

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

## Explanatory Notes

### Short title

The short title of the Bill is the *Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013*.

### Policy objectives and the reasons for them

The objectives of the Bill are to amend the *Nature Conservation Act 1992* (NCA) and other related legislation in order to:

- increase access to national parks and other public lands;
- achieve red tape reduction; and
- streamline legislative processes.

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

Achieving red tape reduction and the streamlining of regulatory and legislative processes have also been identified as a priority in key government action plans. The NCA was reviewed to deliver on these commitments by identifying critical areas for legislative reform and simplification. This Bill includes a suite of amendments to primary legislation designed to implement the outcomes of the review and give effect to the policy objectives. The Bill primarily amends the following Acts:

- *Nature Conservation Act 1992*
- *Forestry Act 1959*
- *Recreation Areas Management Act 2006*
- *Marine Parks Act 2004*

It also makes a number of consequential amendments to a range of other primary legislation.

### Achievement of policy objectives

To achieve its objectives, the Bill will make a suite of amendments to the NCA and other related primary legislation in order to improve access to national parks and other public lands, and implement significant reforms that will result in cutting red tape and streamlining legislative and regulatory processes.

Specifically, the Bill will:

1. **Amend the NCA** in order to:

- a) *Broaden the object of the NCA* to provide for recreation and commercial uses in protected areas, while continuing to retain a focus on nature conservation.

The current object of the NCA is the ‘conservation of nature’, which is to be achieved by ‘an integrated and comprehensive conservation strategy for the whole of the State’. This narrow definition of the object of the NCA does not reflect:

- the Government’s commitment to achieving recreational and commercial outcomes in the management of protected areas; or
- what the Act currently provides for in regard to providing access to, and use of, protected areas.

Consistent with government commitments to open up national parks and increase access for tourists and the community, the Bill includes the following supplementary outcomes with regard to meeting the objective of the conservation of nature:

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

It is intended that these amendments will result in the object of the NCA explicitly providing for recreation and commercial uses in protected areas while continuing to retain a focus on the primary purpose of nature conservation.

It should be noted that the object of the NCA applies to all protected area tenures, not just national parks. However, it is not intended that the identified supplementary outcomes apply to private protected areas such as nature refuges, where such things are matters for the landholder.

- b) *Reduce the number of protected area tenure classes* currently provided for under the NCA through abolishing or amalgamating tenures.

With 14 tenure classes (tenures) currently established under the NCA there is the potential to generate an unnecessary degree of complexity and confusion around the purpose of these different tenures and how they are to be managed. Furthermore, some tenure classes have never been used.

The Bill will simplify the tenure structure in the NCA in line with government commitments to reduce and streamline legislative and regulatory complexity.

Specifically, the Bill will amend the tenure classes to:

- combine the national park, national park (scientific) and national park (recovery) tenures into one tenure class called ‘national park’;
- combine the conservation park and resources reserve tenures into one tenure class called ‘regional park’;

- retain the ‘nature refuge’ tenure;
- retain the ‘national park (Aboriginal Land)’, ‘national park (Torres Strait Islander Land)’ and ‘national park (Cape York Peninsula Aboriginal Land)’ tenures;
- grandfather the ‘coordinated conservation area’ tenure from future use;
- abolish the ‘wilderness area’, ‘World Heritage management area’ and ‘international agreement area’ tenures; and
- grandfather the ‘forest reserve’ tenure from future use, and then abolish the tenure category following a review and reclassification process of all remaining forest reserves.

The intention of grandfathering is to exclude the dedication of any further areas under the tenure class, without impacting on the ability to continue to manage existing areas under the tenure.

- c) *Revise the management principles* for protected areas consistent with the new tenure classes.

Under the NCA, all protected areas are to be managed in accordance with the specific management principles that apply to each tenure class. These management principles have been revised to reflect changes to the tenure classes and to implement the government commitments to achieve a greater balance between nature conservation and access for recreational and commercial purposes.

The Bill amends the management principles of national parks. The cardinal principle has been retained as the basis of national park management. In addition, the management principles for national parks have been expanded to provide for educational, recreational and ecotourism opportunities. The Bill specifies that these additional uses are to be consistent with the natural and cultural values of the national park.

The Bill provides management principles for the newly created tenure of regional park. These management principles draw heavily from the management principles of the repealed conservation park and resources reserve tenures, reflecting that these two tenures have been combined within the new regional park tenure. In particular, the management principles of a regional park retain a focus on allowing for commercial use of natural resources while retaining an emphasis on conserving an area’s natural and cultural values. Additionally, the management principles of the new regional parks will also provide opportunities for recreational activities, reflecting the government commitments to encourage this type of use of protected areas.

The management principles expressly exclude the felling of timber for a commercial purpose on a regional park.

- d) *Provide for the creation of Special Management Areas and resource use areas.*

The Bill also provides for the chief executive to declare Special Management Areas (SMAs) over a national park, or part of a national park, including a national park (Aboriginal land), national park (Torres Strait Islander land) and national park (Cape York Peninsula Aboriginal land). SMAs have been developed to provide for a number

of policy outcomes related to the Government's decision to streamline legislation and remove a number of tenures from the NCA. SMAs will allow for activities that are inconsistent with the management principles of a national park in order to ensure that the management principles associated with the repealed national park (scientific) and national park (recovery) tenures can largely be retained following the merging of these tenure classes.

The declaration of an SMA (scientific) is designed specifically to provide a mechanism that allows for scientific activities to occur on national parks, ensuring a continuation of uses that previously took place under the tenure national park (scientific).

In a similar fashion, the declaration of an SMA (controlled action) will allow for the activities that had previously occurred under the tenure national park (recovery). The national park (recovery) tenure was originally created as a holding tenure with the intent that the area would ultimately become a national park. A national park (recovery) differs from a national park in that the management principles provide for the manipulation of the area's natural resources in order to restore its conservation values. For example, national park (recovery) allowed for the removal of unwanted plantation timber and subsequent active (by planting) or passive regeneration of the affected land. The management principles for an SMA (controlled action) will similarly allow for this manipulation of an area's natural resources. However, an SMA (controlled action) does not limit this manipulation to the restoration of an area but enables such actions to be undertaken on a long term basis where the outcome is to protect the area's natural and cultural values.

An SMA (controlled action) can also be used to provide for the continuation of existing interests. Historically these interests have been managed through a grandfathering provision within the Act or a previous use authority. Under the Bill, the definition of an 'existing use' is the purpose for which the land was being used, immediately before the declaration of the SMA. The intention is to provide an opportunity for these activities to continue, however this will be premised on the requirement that the natural and cultural values of the area are not diminished as a result of the activity that is authorised.

The Bill specifies that the decision to create an SMA cannot be delegated by the chief executive.

The Bill also provides for the declaration of a *resource use area* over all, or part, of a regional park to allow for mining, geothermal activities and GHG storage activities, by regulation. This will allow for the distinction between former resources reserves where resource extraction activity is permitted, and conservation parks where this activity is not allowed, to be maintained when the changes to the tenure structure take place. A resource use area will only be allowable on regional park tenure to maintain the current Government commitment to not allow mining activities on national parks.

- e) *Streamline the management planning processes* for protected areas under the NCA.

There is currently a statutory requirement to prepare a formal management plan for all protected area tenures. This process is extremely resource intensive. By contrast,

management statements are a simpler expression of management intent for protected areas without requiring public consultation and are considered a satisfactory planning instrument for many protected areas. Management statements are currently prepared for protected areas, but are only an administrative document that is not formally recognised under the NCA.

On this basis, an alternative planning process has been identified that will provide greater management flexibility and deliver on the government commitments to reduce legislative complexity and red tape.

The Bill amends the NCA to replace the requirement that the Minister prepare a management plan with a requirement that the chief executive prepare a management statement for the area. Both the object of the NCA (section 5) and the management principles of protected areas (section 15) will recognise that a management statement is to be used and *considered* in the management of a protected area.

The Bill enables the Minister to prepare a management plan where he or she considers there are specific circumstances which make a more detailed planning process appropriate. These circumstances include: the importance of the area's cultural or natural resources and values; any significant or particular threats to these resources and values; any significant public interest concerns with regard to these resources and values; or, the nature and management of any proposed commercial or recreational uses of the area. Where a management plan is developed, it supersedes a management statement, and consistent with the current wording in the NCA, an area *must* be managed in accordance with the management plan.

