding the implementation of the relevant Reef 2050 commitment.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

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
- the institution of Parliament.

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

It is considered that clauses 12, 14, and 47 raise potential issues of fundamental legislative principles.

3.1.1 Rights and liberties of individuals

3.1.1.1 Rights and liberties of individuals

Clause 14 of the Bill inserts new s 51 (Conservation agreements and conservation covenants for nature refuges binding) into the *Nature Conservation Act 1992*. Section 51(1) provides that a conservation agreement in relation to the land in a nature refuge is binding on the landholder of the land; the landholder's successors in title; and any other person with an interest in land in the nature refuge, to the extent the agreement contains terms to that effect. Pursuant to s 51(2) a conservation covenant in relation to the land in a nature refuge is binding on persons with an interest in the land to the extent stated in the covenant.

Section 51(3) provides that sub-section (1) applies if there is a lease or reserve under the *Land Act 1994* over the land in the nature refuge and the lease is renewed or extended; converted to freehold land or a different type of lease; or the reserve is converted to freehold land or a different type of reserve.

Current s 45(2) of the *Nature Conservation Act 1992* provides that if the rights of any of the following persons will be materially affected by the conservation agreement, the Minister must not enter into it without that person's written consent:

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

Binding a person to a conservation agreement who is not a signatory to the agreement (such as successors in title to the land in question or any other person with an interest in land in the nature refuge), to the extent the agreement contains terms to that effect, potentially breaches s 4(2)(a) of the *Legislative Standards Act 1992*, which provides that legislation should have sufficient regard to the rights and liberties of individuals.

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

> *While it may appear to impact upon fundamental legislative principles to bind a person who is not a signatory to an agreement, the written consent of interest holders who are materially affected, such as those to be bound by a conservation agreement, is required under section 45(2). Any subsequent interest holder, such as a future sublessee, would be entering into such an interest with the full knowledge of the conservation agreement and the nature refuge declaration.*

For this reason, the amendment to section 51 does not present a significant issue in relation to fundamental legislative principles.[76]

Government Members' comments

The Government Members accept the justification provided in the explanatory notes.

3.1.1.2 Aboriginal tradition and custom

Clause 12 inserts s 43B into the *Nature Conservation Act 1992*. Section 43B(1) provides that the Minister must, for the State, enter into a conservation agreement for a proposed special wildlife reserve if:

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

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

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

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

Pursuant to s 43B(2), if the rights or interests of a person mentioned in s 43A(5) will be materially affected by the conservation agreement, the Minister must not enter into the agreement without the person's written consent. As noted previously, s 43A(5)(a) provides that the Minister must give written notice about the proposal to each person who has an interest in land in the proposed reserve area.

The explanatory notes advise that notice should be given to a native title holder:

The Minister must give written notice of the proposal to any person who has an interest in land, such as a mortgagee, native title holder or someone with the benefit of an easement, in the area proposed for the reserve, and those who hold a specific authority as listed, in the manner described in the section. [77]

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

Establishment of special wildlife reserves, through introduction of the Bill, is not considered controversial as negotiation and declaration of a reserve is entirely voluntary and a conservation agreement does not impact on the rights and/or interests of other relevant parties, including Native Title holders, without consent. The concept of a special wildlife reserve is supported by key stakeholders in the conservation land management sector.[78]

The explanatory notes advise that consultation was undertaken with native title holders in drafting the Bill.[79]

At the committee's public hearing the Cape York Land Council Aboriginal Corporation submitted that while the provisions sought the agreement of the landholder, they did not provide for the express consent of the native title holder. The CYLCC submitted:

Currently the Bill proposes that the consent of the landholder is required—that is defined as the freehold landowner or the lessee—regardless of the impact on that party's interest. For example, you could declare a special wildlife reserve over a pastoral lease and potentially it could still be

76 Explanatory notes, p 8.
77 Explanatory notes, p 13.
78 Explanatory notes, p 3.
79 Explanatory notes, p 9.

used for grazing purposes and the interests of the pastoral lessee would not be affected in any way. However, even though the State is claiming that a native title party's interests are not materially affected, it does not seek their consent for this change. The Racial Discrimination Act would say, 'How come you afford this right to a landholder whose interests may not be materially affected by the declaration of the special wildlife reserve but you do not require the same consent of the native title party whose interests—so the state argues—will not be materially affected?' It basically says that a double standard is being applied to holders of an interest in the land. That is an issue we have not raised simply for the purposes of this inquiry. It is an issue we intend to pursue through legal means if we have to, but obviously we would prefer to simply have the matter addressed by having the legislation amended to expand the definition of 'landholder' to also include native title holder.[80]

