AGRICULTURE AND ENVIRONMENT COMMITTEE

REPORT NO. 13 ON THE

NATURE CONSERVATION AND OTHER LEGISLATION AMENDMENT BILL 2015

QUEENSLAND GOVERNMENT RESPONSE

Introduction

On 27 October 2015, the Nature Conservation and Other Legislation Amendment Bill 2015 (the Bill) was introduced into Parliament.

The Bill was subsequently referred to the Agriculture and Environment Committee (the committee) for examination. The committee tabled its report on the Bill (Report No. 13) on 5 February 2016. The committee made seven recommendations and provided four points for clarification.

The Queensland Government response to the committee's recommendations and points for clarification are provided below.

Recommendation 1

The committee could not agree on whether the Bill should be passed.

Government Response

The government thanks the committee for its consideration of the Bill.

Recommendation 2

The committee recommends that the following wording proposed to be removed from section 4, or wording with similar meaning, be incorporated into section 5 of the *Nature Conservation Act 1992*:

While allowing for the following—

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

Government Response

The government thanks the committee for the recommendation. After considering the report and feedback provided by key stakeholders through the committee's examination of the Bill; the government has reconsidered the proposed amendments to the object of the *Nature Conservation Act 1992*.

Rather than incorporating the reference to 'the involvement of Indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom' into section 5, as recommended by the committee, it is now proposed to retain this wording in the object of the Act in recognition of Indigenous people's connection to and involvement with protected areas and their management.

The government proposes to move amendments during consideration in detail to give effect to this change.

Recommendation 3

The committee recommends that the Bill be amended to require that the department consults with and seeks the consent of the landowner of a national park (Cape York Peninsula Aboriginal land) when making a declaration of a special management area (controlled action).

Government Response

The government accepts the recommendation.

Recommendation 4

The committee recommends that the clause 9 be amended to incorporate the wording of section 17(1)(d) of the *Nature Conservation Act 1992* into the management principles for a conservation park.

Government Response

The government accepts the recommendation.

Recommendation 5

The committee recommends that clause 17 be amended to remove the reference to national park (scientific) from the definition of prescribed national park in clause 17 (section 42A(4)(a)).

Government Response

The government accepts the recommendation.

Recommendation 6

The committee recommends that the Minister consider amending clause 27 to incorporate a legislative requirement for amendments to management plans for national park (Cape York Peninsula Aboriginal land) and indigenous joint management areas to be prepared jointly with the indigenous landowner and to be consistent with any indigenous land use agreement and Indigenous Management Agreement for the area.

Government Response

The government accepts the recommendation.

Recommendation 7

The committee recommends that the Minister consider the rights of agricultural and grazing lease holders in regards to their rights of appeal over lease renewal decisions, and consider if this administrative power is still subject to appropriate review.

Government Response

The government accepts the recommendation.

This recommendation relates to the change in appeal rights that would result from reverting approximately 78 rolling term grazing leases on national parks, regional parks and forest reserves back to term leases. A consequence of reverting back to the term lease decision making framework, a framework which continues to apply to approximately 6,300 other leases in Queensland, is that a

decision to refuse a renewal on the basis that the land is needed for environmental or nature conservation purposes is not subject to appeal.

Members of the opposition and rolling term lease holders for leases within nature conservation areas or specified national parks have expressed concern that they will be disadvantaged if the Bill is enacted. Their concern is that when rolling term leases revert back to term leases, they will have the narrower appeal rights under section 160(3) of the *Land Act 1994* if their renewal application is refused, when compared to the apparently broader appeal rights that apply under section 164C(7) of the Land Act if an extension of a rolling term lease is refused.

The government's view is that despite the different statutory provisions governing rolling term leases and ordinary term leases under the Land Act, the practical reality is that the appeal rights of rolling term lease holders for leases in nature conservation areas or specified national parks are not materially affected by converting the rolling term leases to ordinary term leases under the Land Act. This is because, regardless of the differences under the Land Act between appeal rights for rolling term leases and non-rolling term leases, the ability of holders of Land Act leases over land in protected areas to renew or extend their leases depends on a decision by the NCA chief executive. That decision is not subject to merits appeal. This is the same whether the lease is a rolling term lease or a non-rolling term lease.