The Bill has also implemented specific measures to streamline the management planning process, where it is applied. Specifically, it removes:

- the obligation for the first round of mandatory public consultation on the intent to prepare management plans, providing consistency with other statutory instruments under State legislation;
- the requirement for management plans to go through a full review process if the plan is (a) still operating effectively or (b) only amendments are needed; and
- the need for Governor in Council approval of minor amendments to a management plan, allowing the decision to be made by the Minister by gazette notice.

In addition, the Bill amends the NCA to allow the Minister to make changes to a management plan to reflect a State government policy decision by following the processes in the NCA for those instances where minor amendments to a management plan are being made. Currently, any change of substance in a management plan requires the Minister to give public notice of the change as well as a number of lengthy administrative processes, including seeking public submissions on the revised management plan. To ensure that management plans remain contemporary, the Bill will enable the Minister to make changes to a management plan to reflect policy decisions of Government without going through this process and the administrative burden it creates. However, to provide for greater transparency in this decision making process, an additional requirement has been included that the Minister publish a notice on the department's website stating the amendments made to the management plan and the reasons for the amendments.

The Bill makes a number of additional miscellaneous amendments to the management planning process to further improve flexibility and efficiency.

- f) *Reduce the State's exposure to liability* arising out of incidents that occur on Queensland Parks and Wildlife Service (QPWS) managed land.

The Bill makes amendments to the NCA to reduce the State's exposure to liability on QPWS managed land. These reforms are in response to the Government's commitment to extend access to national parks and other public lands for recreational and commercial purposes, resulting in an increase in the likelihood that the State will be exposed to large personal injury claims. The policy basis for the liability provisions is directed towards limiting the financial exposure of the State as a result of implementing this commitment.

The amendments will provide civil immunity coverage to the State, the Minister, the chief executive or any employee or volunteer of the relevant department managing the land for a liability for death, personal injury, property damage and any resulting economic loss. The scope of the civil immunity provisions extend to policy makers regardless of their physical location. For example, it will extend to decisions made with regard to the management of QPWS lands.

The amendments do not affect the operation of the current provisions of section 142 under the NCA that protect some or all of the nominated agents of the State for civil liability in cases without negligence. These provisions refer to all aspects of the NCA not just protected areas. In these instances, any liability attaches to the State.

The proposed amendments expand on these provisions to provide that both the State and nominated officials are not civilly liable in a proceeding for any act done, or omission made in relation to their functions and responsibilities for managing a State protected area. This includes those acts or omissions that constitute negligence. Matters of contract (except those relating to personal injury or property damage) are not captured in the provisions to ensure that current and future authorities, issued under the Act, are not affected.

The amendments also identify specific circumstances in which this civil immunity coverage does not apply. This recognises those activities and functions for which the State should be appropriately responsible and are within the scope of control of QPWS in its role of managing protected areas. Specifically, the civil immunity coverage will not apply to:

- the construction, installation or maintenance of a State fixture (a building, structure or other thing constructed by the State, like a lookout or a stairway) or State road (as per relevant definitions under the *Transport Infrastructure Act 1994* and the *Transport Operations (Road Use Management) Act 1995*), that is defective, except where the defect is the result of a natural event;
- the failure to give adequate notice of a defective State fixture or State road, except where that defect is the result of a natural event; or
- carrying out a State management activity which is limited to programmed shooting or poisoning of animals and programmed burning or poisoning of vegetation.

Additionally, the Bill includes a provision similar to section 5 of the *Civil Liability Act 2003* (CLA) to clarify that the civil immunity provisions do not apply in relation to deciding liability of an employer where compensation is payable under the *Workers' Compensation and Rehabilitation Act 2003*.

The policy intent is to ensure that the provisions addressing civil immunity within the Bill do not affect the liability of an employer in workers compensation claims. While adopting provisions consistent with the CLA goes part way to create certainty about the scope of the amendments, additional provisions are included to ensure that the State (or an official) is not drawn into a proceeding by a private sector employer or an employee of a private sector employer as a third party.

The Bill also clarifies that the civil immunity provisions do not apply to any liability of the State or official, for a personal injury to which the *Motor Accident Insurance Act 1994* (MAIA) applies. This will allow for the usual scope of the MAIA to apply to personal injury actions, including any coverage provided under a compulsory third party (CTP) insurance policy for the State and official.

In all other circumstances, the civil immunity coverage takes effect. This will apply even when prior knowledge of a risk exists. Thus, the exemption should be seen as operating in a fundamentally different way to section 37(2) of the CLA and its application to roads.

- g) *Provide the opportunity for conservation officers to provide proof of authority* at the first reasonable opportunity where it is not practicable to do so before exercising a power.

Under the NCA there is currently no provision for proof of authority to be established after a power is exercised in relation to a person. In some instances it may be impractical to exercise this power.

The Bill will enable a conservation officer to present his/her identity card for inspection at the first reasonable opportunity, if it is not practicable to first produce his/her identity card for inspection before exercising any power in relation to a person that exists under the Act.

This issue is of relevance in cases of investigation and enforcement of the Act, for example where enforcement letters requiring information about suspected offences are sent to individuals suspected of having committed an offence which could have otherwise been addressed at the time the suspected offence was occurring. An example of such a situation might include a vehicle owner who had been observed driving on a restricted access track. Such an amendment will allow the admissibility of any information provided in response to such an enforcement letter if the conservation officer had not presented his/her identity card for inspection prior to delivery of the enforcement letter.

h) *Streamline the Conservation Plan development processes* under the NCA.

The Bill removes the requirement for two specified, mandatory rounds of public consultation for making conservation plans under the Act. Rather, the intention in policy is that processes and consultation requirements for the making, review and amendment of conservation plans will be aligned with those required for the making, review and amendment of regulations under the Act.

i) *Reform provisions regarding the supply of false or misleading information* to departmental officers.

The Bill will require that persons submitting documents, including applications made electronically for authorities under the NCA to the relevant departments, or to officers of the relevant departments who are not conservation officers, must not contain information that the person knows is false, misleading or incomplete. The broadening of this provision beyond conservation officers acknowledges that a significant portion of permit and licence application processes are now conducted online rather than through conservation officers in person.

j) *Create a new offence for selling meat or other products* sourced from dugong or marine turtle from commercial premises.

The Bill creates a new offence with respect to the selling of meat of other products sourced from dugong or marine turtle from commercial premises. For the purpose of the offence, a commercial premises will not include a place which is in a public place where the selling or giving away only occurs from time to time in association with a public event (such activity may still constitute an offence under existing provisions).

k) *Make miscellaneous amendments* to achieve streamlining of legislative processes and reduce complexity.

The Bill will amend the definition of *Aboriginal land* under the NCA to reflect amendments to section numbering under the *Aboriginal Land Act 1991*. This miscellaneous amendment is required to ensure currency and accuracy of legislation.

The Bill also amends the NCA to:

- Ensure timely implementation of changes to protected area and forest reserve dedications. Under provisions recently inserted in the NCA, regulations that dedicate, revoke, amalgamate or otherwise change protected areas and forest reserves do not take effect until the relevant details are registered under the *Land Act 1994 (LA)*. Amendments in the Bill will reinstate the previous position so that changes to these areas will take effect as soon as the regulation commences, and are not affected by potential delays in registration. The registration process under the LA will still occur, but can be completed after the change to the protected area or forest reserve is in effect.
- Ensure relevant lease documents are lodged for registration under the LA. The NCA requires the chief executive to lodge protected area lease documents with the chief executive (lands) for registration. Amendments in the Bill will ensure that this requirement extends to all protected area provisions under which leases may be granted.

**2. Amend the *Forestry Act 1959* (FA) in order to:**

- a) *Grandfather the timber reserve tenure* from future use.

In addition to the tenure reforms proposed under the NCA, the Bill will grandfather the timber reserve tenure category under the FA. This will remove the ability to dedicate new timber reserves, while retaining provisions regarding the management of existing timber reserves. This will leave State forests as the primary tenure under the FA. This is in line with government commitments to reduce and streamline legislative and regulatory complexity.

- b) *Reduce the State's exposure to liability* arising out of incidents that occur on QPWS managed land, consistent with proposed amendments to the NCA.

The FA is another instrument which deals with QPWS managed land. For this reason, consistent with the proposed amendments to the NCA, the Bill inserts a similar provision into the FA to reduce the liability of the State for incidents occurring on or in relation to a State forest or timber reserve.

- c) *Clarify that the plantation licensee (HQPlantations Pty Ltd)* will be provided with the same protection from liability as proposed for the State in the exercise of its delegated powers and functions under the FA.
- d) *Make miscellaneous amendments* to achieve streamlining of legislative processes and reduce complexity.