In obtaining the consent of a 'landholder', the Cape York Land Council Aboriginal Corporation believes that the term does not adequately cover native title holders. This raises s 4(3)(j) of the *Legislative Standards Act 1992* which provides that legislation should have sufficient regard to Aboriginal tradition and Island custom. The former Scrutiny of Legislation Committee considered that this fundamental legislative principle encompassed two considerations:

(i) legislation should be drafted to recognise Aboriginal and Islander customary law and to avoid unintended legislative impacts on traditional practices, and

(ii) 'limited concession' to Aboriginal traditional Island custom was based on 'a recognition of the unique status of Aborigines and Torres Strait Islanders as Australia's indigenous peoples.'[81]

In written advice to the committee, the department stated that the rights and interests of native title holders are adequately protected by the provisions contained in the Bill:

A conservation agreement is intended to primarily bind (and thereby restrict the rights and interests of) the lessee or freehold landholder who has requested the agreement (hence the particular definition of landholder in the Nature Conservation Act 1992). The Minister will provide written notification to all persons with an interest in the land including native title holders (and claimants) to seek advice regarding whether they are materially affected. The Minister may not proceed with the special wildlife reserve without the consent of all interest holders who are materially affected.[82]

Government Members' comments

The Government Members note advice from the department that native title holders are adequately covered by the provisions contained in the Bill.

3.1.1.3 Compulsory acquisition of property

Clause 12 inserts s 43A into the *Nature Conservation Act 1992*. Section 43A applies if, after considering the State interest in relation to an area of land, the Minister is satisfied the area should be declared as a special wildlife reserve.

Section 43A(5) concerns mining rights, and provides that the Minister must give written notice about the proposal to declare a special wildlife reserve to each person in the proposed reserve area who:

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80 Public briefing transcript, Brisbane, 12 July 2017, p 8.

81 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 79.

82 Department of Environment and Heritage Protection, correspondence dated 7 August 2017, p 2.

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

Under current s 67 of the *Nature Conservation Act 1992*, if a nature refuge is declared and a landholder's interest in land is injuriously affected under the declaration by a restriction or prohibition imposed on their existing use of the land, the landholder is entitled to be paid by the State the reasonable compensation because of the restriction or prohibition that is agreed between the State and the landholder or, failing agreement, as decided by the Land Court.

Under s 4(3)(i) of the *Legislative Standards Act 1992*, legislation should provide for the compulsory acquisition of property only with fair compensation. The OQPC Notebook states that a 'legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason'.[83]

In its submission to the committee, the Queensland Resources Council contended that where the holder of a resource tenure can no longer exercise its rights under the tenure after a special wildlife reserve has been declared, the State should compensate the tenure holder.[84] Its submission argues that this should occur because:

> *….the State gains the preservation of "economic, environmental or interests", that is land with outstanding conservation value, through the removal of the existing tenure at a loss ultimately to the proponent. Further, this approach would be consistent with the current requirements under the NC Act for nature refuges (section 67), whereby if the holder is materially (or injuriously) affected by a SWR declaration compensation is afforded.*[85]

The explanatory notes state:

> *There is no impact on fundamental legislative principles relating to the proposed amendments to create a new class of protected area, or the consequential amendments to other legislation to insert the new class of protected area. This is because the declarations are of a voluntary nature, and the landholders involved are signatories to the relevant conservation agreement. Other materially affected parties will have had to provide their consent for the proposal to proceed to declaration.*[86]

QLS refuted these statements in the explanatory notes and submitted that the declaration of a special wildlife reserve would have the effect of compulsorily acquiring property from resource tenure holders, and therefore, the Bill should provide for fair compensation. According to the QLS:

> *as the resources tenement holder's rights to conduct activities under an exploration or petroleum tenement are expressed to relate to "land", rights cannot be exercised in respect of it, and it is effectively (whether or not directly) excised from the existing resource tenement authority.*[87]

QLS argued that the declaration of a special wildlife reserve will have the effect of indirectly acquiring rights of existing resource tenure holders as those rights will no longer be able to be exercised after

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83 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 73.