Changing these rolling term leases back to term leases, as the amending Bill proposes, is effectively 'neutral' because section 38 of the *Nature Conservation Act 1992* (NCA) requires consent of the chief executive of the NCA both to extend a term lease in a protected area and to extend an rolling term lease in a protected area. In either case, it is only the Land Act decision that can be appealed. If the chief executive of the NCA refuses to consent, there is no right under the NCA to appeal against this decision on its merits.

Points for clarification

Point for clarification 1

The committee invites the Minister to ask his department to consult with the outdoor recreation sector, holders of agricultural and grazing leases in protected areas and Indigenous stakeholders in relation to the proposed amendments in the Bill, and to inform the House of the outcomes of these consultations.

Response

On 23 November 2015, officers of the Queensland Parks and Wildlife Service (QPWS), within the Department of National Parks, Sport and Racing (NPSR) attended a forum organised by the Queensland Outdoor Recreation Federation (QORF), to brief their members on the proposed amendments in the Bill.

The government notes that during the public hearing on the Bill on 2 December 2015, Mr Courtney, Executive Officer of QORF indicated that QORF organised an outdoor recreation forum and that Officers from QPWS attended to discuss the amendments with approximately 30 stakeholders that also attended the forum.

QORF indicated that the proposed amendment it put forward in their submission relating to the management principles for conservation parks was discussed at the forum and that the people in

the room were quite supportive of this submission in relation to that amendment. This amendment is the subject of recommendation 4 of the committee's report and has been accepted by the government. Due to the previous consultation and acceptance of the committee's recommendation in relation to the specific matter raised by QORF, additional consultation with QORF on the Bill is not considered necessary.

As with all of the amendments contained in the Bill, NPSR undertook targeted consultation with the relevant peak bodies or representative stakeholder groups.

Consultation on the amendments to leases for agricultural, grazing or pastoral purposes was undertaken with AgForce Queensland – the peak body representing graziers. AgForce did not raise any significant concerns about the amendments in the Bill at the time and only one affected grazier made a submission to the committee on the relevant amendments in the Bill.

Leases for agriculture, grazing and pastoral purposes located in QPWS managed areas are, by their nature, inconsistent with the government's long-term aspirations for the State's protected area estate, which is reservation for biodiversity conservation and recreation purposes. Many of the leases that currently exist on the protected area estate are merely in recognition of a pre-existing use which existed at the time that a particular property became a protected area. The lease afforded opportunity for a gradual phase-out over time, with the ultimate aim of ensuring the property became solely protected area upon expiration of the lease.

In the case of leases on protected areas (tenures administered under the NCA), such as a national park or regional park, the Minister administering the Land Act can only grant an extension with the agreement of the chief executive responsible for the national parks or regional parks. The chief executive in turn may not agree to an extension. The rolling term lease provisions did not provide an automatic right of extension. This differs from the leases on tenures administered under the Land Act, such as rural term leases on rural leasehold land. In considering such applications for extension/renewal the key difference under the Land Act is the Minister must grant an extension of the term of a lease if the lessee makes a valid application.

Reverting rolling term leases back to term leases will provide the most appropriate framework for managing these leases. Consultation occurs with individual lease holders in the period leading up to the expiry of their leases to inform them of the options available to them at the time and this will continue to occur.

Consultation also occurred with Queensland South Native Title Services Ltd, Cape York Land Council Aboriginal Corporation and Carpentaria Land Council Aboriginal Corporation and no concerns were raised at the time. However, due to the subsequent concerns raised in submissions to the committee about removing the reference to 'the involvement of Indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom' from the object of the Nature Conservation Act 1992, the government has now reconsidered this amendment. As indicated in the government's response to recommendation 2, it is now proposed to retain this wording in the object of the Act. As such, this addresses the primary concerns raised by Indigenous stakeholders and additional consultation is not considered necessary in this regard.

Point for clarification 2

The committee invites the Minister to clarify the reasons why regional parks (resource use area), for which there are no trustees, is not included in section 38(2)(k)(iv), and whether clause 48 of the Bill should be amended to rectify this.

Response

All parcels of land have environmental and other values and a range of intended or permitted uses. Impacts to values and uses need to be considered during the environmental impact statement (EIS) process. The proposed uses or roles of the land are a critical context that the land owner or trustee is best placed to provide for an EIS. It is the intention of the Department of Environment and Heritage Protection (EHP) to ensure that all appropriate parties with direct involvement in a parcel of land are identified and included in the EIS process.