The Bill amends the FA to ensure timely implementation of changes to State forest and timber reserve dedications. Under provisions recently inserted in the FA, regulations that dedicate, revoke, amalgamate or otherwise change State forests and timber reserves do not take effect until the relevant details are registered under the LA. Amendments in the Bill will reinstate the previous position so that changes to these areas will take effect as soon as the regulation commences, and are not affected by potential delays in registration. The registration process under the LA will still occur, but can be completed after the change to the State forest or timber reserve is in effect.

**3. Amend the *Recreation Areas Management Act 2006* (RAM Act) in order to:**

- a) *Streamline the process for reviewing and amending management plans.*

For consistency with amendments to the NCA, the Bill amends the RAM Act to reflect changes to the processes for giving public notice, reviewing and amending management plans.

- b) *Make miscellaneous amendments* to achieve streamlining of legislative processes and reduce complexity.

The Bill makes three additional miscellaneous amendments to the RAM Act in order to further streamline legislative processes by:

- expanding references to a “guide, hearing or assistance dog” to include a “guide dog, hearing dog, assistance dog or trainee support dog”. This miscellaneous amendment ensures consistency with references in regulations for other areas managed by QPWS;
  - exempting filming or photography from the need to hold a commercial activity permit where it involves no more than 2 persons; and does not involve the erection, construction or use of a “prescribed structure”. This miscellaneous amendment ensures consistency with regulations for other areas managed by QPWS; and
  - allowing for a single (combined) commercial activity permit or commercial activity agreement to extend across more than one tenure type (e.g. marine parks, protected areas, recreation areas and State forests). This reflects complementary amendments made to the Nature Conservation and Marine Parks regulations.
- c) *Reduce the State’s exposure to liability* arising out of incidents that occur on QPWS managed land, consistent with proposed amendments to the NCA.

The RAM Act is another instrument which deals with QPWS managed land. For this reason, consistent with the proposed amendments to the NCA, the Bill inserts a similar provision into the RAM Act to reduce the liability of the State for incidents occurring on or in relation to a recreation area.

**4. Amend the *Marine Parks Act 2004* (MPA) in order to:**

- a) *Streamline the process for reviewing and amending management plans.*

For consistency with amendments to the NCA, the Bill amends the MPA, to reflect changes to the processes for giving public notice, reviewing and amending management plans.

- b) *Make miscellaneous amendments* to achieve streamlining of legislative processes and reduce complexity.

The Bill will make an additional miscellaneous amendment to the MPA in order to further streamline legislative processes by removing the requirement for a management plan for a marine park to be tabled in the Legislative Assembly. This will achieve consistency with the approval processes for other types of management plans.

- c) *Reduce the State’s exposure to liability* arising out of incidents that occur on QPWS managed land, consistent with proposed amendments to the NCA.

The MPA is another instrument which deals with QPWS managed land. For this reason, consistent with the proposed amendments to the NCA, the Bill inserts a similar provision into the MPA to reduce the liability of the State for incidents occurring in or in relation to a marine park.

**5. Make consequential amendments** to a range of other primary legislation to reflect the proposed reforms.

## **Alternative ways of achieving policy objectives**

As the Bill primarily addresses the regulatory burden and complexities already contained in primary legislation, the policy objectives cannot be achieved without changes to legislation. The review of the NCA identified a range of policy, regulatory and legislative reforms in order to improve access to national parks and other public lands; and achieve red tape reduction. This Bill reflects the outcomes of the review that can only be achieved through changes to primary legislation. These reforms are directed specifically towards achieving increased efficiencies within the legislative framework.

## **Estimated cost for government implementation**

The majority of reforms under the Bill will result in little or no cost to government, with only subsequent updates to advice, policies and procedures required. Given the policy objective of reducing red tape and regulatory burden, in some instances these reforms will result in cost and resource efficiencies for government, along with flow on benefits to business and community. In particular, reforms to the management planning process for protected areas will result in significant time, cost and resource savings for government in administering and managing the planning process; and for business and community members in their participation in consultation processes.

Any costs associated with the implementation of the Bill reforms will be met from within current departmental resources. A summary of the reforms with more significant implementation costs are summarised below.

### ***Reducing the number of tenures under the NCA***

Amendments to subordinate legislation will be required in order to reflect the proposed reforms relating to new protected area tenure classes. The Department of National Parks, Recreation, Sport and Racing will coordinate the development of these subsequent regulatory amendments to be endorsed following the passage of the Bill. Resources to coordinate this process will be met through existing departmental allocations.

In the main part, the Bill's provisions will commence on assent. However some provisions relating to changes to the protected area tenure classes and their management principles will commence by Proclamation. The commencement of Bill provisions relating to the tenure structure reform will be as follows:

- *On assent* – amendments relating to the abolishment of wilderness area, World Heritage management area and international agreement area tenures; and the grandfathering of coordinated conservation area tenure, forest reserve tenure and timber reserve tenure;
- *On proclamation* – amendments relating to all other protected area tenures and associated management principles, in order to allow time for necessary amendments to subordinate legislation to be made.
- *On proclamation* - amendments relating to the abolishment of the forest reserve tenure will commence by a separate proclamation date once the current review of all remaining forest reserves has been undertaken and each area has been reclassified under either a protected area or State forest tenure.

In addition, it is expected that there will be some costs associated with the implementation of the new protected area tenure structure, involving administrative and capital costs. These will

include: the assessment and review of relevant policies and procedures, forms, maps and other publications; modifying website material for consistency with the new tenure classes; the replacement of signs where a tenure change has taken place; the ongoing review and updating of trustee agreements and other authorities as required; and investigation of amendments to land titling information and place name changes.

These costs will be met through existing departmental allocations and a strategic approach will be taken to managing them. Transitional provisions included in the Bill will allow for existing signage, agreements, materials and publications relating to the current tenure structure to remain in force, until such time as a review and updating process can be finalised. This process will be managed through a risk assessment to identify matters that require urgent, immediate, medium term or long term consideration. For example, where a risk is associated with not changing a sign, this work will be undertaken as a priority. In most cases, signs will be replaced over time as part of the normal operational work schedule.

## **Consistency with fundamental legislative principles**

The Office of the Queensland Parliamentary Counsel (OQPC) has raised seven issues regarding fundamental legislative principles (FLPs) in the proposed amendments.

### ***Reducing the State's exposure to liability on QPWS lands***

First, clauses 14, 22, 80 and 97 amend sections 96E of the FA, 147 of the MPA, 142 of the NCA and 228 of the RAM Act to reduce the State's liability on QPWS managed land (ie. State protected areas; State forests – including State plantation forests; timber reserves; recreation areas; and marine parks). OQPC advises that the proposed amendments are inconsistent with the FLPs outlined in section 4(3)(h) of the *Legislative Standards Act 1992* (LSA) conferring immunity from a proceeding without adequate justification, as well as removing the common law rights of State citizens in circumstances where the resources of the State is a relevant consideration in determining the extent, if any, of the State's duty of care (CLA part 3, division 1) and failing to have sufficient regard to the rights and liberties of individuals. OQPC consider the provisions contained within the CLA, with regard to dangerous recreational activities, as well as those provisions currently within section 142 of the NCA to provide sufficient coverage for matters of civil liability.

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

This trend towards increasing claims demonstrates that reliance cannot be placed on the existing provisions of the CLA to minimise the liability of the State for the present use of protected areas under the NCA, let alone the wider variety of uses that may result from the policy direction of the Queensland Government to encourage access to lands managed by QPWS. As a result, the amendments provide clear and concise limitations to the liability of the State.

Other options were investigated to address this policy issue. However, it is simply not practical to put in place management practices that will sufficiently reduce the risk of an incident occurring on a protected area as many risks associated with visiting a protected area involve a high degree of unpredictability and on this basis cannot be ‘managed’ out of contention. Moreover, the cost of implementing such a strategy (even if it was possible or desirable) is so far outside of the current resources available it is not feasible. Rather, the amendments identify a number of specific management outcomes that the State remains liable for, relating to State fixtures, State roads, and specific management activities.

***Reducing the number of tenures under the NCA***

Second, clause 139 inserts new sections 42A and 42B into the NCA to establish the process through which an SMA is established and ends. This process has been identified by OQPC as inconsistent with FLPs on the basis that the chief executive is able to override the express decision of the Parliament to declare an area as a national park. This FLP issue relates to appropriate sub-delegation and insufficient regard to Parliament, given that an SMA allows for activities that are inconsistent with the management principles of a national park.