84 Submission 8, p 3.

85 Submission 8, attachment, p 3.

86 Explanatory notes, p 7.

87 Submission 29, p 7.

the declaration (e.g. a holder of resource exploration tenure would have rights to explore for a resource before the declaration, which it may no longer be able to exercise after the declaration).[88]

According to advice from the department:

> *Where an [exploration, prospecting or resource extraction] interest exists on a proposal area, the interest will continue over the land until it is resolved or expires under its terms. Special wildlife reserves will not be declared where there is an active interest (unless by consent which is unlikely).*[89]

Government Members' comments

The Government Members note that special wildlife reserves are only declared over land if the landholder agrees. It is a voluntary process. While successors in title are also bound by the conservation agreement for the special wildlife reserve, these persons should have full knowledge of the conservation agreement and special wildlife reserve declaration before becoming bound (through a land title search).

The Government Members are satisfied with the department's advice that the consent of parties with an existing resource interest will be required before an area can be declared. The Government Members also note that, under cl 12 of the Bill, the declaration of a special wildlife reserve cannot proceed without consent of all parties who have an interest in the land and who are materially affected by the conservation agreement.

Furthermore, the Government Members consider that the declaration of a special wildlife reserve is in the public interest to preserve the relevant land for future generations because of the land's conservation value.

The Government Members do not consider that the Bill provides for compulsory acquisition of property without fair compensation.

3.1.1.4 Judicial warrant required for entry, search and seizure

Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.[90]

Clause 32 of the Bill amends s 154 of the *Nature Conservation Act 1992* to extend existing powers of a conservation officer to enter protected areas. However, this power is subject to a requirement that the conservation officer 'obtain, or in urgent circumstances, take all reasonable steps to obtain, the consent of the landholder concerned, or give at least 14 days written notice to the landholder concerned…'.[91]

The explanatory notes further justify the expansion of powers as follows:

> *this is considered necessary for the effective implementation of the special wildlife reserve and nature refuge classes of protected areas, as it allows the capacity for conservation officers to access a protected area to investigate or monitor compliance with the conservation agreement for the area.*[92]

88 Submission 29, p 6.
89 Department of Environment and Heritage Protection, correspondence dated 4 July 2017, attachment, p 4.
90 *Legislative Standards Act 1992*, s 4(3)(e).
91 *Nature Conservation Act 1992*, s 154(2).
92 Explanatory notes, p 7.

Government Members' comments

The Government Members note that landholder consent or written notice is required under s 154 and accepts the justification provided in the explanatory notes.

3.1.2 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

3.1.2.1 Delegation of legislative power

A Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons.[93] Subordinate legislation should contain only matters appropriate to that level of legislation.[94]

A number of provisions in the Bill leave potentially important matters to be prescribed by regulation rather than being contained in the Act, including:

- cl 12 (insertion of s 43D, *Nature Conservation Act 1992*) – declaration of special wildlife reserve by regulation
- cl 12 (insertion of s 43I, *Nature Conservation Act 1992*) – amalgamation of special wildlife reserves by regulation
- cl 12 (insertion of s 43J, *Nature Conservation Act 1992*) – revocation of declaration of all or part of special wildlife reserve, and
- cl 47 (amendment of s 19, *Environmental Protection Act 1994*) – circumstances in which regulation may prescribe an environmentally relevant activity.

As noted above in section 2.1.4, the department also advised that it proposes to introduce regulations to detail restrictions and offences in relation to special wildlife reserves should the Bill be enacted.

In relation to the use of regulations pursuant to s 43I of the *Nature Conservation Act 1992*, the explanatory notes advise as follows:

> *The new section 43I (Amalgamation of special wildlife reserves) allows the Governor in Council to amalgamate and rename special wildlife reserves, by regulation, without the requirement to go through the more onerous process required for simple revocations. This simpler process is seen as acceptable, as no net effect is had on the values or protection of the values of the special wildlife reserves involved. Amalgamation is essentially an administrative process, for which the passing of a resolution by the Legislative Assembly would be excessive. Standard administrative processes will apply in relation to amendment of conservation agreements, management programs and recording actions with the registrar.*[95]

The explanatory notes provide this commentary in relation to s 43J (revocation):

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

93 *Legislative Standards Act 1992*, s 4(4)(a).
94 *Legislative Standards Act 1992*, s 4(5)(c).
95 Explanatory notes, pp 15-16.

to provide the highest possible level of security to a special wildlife reserve declaration, in line with the level of security afforded to national parks.[96]