Currently the *Environmental Protection Act 1994* section 38(2)(e) states that for land under the *Nature Conservation Act 1992* (NCA) for which there is a trustee, that the trustee is an affected person. Section 38(2) consistently also includes that requirement for land held or managed under a number of other acts. Importantly the designation of affected persons is inclusive; there are no stated exclusions where a land manager is not an affected person for the EIS process.

For the purpose of the EIS process, identifying an affected person for the resource reserve is critical. EHPs preference is that the Bill be amended to clarify that the State should be the affected person for a resource reserve for which there is no trustee.

Drafting specifically to identify both conservation parks and resources reserves in section 38(2)(k)(iv) as is proposed for the definition of owner through the amendment of section 579(6)(d) would be acceptable to EHP.

The government proposes to move amendments during consideration in detail to give effect to this change.

Point for clarification 3

The committee invites the Minister to clarify for the information of the House: why the proposed amendment to Schedule 2 (definition of protected area) makes no reference to 'national park (Cape York Peninsula Aboriginal land)' in the amendment of the Mineral Resources Act 1989; why the reference to national park (Cape York Peninsula Aboriginal land) is omitted from the definition of owner (paragraph 1(q)); and whether the Bill should be amended to rectify these anomalies.

Response

In relation to the first aspect of the question, the Department of Natural Resources and Mines (DNRM) has advised that "land" under the *Mineral Resources Act 1989* does not include a protected area. This means that mining tenures cannot be granted over protected areas. There is no reference to national park (Cape York Peninsula Aboriginal land) in the definition of protected area; however, due to section 27 of the *Nature Conservation Act 1992*, mining tenures are not able to be granted over protected areas, including national park (Cape York Peninsula Aboriginal land).

Therefore, there is no need to amend the definition of protected area to refer to national park (Cape York Peninsula Aboriginal land).

In relation to the second aspect of question, DNRM has advised that there is no need to include national park (Cape York Peninsula Aboriginal land) in the definitions of 'owner' in paragraph 1(q) of the resources Acts. Section 27 of the *Nature Conservation Act 1992* (NCA) does **not** allow any mining, greenhouse gas, or geothermal tenures in protected areas – therefore there is no need to include national park (Cape York Peninsula Aboriginal land) in the definition of 'owner' in the *Mineral Resources Act 1989*, *Greenhouse Gas Storage Act 2009*, or *Geothermal Energy Act 2010* as these tenures cannot exist over national park (Cape York Peninsula Aboriginal land).

The NCA does allow survey licences and pipeline licences to be granted under the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) over a protected area, including national park (Cape York Peninsula Aboriginal land). However, these licences can only be granted with the consent of the Chief Executive administering the NCA and the Indigenous landholder for the land (refer to sections 42AD and 42AE of the NCA). The underlying land tenure of national park (Cape York Peninsula Aboriginal land) is Aboriginal freehold land.

The Chief Executive administering the NCA is also recognised as a public land authority in the P&G Act. The Indigenous landholder that holds the Aboriginal freehold land is also recognised as the owner of land in the P&G Act definition of owner (schedule 2, owner 1(a) and/or 1(k)).

DNRM therefore does not recommend any changes to the definitions of owner in the above mentioned Acts.

Point for clarification 4

The committee invites the Minister to request his department to consult with affected holders of rolling term leases on the proposed changes in clauses 39 and 43 and to advise the House on this process. It should be noted that agricultural, grazing or pastoral leases will continue to be assessed on a case by case basis and that this will not change.

Response

The Department of National Parks, Sport and Racing has been engaging with lease holders in the lead up to their lease expiry and will be writing to all affected leaseholders to inform them of the changes.

On 1 July 2014, an administrative advice was placed on the existing title in the Queensland's Titles Registry for all eligible term leases indicating that the 'term lease' became a 'rolling term lease'. No new leases were issued as part of this process and no additional rights or interests were created by the rolling term lease. The rolling term lease remained subject to the same length of term, approved purpose, imposed conditions, registered interests, advices, and notings.

The amendments in the Bill will change rolling term leases back to term leases through a similar process, with no changes to the term, purpose or conditions, and there will be no requirement for the lease holder to undertake any actions.