This FLP breach is considered justified on the grounds that the approach provided for in the Bill is the only option that meets the Government’s policy objective of creating an operationally efficient and flexible approach to park management that will enable an (a) improvement in the management of national parks and (b) a reduction in regulatory red tape. All other options will either reduce the capacity of park managers to effectively manage the park by requiring all actions to be consistent with the management principles of a national park; or be undertaken in a manner that will result in an unacceptable level of regulatory burden, creating a cumbersome administrative decision making process. Further, it should be noted that the management principles of an SMA are to be specified within the NCA. Therefore, in effect, Parliament has approved these alternative purposes for which areas of national park may be used.

Third, clause 153 provides for a new section 205 in the NCA which sets out that a transitional regulation may be made to provide necessary savings or transitional provisions within one year following commencement. OQPC has identified this clause to be contrary to the FLP that only an Act can amend another Act. This provision is considered justified given the scope of the measures covered in this Bill and the potential practical requirement of making amendments, through regulation to address any unintended consequences of the reforms.

***Streamlining management planning processes under the NCA***

Fourth, clauses 20, 72 and 88 amend the MPA, NCA and RAM Act, providing the capacity for the Minister to amend a management plan without complying with all aspects of the management planning process. OQPC has identified these clauses as inconsistent with FLPs with regard to not having sufficient regard to Parliament by allowing the exercise of administrative power in a manner that is unconstrained and not appropriately defined (LSA section 4(3)(a)). In particular, the Bill provides the Minister with the ability to amend a management plan to reflect government policy changes without undertaking the full public notice process provided for under the Acts. This approach is considered justified on the basis that it provides the only mechanism that will enable the Minister to amend a management plan to reflect government policy, in a timely fashion, without placing an unnecessary financial burden on the State by requiring a costly and resource intensive process to be undertaken, when a decision has already been made by government.

Fifth, clauses 17, 20, 68, 85, 87 amend the MPA, NCA and RAM Act with the effect that a draft management plan or draft amendment to a management plan only needs to be published on the department's website and not necessarily in other locations, such as newspapers. OQPC has identified these clauses to be inconsistent with FLPs with regard to the approach potentially failing to adequately ensure that interested parties and stakeholders have sufficient notice of the draft plan. This measure is considered appropriate on the basis that there is an increasing trend towards accessing all information online and that the breadth of access to this technology is now considerable. Furthermore, as a cost effective way of disseminating information it is consistent with the overarching policy intent of achieving improved resource efficiency. In addition, the provisions will not limit the ability to still publish a newspaper notice where that is deemed to be the most appropriate way to reach interested stakeholders.

Sixth, clauses 16 and 19 omit subsections of the MPA to streamline the provisions that apply to the approval of management plans and provide consistency with equivalent provisions in the NCA and RAM Act. The effect is that a management plan, under the MPA, no longer needs to be tabled in Parliament. OQPC has identified this clause to be inconsistent with FLPs with regard to the amendment removing the requirement to table the management plan and removing the power of Parliament to disallow a management plan. Under the Bill, sections 49 to 51 of the *Statutory Instruments Act 1992* dealing with the tabling in, and disallowance by, the Legislative Assembly of subordinate legislation, will no longer apply to management plans for marine parks. This amendment reflects that management plans prepared under the MPA are not subordinate legislation.

***Provisions regarding the supply of false or misleading information***

Seventh, clause 81 amends section 158 of the NCA to include a new (broadened) offence of giving a document containing information that the person knows is false, misleading or incomplete in a material particular to an authorised person, unless the person informs the authorised person the extent to which the information is false, misleading or incomplete.

This broadens the existing scope of the offence from providing information to a conservation officer, to including any information provided to the department and those acting on behalf of the department. Consequently, the inclusion of a new offence raises a FLP and requires that sufficient regard be given to the rights and liberties of individuals. The new offence retains the maximum penalty of 100 penalty units and is necessary to improve the proper administration of the NCA by responding to the increasingly common manner in which a person may provide information to the department, including by way of online application.

A material particular in a document is necessary for substantial compliance on the grounds that materially relevant information is required for the proper administration of the NCA. This is consistent with section 49 of the *Acts Interpretation Act 1954*.

The new offence places a greater onus on individuals to check information before it is passed onto an authorised person. A penalty may apply in cases where due diligence has not been carried out and false, misleading or incomplete information is consequently provided. The prosecution however would still be required to prove that the person knew the information was false, misleading or incomplete in a material particular.

## Consultation

Confidential briefings with key stakeholder groups have been undertaken on the proposed reforms. Stakeholder groups were provided with briefings on amendments relevant to their interest, with the opportunity to provide feedback direct to the relevant Minister. Attachment 1 provides a list of the stakeholder groups consulted.

No significant issues or concerns were raised by stakeholder groups on the majority of amendments. However stakeholder feedback on the following reforms was received and considered in the development of the final Bill.

### ***Broadening the object of the NCA***

Conservation and national park interest groups expressed concerns around the broadening of the object of the NCA and its potential impact on the cardinal principle of national park management. This feedback was reviewed in light of the fact that the cardinal principle relates specifically to national park management, while the object of the NCA relates to the management of areas broader than just national parks, namely all classes of protected area. Therefore, the inclusion of themes associated with the commercial and recreational use of protected areas, as an outcome of the NCA as a whole, is considered appropriate. The cardinal principle of national park management will not be amended under this Bill.

### ***Reducing the number of tenures under the NCA***

No significant concerns were raised regarding proposed changes to the protected area tenure structure; however conservation and national park interest groups noted the need to retain provisions regarding access to national park (scientific) areas and raised concerns regarding the potential for revocation of national parks through the tenure change process. This feedback regarding access arrangements has been considered and is reflected in the Bill through the use of SMAs to retain the management outcomes of former national park (scientific) areas. In addition, the Bill provides for a direct transfer of existing areas into the new tenure structure as per the proposed reform. Any additional changes to tenures would require a separate assessment process not being considered as part of this Bill.

### ***Streamlining management planning processes under the NCA***

The majority of stakeholders supported the proposed amendments to the management planning process, noting the opportunities for streamlining and resource efficiencies. Recommendations from conservation and national park interest groups suggest the need to take a bioregional approach to management planning. While this feedback has been considered, this approach represents a significant deviation from the current management framework for protected areas and has not been considered as an appropriate alternative at this time.

### ***Reducing the State's exposure to liability on QPWS lands***

No consultation was undertaken on the provisions proposed to reduce State liability on QPWS managed lands, apart from with HQPlantations as a plantation licensee and delegate under the FA. This was considered a matter for government policy and as such was not subjected to consultation through this process.

## **Consistency with legislation of other jurisdictions**

This Bill is specific to Queensland and is not intended to be uniform with, or complementary to, Commonwealth or other State or Territory legislation.

Each Australian State or Territory manages the conservation of protected areas and wildlife in different ways. The majority involve a tenure regime that is less complex than the one currently adhered to under the NCA and the objects of the Act vary considerably across jurisdictions. However, specifying a balance between nature conservation and other consistent objectives, such as the use and enjoyment of an area, is a common approach.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* states that, when enacted, the Bill will be cited as the *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013*.

*Clause 2* states that parts 3 and 4 and schedule 1, parts 2 and 3 of the Bill are intended to commence on a day to be fixed by proclamation.

### Part 2 Amendments commencing on assent

#### Division 1 Amendment of Aboriginal Land Act 1991

*Clause 3* provides that this division amends the *Aboriginal Land Act 1991* (ALA).

*Clause 4* amends section 170 of the ALA to insert the term “management statement” and a definition of “management statement”. This reflects amendments to the NCA to recognise management statements as an alternative planning instrument to a management plan for protected areas. This amendment provides that any indigenous management agreement about the management of land in the Cape York Peninsula Region or the North Stradbroke Island Region must:

- include details of any interim arrangements for its management before the approval of a management statement or plan for the land; and
- include details of the process for developing a management statement or plan for the land.

*Clause 5* amends section 284 of the ALA to insert a definition of “management plan” into the section. The definition of “management plan” has been relocated from schedule 1 (Dictionary). This definition is only applicable to section 284 of the ALA. The clause also amends section 284 of the ALA to make reference to the new section 112 of the NCA that is being inserted by the Bill regarding management plans.

*Clause 6* amends schedule 1 (Dictionary) to remove the definition of “management plan” because the definition is being relocated to section 284 of the ALA by clause 5 of the Bill.

#### Division 2 Amendment of Civil Liability Act 2003

*Clause 7* provides that this division amends the *Civil Liability Act 2003* (CLA).