As noted above in section 2.3, the Queensland Resources Council expressed concern that no consultation had taken place with the resources sector in relation to proposed changes to allow a regulation to prescribe environmentally relevant activities, as provided for by clause 47.[97]

In relation to clause 47, the explanatory notes advise:

The proposed amendment will provide a head of power under the Environmental Protection Act to allow a regulation to prescribe 'environmentally relevant activities' which are conducted partly within Queensland waters and partly within Commonwealth waters, within the Great Barrier Reef Marine Park.[98]

Consultation with State and Commonwealth departments and agencies was undertaken. Consultation with external stakeholders will be undertaken prior to any subsequent amendments in the Environmental Protection Regulation 2008.[99]

In response to questions from the committee, the department advised:

The Environmental Protection Act 1994 (EP Act), under section 19, currently provides the head of power for an environmentally relevant activity to be prescribed under the Environmental Protection Regulation 2008 (EP Regulation). The EP Regulation currently includes a list of 64 environmentally relevant activities that are regulated under this framework.

The EP Act does not currently provide a holistic framework for regulating, assessing and undertaking compliance of an activity that is carried out partially in Queensland waters and partially in Commonwealth waters. That is, the EP Act currently only allows for the regulation, assessment and compliance of the portion of the activity that is carried out in Queensland waters.

The proposed EP Act amendment does not change the head of power for prescribing environmentally relevant activities or the nature of the activities that may be prescribed under the EP Regulation. The EP Act amendment only provides for applying the existing regulatory framework to activities conducted partially in Queensland waters and partially in Commonwealth waters, within the Great Barrier Reef Marine Park. This is considered appropriate as it will allow these activities to be regulated as a whole, considering the entire activity, and not only the portion of the activity that is conducted within Queensland waters. The activities covered have a relevant connection with Queensland and, in addition, are conducted within the area of the Great Barrier Reef Marine Park, which is an area of interest and relevance to Queensland.

Any subsequent amendments to the EP Regulation with the intent to prescribe a new environmentally relevant activity, in the context of the proposed amendments, will follow the necessary processes that have been used so far when prescribing a new environmentally relevant activity or omitting an existing environmentally relevant activity.[100]

In relation to the department's proposal to introduce regulations to prescribe offences for special wildlife reserves, the former Scrutiny of Legislation Committee considered the issue of creating offences and prescribing penalties in subordinate legislation. It accepted that offences and penalties

96 Explanatory notes, p 16.
97 Submission 8, p 7.
98 Explanatory notes, p 2.
99 Explanatory notes, p 9.
100 Department of Environment and Heritage Protection, correspondence dated 7 August 2017, p 3.

may be delegated to subordinate legislation in limited circumstances, provided the following safeguards are observed:

- rights and liberties of individuals should not be affected, and the obligations imposed on persons by such delegated legislation should be limited
- the maximum penalties should be limited, generally to 20 penalty units
- where possible, the types of regulation to be made under such provisions, which are foreseeable at the time of drafting the Bill, should be specified in the Bill, and
- where the types of regulation to be made are not reasonably foreseeable at the time of drafting the Bill, a sunset clause (for a period not exceeding two years) should be set in respect of the relevant provision to allow time to identify the necessary penalties and offences.[101]

The department commented as follows:

> *The proposed regulation is consistent with fundamental legislative principles and no rights or liberties will be effected. Declarations of special wildlife reserves are of a voluntary nature only. As this class of protected area has yet to be created, there are no existing landholders who can be impacted retrospectively by offences in the regulation.*
>
> *As a class of protected area under the Nature Conservation Act 1992 (the Act), the offence contained within section 62 of the Act will apply to special wildlife reserves. Section 62 of the Act carries a maximum penalty of 3000 penalty units, or 2 years imprisonment. Lesser offences that will apply to special wildlife reserves within the proposed regulation will be in accordance with section 175(2)(t) of the Act, which limits offences within a regulation to be no more than 165 penalty units.*
>
> *It should be noted that it is not proposed to create new trypes of offences for special wildlife reserves. Rather, a subset of existing offences that already apply to other classes of protected area will be extended to also apply to this new class of protected area. For this reason it is not deemed necessary or appropriate to relocate offences from the existing regulation to the Bill.*
>
> *The proposed regulation will be consistent with [s]ection 175 of the Act which provides a regulation making power in respect of a range of matters relevant to protected areas. The proposed offences exist already in the Nature Conservation (Protected Area Management) Regulation 2006 and apply to a range of protected area classes.*
>
> *The types of regulation are foreseeable, and are currently undergoing drafting so it is not necessary to include a sunset clause.*[102]

Government Members' comments

The Government Members accept the justifications and advice provided by the department regarding the appropriateness of the delegation of legislative power.