*Clause 8* amends section 7 of the CLA to insert a note to cross reference the following Acts that will also include provisions giving protection from civil liability to particular persons:

- *Forestry Act 1959*, section 96E
- *Marine Parks Act 2004*, section 147
- *Nature Conservation Act 1992*, section 142
- *Recreation Areas Management Act 2006*, section 228

This reflects amendments being made by this Bill under clauses 14, 22, 80 and 97, to reduce the State's exposure to liability arising out of incidents that occur on Queensland Parks and Wildlife Service (QPWS) managed land.

### **Division 3                      Amendment of Forestry Act 1959**

*Clause 9* provides that this division amends the *Forestry Act 1959* (FA).

*Clause 10* amends section 25 of the FA to clarify the power for the Governor in Council to make a declaration of a State forest over an existing forest reserve. This amendment is required to facilitate the review and reclassification process for all remaining forest reserves, where, in some instances, the appropriate tenure is State forest. Facilitating this reclassification process will allow for the subsequent abolishment of the forest reserve tenure from the NCA.

*Clause 11* inserts a new section 25A into the FA to clarify the consequences of making a declaration of State forest over a forest reserve. The amendments provide that upon declaration of a forest reserve as a State forest, the land ceases to be a forest reserve and the FA applies to the management of the land. This includes section 33 of the FA, which provides the cardinal principle of management of State forests, once again applying to the land. These amendments are intended to ensure that current interests over the forest reserve are not affected by the declaration of State forest and can continue to exist. The section applies despite section 70G of the NCA which relates to a State forest or timber reserve dedicated as a forest reserve.

The new section 25A also clarifies that the declaration of a forest reserve as State forest does not extinguish or affect native title or native title rights and interests in relation to the land. These amendments will ensure that any transfer of forest reserve to State forest does not impact on native title rights and interests.

*Clause 12* amends section 28 of the FA to omit the current power to set apart and declare timber reserves from 30 June 2014. This reflects the intention to grandfather the timber reserve tenure from further use. Grandfathering the tenure is not intended to impact on the management of existing timber reserves. The power to revoke a timber reserve under section 28 of the FA will remain.

*Clause 13* omits section 32AB from the FA. This section is being inserted into the FA by the *Waste Reduction and Recycling Act 2011* when the provision commences on 29 October 2013.

The omission of section 32AB will mean that the setting apart and declaration of, or revocation, amalgamation or other change to, a State forest or timber reserve will have effect on the commencement of the regulation making the change, rather than having to wait for registration under the *Land Act 1994* (LA). The registration process under the LA will still occur, but can be completed once the change to the State forest or timber reserve is already in effect.

The removal of this provision reinstates the previous situation in order to avoid any delays in the registration process that may have unintended consequences. For example, if part of a State forest is revoked to allow for an adjacent road to be widened, the road works should be

able to commence immediately upon revocation and not have to wait for the revocation to be registered. Timing can be critical, for instance, the necessary road works may need to be completed before the onset of the wet season.

*Clause 14* replaces section 96E of the FA to protect the State and nominated officials from civil liability in the management or operation of a State forest or timber reserve, including land in a State plantation forest.

This amendment reduces the State's exposure to liability in response to the Government's commitment to extend access to national parks and other public lands for recreational and commercial purposes and is consistent with similar amendments being made to the NCA, MPA and RAM Act.

Sections 96E(1) and (2) protect nominated officials of the State from civil liability for acts or omissions made honestly and without negligence. In these instances, the liability instead attaches to the State.

In addition to these provisions, section 96E(3) protects the State and nominated officials from civil liability for any acts done, or omissions made, including those that constitute negligence, in:

- the performance or purported performance of a function under the FA; or
- the exercise or purported exercise of a power under the FA; or
- the management or operation of a State forest or timber reserve.

These provisions provide civil liability protection in any proceeding for damages based on a liability for personal injury (including death), damage to property or any resulting economic loss.

However, the protection from liability under section 96E(3) does not apply in circumstances set out in 96E(4), namely:

- 96E(4)(a) excludes the construction, installation or maintenance of a State fixture or State road that is defective from the protection from liability, except where that defect is the result of a natural event;
- 96E(4)(b) excludes the failure to give adequate notice of a defective State fixture or State road from the protection from liability, except where that defect is the result of a natural event; and
- 96E(4)(c) excludes carrying out a State management activity from the protection from liability.

The definition of a State fixture is a building, structure or other thing constructed or installed by the State; for example a lookout or stairway. The definition of a State road is linked to the definition of State-controlled road under the *Transport Infrastructure Act 1994*; and the definition of road under the *Transport Operations (Road Use Management) Act 1995*, where that road has been constructed by the State. A State management activity is limited to programmed shooting or poisoning of animals and programmed burning or poisoning of vegetation.

In addition, the protection from liability under section 96E(3) does not apply to a proceeding against an injured worker's employer for damages based on a liability for an injury for which

compensation is payable under the *Workers' Compensation and Rehabilitation Act 2003* (WCRA). This provision is broadly consistent with section 5 of the CLA. Section 96E(5) clarifies that in a proceeding, where compensation is payable under the WCRA, the State can be a party liable in the proceeding in its role as an employer; but it cannot become liable as a non-employer third party in a proceeding by an employee of a private sector employer.

Section 96E(5) further clarifies that the protection from liability under section 96E(3) does not apply to a proceeding for damages based on a liability of the State or an official as an insured person under the *Motor Accident Insurance Act 1994* (MAIA). This will allow for the usual scope of the MAIA to apply to personal injury actions, including any coverage provided under a compulsory third party (CTP) insurance policy.

The nominated officials for this provision are the relevant Minister; chief executive; a forest officer, plantation officer or other appointed officer under section 17 of the FA; State employees; delegates under section 96B of the FA and employees of delegates; and any person acting on a voluntary basis under the direction of another type of official.

#### **Division 4                      Amendment of Marine Parks Act 2004**

*Clause 15* provides that this division amends the *Marine Parks Act 2004* (MPA).

*Clause 16* omits subsections 29(2) to (4) of the MPA to streamline the provisions applying to the approval of management plans and provide consistency with equivalent provisions in the NCA and RAM Act. Sections 49 to 51 of the *Statutory Instruments Act 1992* dealing with the tabling in, and disallowance by, the Legislative Assembly of subordinate legislation, will no longer apply. This amendment reflects that management plans prepared under the MPA are not subordinate legislation.

*Clause 17* amends section 31 of the MPA to streamline the public notice requirements applying to draft management plans to provide consistency with equivalent amendments to the NCA and RAM Act. The amendments provide that the Minister must publish a notice about the draft plan on the department's website, removing the current requirement for a notice to be published in a newspaper circulating throughout the State. This amendment streamlines management planning processes, however is not intended to preclude the option of publishing of a notice in a newspaper or by any other means considered necessary.

*Clause 18* inserts a new section 32A into the MPA to streamline the management planning provisions. This amendment provides clarity that a single management plan can be prepared for multiple areas, by allowing a plan under the MPA to be combined with a management plan for another marine park; a management plan for an area declared or dedicated under the NCA and/or a management plan for a recreation area under the RAM Act.

*Clause 19* replaces section 34 of the MPA to streamline management planning provisions, providing that:

- an amendment to a management plan made under section 36(5) or (6) of the MPA may be approved by the Minister, rather than the Governor in Council, by gazette notice. This amendment provides consistency with similar provisions in the NCA and RAM Act.
- sections 49 to 51 of the *Statutory Instruments Act 1992* dealing with the tabling in, and disallowance by, the Legislative Assembly of subordinate legislation, will no

longer apply the approval of an amendment of a management plan. This amendment reflects that management plans prepared under the MPA are not subordinate legislation.

*Clause 20* amends subsection 36(1) of the MPA to streamline the public notice requirements applying to draft management plan amendments to provide consistency with equivalent amendments to the NCA and RAM Act. The amendments provide that the Minister must publish a notice about the draft amendment on the department's website, removing the current requirement for a notice to be published in a newspaper circulating throughout the State. This amendment streamlines management planning processes, however is not intended to preclude the option of publishing of a notice in a newspaper or by any other means considered necessary.

This clause also amends subsection 36(5) to provide the ability for amendments to be made to a management plan without notice or inviting submissions on the draft plan amendment where the amendment is made to ensure the plan is consistent with State government policy. A new subsection is being added to provide that in such instances, the Minister must publish a notice on the department's website stating the amendments made to the plan and the reasons for the amendments. Similar amendments are also being made to the NCA and RAM Act under the Bill.

*Clause 21* replaces section 39 of the MPA to streamline processes for the review of management plans and provide consistency with similar amendments to the NCA and RAM Act. The provision provides that an assessment of each management plan is required within 10 years of its approval. On completion of the assessment process, the Minister may:

- prepare a new management plan for the marine park; or
- amend the existing management plan for the marine park; or
- leave the existing management plan for the marine park unchanged.

The current provision effectively requires the preparation of a new plan after 10 years. The amendments streamline the process by providing the Minister with two new options to either amend the plan or leave the plan unchanged. If the Minister decides to prepare a new plan or amend the existing plan, the relevant processes under the Act must still be followed.

*Clause 22* amends section 147 of the MPA to extend current liability provisions to protect the State and prescribed persons, from civil liability in the management or operation of a marine park.

This amendment reduces the State's exposure to liability in response to the Government's commitment to extend access to national parks and other public lands for recreational and commercial purposes and is consistent with similar amendments being made to the NCA, FA and RAM Act.

Current sections 147(1) and (2) protect prescribed persons of the State from civil liability for acts or omissions made honestly and without negligence. In these instances, the liability instead attaches to the State.

In addition to these provisions, a new section 147(2A) protects the State and prescribed persons from civil liability for any acts done, or omissions made, including those that constitute negligence, in:

- the performance or purported performance of a function under the MPA; or
- the exercise or purported exercise of a power under the MPA; or
- the management or operation of a marine park.

These provisions provide civil liability protection in any proceeding for damages based on a liability for personal injury (including death), damage to property or any resulting economic loss.

However, the protection from liability under section 147(2A) does not apply in circumstances set out in 147(2B), namely:

- 147(2B)(a) excludes the construction, installation or maintenance of a State fixture or State road that is defective from the protection from liability, except where that defect is the result of a natural event;
- 147(2B)(b) excludes the failure to give adequate notice of a defective State fixture or State road from the protection from liability, except where that defect is the result of a natural event; and
- 147(2B)(c) excludes carrying out a State management activity from the protection from liability.

The definition of a State fixture is a building, structure or other thing constructed or installed by the State; for example a lookout, a stairway, jetty or mooring. The definition of a State road is linked to the definition of State-controlled road under the *Transport Infrastructure Act 1994*; and the definition of road under the *Transport Operations (Road Use Management) Act 1995*, where that road has been constructed by the State. A State management activity is limited to programmed shooting or poisoning of animals and programmed burning or poisoning of vegetation.

In addition, the protection from liability under section 147(2A) does not apply to a proceeding against an injured worker's employer for damages based on a liability for an injury for which compensation is payable under the WCRA. This provision is broadly consistent with section 5 of the CLA. Section 147(2C) clarifies that in a proceeding, where compensation is payable under the WCRA, the State can be a party liable in the proceeding in its role as an employer; but it cannot become liable as a non-employer third party in a proceeding by an employee of a private sector employer.

Section 147(2C) further clarifies that the protection from liability under section 147(2A) does not apply to a proceeding for damages based on a liability of the State or an official as an insured person under the *Motor Accident Insurance Act 1994* (MAIA). This will allow for the usual scope of the MAIA to apply to personal injury actions, including any coverage provided under a compulsory third party (CTP) insurance policy.

The prescribed persons for this provision are the relevant Minister; chief executive; an officer or employee of the relevant department; an inspector; and any person acting under an authority or direction given under the Act by another type of prescribed person. The term 'a direction given under the Act' is only intended to apply to persons (including volunteers) who are acting under an authorised direction given by a person who has the authority to give such a direction under the MPA. This term is not intended to extend to contractors acting under a contract on a marine park.

## **Division 5                      Amendment of Nature Conservation Act 1992**

*Clause 23* provides that this division amends the *Nature Conservation Act 1992* (NCA).

*Clause 24* amends section 4 of the NCA to expand the object of the Act to provide a number of supplementary outcomes in meeting the current object of the conservation of nature. The amendments continue to provide for the conservation of nature, while allowing for the following:

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

These amendments will result in the objects of the NCA explicitly providing for recreation and commercial uses as well as nature conservation in the management of protected areas.

The primary purpose of the Act will remain the conservation of nature; however the new provisions mean that nature conservation does not automatically override the other supplementary outcomes in determining how protected areas will be managed.

*Clause 25* amends section 5 of the NCA on how the object of the Act is to be achieved to reflect changes to the object and management planning processes under the Act. This clause amends section 5 by:

- replacing the reference to ‘the conservation of nature’ with ‘the object of this Act’ to reflect the broadening of the object of the Act through clause 24 of the Bill; and
- introducing the term management statement to provide that:
  - the management of protected areas will need to have regard to any management statement for the area; and
  - the use of protected areas is to be ecologically sustainable by providing for the preparation of management statements for use in managing the areas.

The Bill does not alter current provisions under section 5(c) that require the management of protected areas to be in accordance with any management plans for the areas.

*Clause 26* amends section 14 of the NCA to abolish the wilderness area, World Heritage management area and international agreement area classes of protected area. There have been no areas declared under these classes of protected area and they are not in use.

*Clause 27* amends section 15 of the NCA to:

- remove the reference to wilderness area to reflect the abolishment of this class of protected area; and
- introduce the term “management statement” to provide that if a management statement is in effect for a protected area, the statement is to be considered in managing the area.

The Bill does not alter current provisions under section 15 that require each protected area to be managed in accordance with any management plan for the area.

*Clause 28* omits sections 24 to 26 of the NCA which become redundant following the abolishment of the classes of protected area currently known as wilderness areas, World Heritage management areas and international agreement areas.

*Clause 29* amends section 33A of the NCA which is being inserted by the *Waste Reduction and Recycling Act 2011* when the provision commences on 29 October 2013. The amendment corrects an error by replacing the reference to section 32 with reference to section 33.

*Clause 30* omits section 33B of the NCA which is being inserted by the *Waste Reduction and Recycling Act 2011* when the provision commences on 29 October 2013.

The omission of section 33B(1) will mean that the dedication, revocation, or amalgamation or other change to a protected area will have effect on the commencement of the regulation making the change, rather than having to wait for registration under the LA. The registration process under the LA will still occur, but can be completed once the change to the protected area is already in effect.

Its removal reinstates the previous situation in order to avoid any delays in the registration process that may have unintended consequences. If a regulation is made to dedicate a protected area, the protection should commence immediately. This avoids the risk of incompatible activities inadvertently occurring in the period between the making of the regulation and the registration under the LA. For example, a long-term incompatible approval could be granted over the land, and significant compensation might be required in order to remove it. Similarly, the revocation of part of a protected area to allow for an activity such as road works should be able to have effect immediately so as not to delay the work.

The omission of section 33B(2) will mean that the appointment or revocation of a trustee of a regional park under section 31 will have effect on the commencement of the regulation making the appointment or revocation, rather than having to wait for registration under the LA. The registration process will still occur, but can be completed once the change to the trustee is already in effect.

Its removal reinstates the previous situation in order to avoid any delays in the registration process that may have unintended consequences. For example, revocation of a trustee due to misconduct should have effect immediately, rather than leaving the trustee in place until such time as the revocation is registered. Similarly, appointment of a new trustee to manage the park should occur immediately, in order to provide clarity and certainty about the transition of management responsibility.

*Clause 31* amends section 37A of the NCA so that, in addition to leases granted under sections 34 and 35, or renewed under section 37, the chief executive must lodge leases granted under sections 35A and 36 of the NCA with the chief executive (lands) for registration.

*Clause 32* amends section 38 of the NCA to clarify that the lease granted under this section must be consistent with a management plan, where there is one in effect for the area. This reflects other amendments in the Bill that remove mandatory requirements for management plans to be prepared for protected areas.

*Clause 33* amends section 40 of the NCA to reflect the amendments included in clause 65 of the Bill that introduce a new planning tool referred to as a management statement into the NCA. The clause inserts a reference to management statement to provide that the approval of a management statement has the same effect as the approval of a management plan for the purposes of this section.

*Clause 34* amends section 41 of the NCA to reflect the amendments included in clause 65 of the Bill that introduce a new planning tool referred to as a management statement into the NCA. The section inserts a reference to management statement to provide that the provisions around the preparation and approval of management plans also apply to management statements.

*Clause 35* amends section 42 of the NCA to reflect the amendments included in clause 65 of the Bill that introduce a new planning tool referred to as a management statement into the NCA. The section inserts a reference to management statement to provide that the provisions around the preparation and approval of management plans also apply to management statements.