3.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

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101 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 150.

102 Department of Environment and Heritage Protection, correspondence dated 1 August 2017, p 3.

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

Appendix A – List of submissions

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

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

Appendix B – List of hearing witnesses and briefing officers

Public hearing – 12 July 2017

Queensland Resources Council

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

Isaac Regional Council

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

Cape York Land Council Aboriginal Corporation

- Mr Shannon Burns – Policy Officer

Balkanu

- Mr Terry Piper – Chief Operating Officer

AgForce Queensland

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

Queensland Law Society

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

South Endeavour Trust

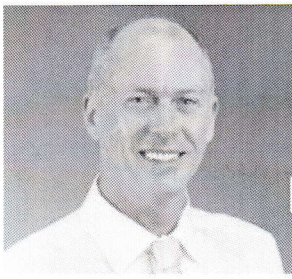
- Mr Tim Hughes – Director

Public briefing – 12 July 2017

Department of Environment and Heritage Protection

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

Statement of Reservation



Pat WEIR MP
Member for Condamine

Opposition Members Statement of Reservation

The Opposition Members strongly oppose the Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017.

Removal of land from agricultural production / economic development

At the conclusion of the committee's inquiry, we remain concerned that the Bill would, if passed, result in the permanent loss of valuable Queensland agricultural lands from productive use, whilst diminishing forever the value of properties where special wildlife reserves have been declared.

In its submission to the committee, AgForce Queensland expressed strong opposition to the exclusion of grazing from the proposed special wildlife reserves:

> *Given the increasing food and fibre needs that will be required in the future, we oppose this Bill permanently removing land from agricultural production...*
>
> *Agforce has strongly supported the Nature Refuges program since 2007 because it combines conservation with sustainable production on private land. A significant percentage of the Nature Refuges estate is made up of AgForce members who manage the outstanding conservation values on their properties, whilst also maintaining the production values through commercial grazing practices. Furthermore, as per our previous submissions, grazing has proven to be beneficial for the control of fire and introduced grasses such as buffel grass. For some properties, the fact is that grazing is already co-existing with the values that may be identified through the process of declaring a special wildlife reserve, if it did not, the values would not exist. We argue that farming and protecting the environment is not incompatible and can occur simultaneously and this had been encouraged and proven through schemes like the Nature Refuges program.*[1]

At the committee's public hearing, Balkanu stated it was concerned:

> *that there is the potential to misuse strategic wildlife reserves to lock up country from economic development... Generally our position overall is that for traditional owners in [Cape York] meaningful employment and economic opportunities are critical. We have always been about looking at conservation while also ensuring that we protect economic opportunities for traditional owners in the Cape. It is the most impoverished area of Queensland, and a job in the Cape is probably very hard to come by compared to jobs down here. Our experience has been that the conservation sector does not provide much in the way of meaningful employment opportunities. It is important, but the grazing sector and other options are also very important.*[2]

Under this Bill, conservation agreements for the proposed special wildlife reserves will be perpetual, that is, future owners will be tied to the agreement. There are very limited circumstances in which a special wildlife reserve can be revoked – it requires a resolution of the Legislative Assembly. This will affect the value of the property, adversely impacting upon the owner of the property, as well as potentially affecting neighbouring property owners.

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1 Submission 28, p 1.

2 Public hearing transcript, Brisbane, 12 July 2017, p 8.

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Impacts on neighbouring land

We are gravely concerned that this Bill will not only take large areas of Queensland out of production; it will also be detrimental to the environment in that it will see an increase in pests and weeds and general biosecurity risks. This will have significant ramifications for owners of properties neighbouring a special wildlife reserve.