*Clause 36* amends section 42AEA of the NCA to require the chief executive to lodge leases granted under that section with the chief executive (lands) for registration.

*Clause 37* amends section 42AO of the NCA to require the chief executive to lodge leases granted under that section with the chief executive (lands) for registration.

*Clause 38* amends section 42AOA of the NCA to require the chief executive to lodge leases granted under that section with the chief executive (lands) for registration.

*Clause 39* omits section 42AR of the NCA which is being inserted by the *Waste Reduction and Recycling Act 2011* when the provision commences on 29 October 2013. The omission of section 42AR will mean that the dedication, declaration, revocation, or amalgamation or other change to a protected area mentioned in section 42AQ will have effect on the commencement of the regulation making the change, rather than having to wait for registration under the LA. The registration process under the LA will still occur, but can be completed once the change to the protected area is already in effect.

*Clause 40* replaces the heading of Part 4, Division 4 to remove the reference to the wilderness areas class of protected area which becomes redundant following the abolishment of this class of protected area.

*Clause 41* omits section 43 of the NCA to reflect the abolishment of the wilderness areas class of protected area and grandfathering of the coordinated conservation area class of protected area.

*Clause 42* amends the heading and provisions of section 44 of the NCA to replace references to 'protected area' with references to 'nature refuge' to reflect the abolishment of the wilderness area class and the grandfathering of the coordinated conservation area class. This reflects a nature refuge being the only class of protected area that can be included in a proposal for declaration under this section.

*Clause 43* amends section 45 of the NCA to replace the reference to ‘protected area’ and ‘class of area’ in this section with a reference to ‘nature refuge’ to reflect the abolishment of the wilderness area class and the grandfathering of the coordinated conservation area class of protected area.

*Clause 44* amends the heading of section 46 of the NCA and the provisions to clarify that the declaration of protected areas provided for under this section will only apply to nature refuges. Amendments to this section reflect the grandfathering of coordinated conservation area class, and the abolishment of the wilderness area class of protected area.

To reflect the grandfathering of the coordinated conservation area tenure class, the power to declare these areas is being removed under this section. However references in other provisions will be retained to allow for the continued management and revocation of existing coordinated conservation areas.

*Clause 45* amends section 47 of the NCA to replace the reference to ‘protected area’ with a reference to ‘nature refuge or coordinated conservation area’ to reflect the omission of the ‘protected area’ definition in section 43. References to coordinated conservation areas are retained to allow for the continued management of existing coordinated conservation areas. It also removes the reference to wilderness area which becomes redundant following the abolishment of this class of protected area.

*Clause 46* amends section 48 of the NCA to replace the reference to ‘protected area’ with a reference to ‘nature refuge or coordinated conservation area’ to reflect the omission of the ‘protected area’ definition in section 43. References to coordinated conservation areas are retained to allow for the continued management of existing coordinated conservation areas. It also removes the reference to wilderness area which becomes redundant following the abolishment of this class of protected area.

*Clause 47* amends section 51 of the NCA to provide a specific reference to the provisions under section 45(2) of the NCA. This subsection replicates current provisions to provide that a conservation agreement is binding on the persons mentioned in section 45(2) of the NCA.

*Clause 48* amends section 52 of the NCA to replace the reference to ‘protected area’ with a reference to ‘nature refuge or coordinated conservation area’ to reflect the omission of the ‘protected area’ definition in section 43. References to coordinated conservation areas are retained to allow for the continued management of existing coordinated conservation areas. It also removes the reference to wilderness area which becomes redundant following the abolishment of this class of protected area.

*Clause 49* repeals Part 4, Divisions 5 and 6 of the NCA regarding World Heritage management areas and international agreement areas. These divisions become redundant following the abolishment of the World Heritage management area and international agreement area classes of protected area. There are currently no areas declared under these classes of protected area and as such, the removal of these divisions has no consequences.

*Clause 50* renumbers Divisions 7 and 8 following the repeal of Divisions 5 and 6.

*Clause 51* repeals section 66 of the NCA which becomes redundant following the abolishment of the World Heritage management area and international agreement area classes

of protected area. There are currently no areas declared under these classes of protected area and as such, the removal of this section has no consequences.

*Clause 52* amends section 70A to reflect the grandfathering of the forest reserve tenure class under the NCA. Amendments to section 70A(3) clarify that land may cease to be forest reserve under section 25A of the FA, as per clauses 10 and 11 of the Bill.

*Clause 53* amends section 70B to replace the definition of ‘forest reserve’ with a new definition to reflect the grandfathering of the forest reserve tenure class.

*Clause 54* replaces the heading of part 4, division 2 to clarify that the division only applies to the revocation of forest reserves. This reflects the grandfathering of the forest reserve tenure class under the NCA.

*Clause 55* omits section 70C of the NCA to provide that the Governor in Council may not dedicate any land as forest reserve following commencement of this Part of the Bill.

This amendment grandfathers the ‘forest reserve’ tenure class by removing the power to dedicate any new areas under this tenure. Following commencement, areas currently dedicated as forest reserve will progressively be reviewed and reclassified under an appropriate tenure class, for example a protected area tenure class under the NCA or State forest under the FA. The review will involve an assessment of the nature conservation and other values present in the forest reserve which will help identify the appropriate future tenure class.

*Clause 56* omits section 70D of the NCA to reflect that no more forest reserves will be dedicated due to the repeal of section 70C.

*Clause 57* amends section 70E of the NCA to clarify that the section does not affect the power of the Governor in Council to make a regulation under the FA, section 25 to set apart and declare as a State forest any forest reserve or part of a forest reserve. This amendment will support the progressive review and reclassification of the forest reserves once the tenure has been grandfathered under the Bill.

*Clause 58* amends section 70EA of the NCA to remove references to the ‘dedication’ of a forest reserve to clarify that the section will only apply to the revocation of a forest reserve. This supports amendments to grandfather the forest reserve tenure class.

*Clause 59* omits section 70EB of the NCA. The omission of section 70EB will mean a revocation of a forest reserve will have effect on the commencement of the regulation making the revocation, rather than having to wait for registration under the LA. The registration process will still occur, but can be completed once the change is already in effect.

Its removal avoids any delays in the registration process that may have unintended consequences. For example, revocation of a forest reserve to allow for an activity such as road works should be able to have effect immediately so as not to delay the work.

*Clause 60* amends section 70M of the NCA to insert a new subsection to provide that the designation of an area as proposed protected area ends if the area ceases to be forest reserve

under the FA, section 25A. Section 25A is inserted into the FA through clause 11 of the Bill to clarify the consequences of making a declaration of State forest over a forest reserve.

*Clause 61* inserts a new section 88BA into the NCA to create a new offence for the selling of meat or other products obtained from dugong or marine turtles from commercial premises. This would include giving such meat or other products away at a commercial premise if the giving away constitutes part of the business operations at the commercial premises. Meat or other products could include a whole dugong or marine turtle.

The new offence provision will apply regardless of whether the sold or gifted dugong or marine turtle from which the meat or other products were sourced had been lawfully taken or had been unlawfully taken.

This provision is not meant to apply to trade undertaken on the basis of traditional custom, not involving an exchange of money and not occurring from commercial premises.

*Clause 62* replaces the heading of Part 7 of the NCA with a new heading that reflects that in addition to management and conservation plans, the part will also provide for management statements.

*Clause 63* inserts a new heading before section 110 to provide a new Division 1 containing preliminary information relating to Part 7 of the NCA.

*Clause 64* inserts a new heading after section 110 to provide a new Division 2 in part 7, reflecting requirements to prepare management statements or management plans.

*Clause 65* amends the heading of section 111 to provide that the chief executive must prepare a management statement for an area mentioned in section 111(1). The section is amended to replace the requirement for the Minister to prepare a management plan with a requirement for the chief executive to prepare a management statement. This reflects the streamlining of the management planning process for protected areas under the NCA.

The clause inserts a new subsection to provide that the chief executive is not required to prepare a management statement for an area if the Minister notifies the chief executive that the Minister is preparing a management plan for the area. This reflects the new section 112 being inserted by clause 67 of the Bill. This results in a management statement becoming the minimum standard of planning document for a protected area. Management plans will apply only where a management statement will not be adequate for the area.

The requirement to have a management statement prepared as soon as practicable after the dedication or declaration of an area under the new section 111 will only apply from the date of commencement of the provision. As such these provisions will not apply to protected areas dedicated or declared prior to commencement and where a management plan is already in place. Transitional provisions for existing protected areas where a management plan was not in place prior to commencement are provided under clause 82 of the Bill through the insertion of a new section 190.