Queensland Farmers' Federation expressed concerns regarding the management practices on special wildlife reserves:

> *Management of SWRs will have flow on effects to the management of adjacent productive agricultural land. It is therefore essential that restrictive management practices imposed on SWRs do not negatively impact productive agricultural land and the overall management of the farming system.*
>
> *For example, the management of pests and weeds on crown land have created ongoing issues for landholders that abut these government-managed lands. The management practices used can be restrictive and frequently do not manage pests and weeds effectively. QFF members have highlighted the Feral Pig (Sus scrofa) as an example. This introduced invasive species is present in all sugarcane regions, although their predominant impact is distinct in northern Queensland. In Mackay, the Feral Pig has caused over $1 million of damage to cane crops in recent years. A consistent and comprehensive approach is required to make a significant impact on the pig population. Where SWRs create corridors, a complimentary coordinated approach that manages these types of issues should also be funded and implemented.*[3]

Under the Bill, there is no requirement for neighbouring land holders to be notified of a proposal to declare a special wildlife reserve. AgForce noted its concerns:

> *...where a proposal for a special wildlife reserve is made within agricultural land, for example in a strategic cropping area, neighbouring properties should be included in the list of interested parties. This is due to AgForce's previous concerns regarding ongoing management and the pest, weed and fire risks of properties when not managed appropriately.*[4]

Weeds are already a major issue for property owners. We have grave concerns that if a property declared to be a special wildlife reserve, at some point in the future, becomes a deceased estate or is otherwise passed onto new owners, there could be new owners that don't care about the management of the property or that can't afford to manage it. These new owners will not be able to remove the special wildlife reserve declaration. This poses a big risk for neighbouring landholders- who wants to live next door to a property that is not being managed for pests and weeds and which has become an eyesore? Furthermore, without grazing or mining being allowed on the land, no money will be able to be generated from these properties.

Not good law

Through the committee's inquiries, it became clear that this Bill has not been well thought out. The Queensland Law Society said: 'is this good law? We do not think it is'.[5]

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3 Submission 33, p 3.

4 Submission 28, p 3.

5 Public hearing transcript, Brisbane, 12 July 2017, p 18.

While the government claims that the intent of the legislation is to preserve land with high conservation values, the Bill actually goes much further than this and potentially allows the Minister do much more. The only requirement in the Bill is for the Minister to be satisfied that there is some 'State interest'.

The scope for abuse of this legislation is frightening. The Queensland Law Society considered that the Bill was 'dangerous':

the purpose of the legislation, outside the scope of the bill or outside the ambit of the bill, is articulated as the preservation of high-value conservation values. If that is what the government wants to do, from a good law perspective the Law Society makes no comment and takes no position. Our point to the committee is that that is not what the bill does. It does that, but only to the extent that a narrow part of the state interest, as it is defined in section 43A(10), includes that as a subset even of the ecological and environmental criterion in that section, but it also includes everything else in the world. There is nothing wrong with the proposition you put to me in the context of the public announcements that have been made. Our point is that that is not all the bill does. The bill does far, far more. In that context it is dangerous...[6]

Incentives and resources for special wildlife reserves

AgForce Queensland expressed serious concerns regarding the costs of implementation of the Bill and ongoing management of special wildlife reserves. It submitted:

> *... when creating a perpetual agreement, the management costs of delivering against the set management principles need to be calculated and provided prior to the establishment of the agreement ... [P]rovision should be made for at least 50 years of future management costs and this money should be banked by the State Government, or otherwise provisioned for in a bond or financial guarantee. Similar guarantees are required of resource proponents and while it can be argued their risk profile is higher, the costs of managing private protected areas to a high standard in perpetuity are not inconsequential and so must be accounted for.*[7]

The government has not allowed sufficient resources to allow for the management of the special wildlife reserves. In this context, we can see why the committee heard so many concerns regarding weeds and pests, and their impacts on neighbouring properties.

Conclusion

The non-government member's hold concerns as to what happens should the relationship between landowner and the department breakdown – what happens should the respective parties disagree over the interpretation of the management program provisions?

In addition, what would happen to the property should the landholder meet financial difficulties which reduce their capacity to undertake appropriate land management, or has failed a compliance check and the respective parties disagree?

This Bill poses big risks for economic development in Queensland. It will lock up land and cause grief for many property owners trying to manage pests and weeds on their land.

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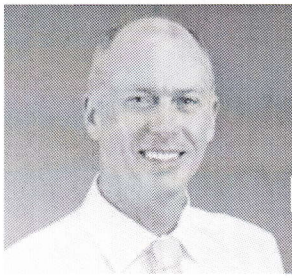
6 Public hearing transcript, Brisbane, 12 July 2017, pp 17-18.

7 Submission 28, p 2.



Pat WEIR MP
Member for Condamine

Yours sincerely,

Pat Weir MP
Member for Condamine
Deputy Chair Agriculture and Environment Committee

Lachlan Millar
Member for Gregory

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