The clause inserts a new subsection to provide that a management statement for an area may be combined with a management statement for another area dedicated or declared under the NCA.

The clause also provides for consequential renumbering of relevant subsections.

*Clause 66* amends the heading of section 112 to clarify that it applies to the preparation of conservation plans. It also removes subsection (3) which refers to the procedures for preparation and approval of conservation plans, including consultation requirements. The section is relocated and renumbered as section 120H.

This section 120H enables the Minister to prepare or require a conservation plan for any native wildlife, class of wildlife, native wildlife habitat or area that is, in the Minister's opinion, an area of major interest. This section states the matters about which a conservation plan may make provision, including prescribing offences for contraventions of the plan and associated maximum penalties of up to 165 penalty units. These are existing provisions, but appear now under a new section due to the restructure of the Act. There are existing offences and penalties for contraventions prescribed under current approved conservation plans.

The clause also introduces a requirement that, before requiring an applicant for a licence, permit or authority or other authority under a regulation to prepare, at their own cost, a conservation plan in respect of the application, or requiring an applicant to meet the preparation cost of a relevant conservation plan prepared by the Queensland Government, the Minister must be satisfied that it is more appropriate to proceed by those means rather than by the making of a regulation. In such a case, the Minister may be satisfied that the course of action is appropriate if, for example, the applicant would be the sole beneficiary of the conservation plan.

*Clause 67* inserts a new section 112 and a heading to provide a new Division 3 for part 7.

The new section 112 provides that the Minister may prepare a management plan for an area mentioned in section 111(1) of the NCA if satisfied it is appropriate in the circumstances having regard to the following—

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

Prior to the introduction of a requirement to prepare management statements under clause 65, management plans were required for all areas mentioned in section 111(1) of the NCA. Under the Bill, it is intended that management plans be required where there is a significant need for a comprehensive planning process, including a requirement for public consultation and input. This section retains existing provisions regarding the processes for the preparation of any management plans for national park (Cape York Peninsula Aboriginal land) and indigenous joint management areas.

A new Division 3 heading is inserted to provide for making and implementing management statements.

*Clause 68* replaces sections 113 to 116 of the NCA with new sections specifically providing for making and implementing management statements. The current sections deal with

management plans and conservation plans and are being streamlined and relocated under part 7 of the Act. The consultation requirements applicable to preparing conservation plans under current sections 113 to 116 (two mandatory rounds of public consultation), have been removed.

The existing section 113 is also being repealed for management plans. Currently, two rounds of mandatory public consultation are required in preparing a management plan. The mandatory requirement for the first round of public consultation on a proposal to prepare a draft plan under this section is considered an unnecessary and resource intensive process and is being removed. The second round of mandatory public consultation following the release of the draft plan is being maintained under the new section 115A. This is consistent with other management planning processes under the MPA and RAM Act.

A new section 113 is being inserted to provide that management statements are to be consistent with the management principles for the particular class of protected area or conservation agreement or covenant for the area. These provisions are consistent with the current requirements associated with the preparation of a management plan.

A new section 113A provides that the chief executive must notify the making of a management statement by gazette notice. The gazette notice must state where a copy of the management statement is available for inspection.

A new section 113B provides that a management statement has effect on and from the later of the following days:

- the day the gazette notice for the statement is published under section 113A;
- the commencement day stated in the statement.

A new section 113C is being inserted to provide details about who must implement a management statement.

The clause provides that:

- if the area is a national park (Aboriginal land) or national park (Torres Strait Islander land)—the board of management for the area must give effect to the statement;
- if the area is a national park (Cape York Peninsula Aboriginal land) or an indigenous joint management area—the indigenous landholder for the area and the chief executive must give effect to the statement;
- if the area is under the control of trustees—the trustees must give effect to the statement;
- if none of the above apply—the chief executive must give effect to the statement.

A new Division 4 is being inserted to provide for preparing, approving and implementing management plans.

A new section 114 is being inserted to provide that division 4 applies if the Minister decides to prepare a management plan for an area under the new section 112 of the NCA.

A new section 115 is being inserted to provide for the preparation of a draft management plan, where a management plan is considered the appropriate planning instrument for a

protected area. This reflects current provisions under the NCA requiring a draft of a management plan to be prepared.

A new section 115A is being inserted to provide for publishing of a notice about a draft management plan, other than a draft plan for a nature refuge that is subject to a conservation agreement.

The section provides that the Minister must publish a notice about the draft plan on the department's website and ensure the draft plan is available for inspection as stated in the notice. These amendments streamline the public notice requirements applying to draft management plans to provide consistency with similar amendments to the MPA and RAM Act. The amendments remove the current requirement for a notice to be published in a newspaper circulating throughout the State. This amendment streamlines management planning processes, however is not intended to preclude the option of publishing of a notice in a newspaper or by any other means considered necessary.

The section retains current requirements for the notice, with an additional requirement that the stated period for written submissions must be at least 20 business days after the notice is published. Consistent with current provisions under the MPA and RAM Act, this section further provides circumstances in which an invitation for written submissions is not required if:

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

A new section 115B is being inserted to provide details about how a copy of the draft management plan may be obtained, consistent with the provisions for management statements and plans provided under the new 120E.

A new section 116 is being inserted to provide that when preparing a final management plan, the Minister must consider all submissions made to the Minister about the draft plan. This is consistent with current requirements of the NCA.

*Clause 69* amends section 117 of the NCA to remove the reference to wilderness area which becomes redundant following the abolishment of this class of protected area.

*Clause 70* replaces section 118 and 119 of the NCA and adds new sections 119A and 119B relating to management planning processes. Provisions relating to conservation plans are being relocated under part 7 of the Act.

A new section 118 provides that the Governor in Council may, by gazette notice, approve a final management plan and that the gazette notice must state where a copy of the approved final management plan is available for inspection. The gazette notice must also specify that, if immediately before the approval of the management plan, a management statement is in

effect for the area, the management statement ceases to have effect on the day the management plan takes effect.

A new section 119 of the NCA streamlines management planning provisions, providing clarity that a single management plan can be prepared for multiple areas, by allowing a plan under the NCA to be combined with a management plan for another area dedicated or declared under the NCA, a marine park under the MPA and/or a recreation area under the RAM Act.

A new section 119A is inserted to provide that a management plan has effect on and from the later of the following days:

- the day the gazette notice approving the plan is published;
- the commencement day stated in the plan.

A new section 119B provides that a management statement in force for an area ceases to have effect if management plan takes effect for the area under section 119A.

*Clause 71* amends the heading of section 120 of the NCA to reflect that the section only relates to management plans and removes the provisions relating to conservation plans which are being relocated by the Bill under part 7.

*Clause 72* inserts new Divisions 5 to 8, and a new Division 9 heading into part 7, following section 120.

A new Division 5 is being inserted to provide for the amendment of management plans.

A new section 120A provides specific procedures applying to the amendment of management plans. These have been updated and relocated from the current section 124 of the NCA which is being repealed. The existing provisions have been retained in this new section; with additional circumstances added under which sections 115 to 116 do not apply.

Section 120A(2) now provides the ability for amendments to be made to a management plan without notice of the draft plan amendment or inviting submissions, in circumstances including:

- where the amendment is to make a change to ensure the plan is consistent with State government policy about the management of the area to which the plan applies; or where the plan is substantially uniform or complementary with another Act; or a law of the Commonwealth or another State; and the amendment is needed to ensure the plan remains substantially uniform or complementary; or
- where the amendment only adopts an Australian or international protocol, standard, code, or intergovernmental agreement or instrument; and an assessment of the benefits and costs associated with the amendment has already been made; and the assessment was made for, or is relevant to, Queensland; or
- where the Minister considers there has already been adequate other public consultation about the matters the subject of the amendment.

This section further provides that where an amendment is making a change to ensure consistency with State government policy, the Minister must publish a notice on the

department's website stating the amendments made to the plan and the reasons for the amendments.

New section 120B provides that an amendment of a management plan may, by gazette notice, be approved by:

- for an amendment to which section 120A(2) applies—the Minister; or
- otherwise—the Governor in Council.

This section also provides that a gazette notice must state where a copy of the amendment of the management plan and the management plan as amended are available for inspection.

New section 120C provides that the amendment of a management plan has effect on and from the later of the following days:

- the day the gazette notice approving the amendment is published;
- the commencement day stated in the amendment.

A new Division 6 is being inserted to provide for the publication of management statements and management plans.

A new section 120D provides details about how a management statement or management plan must be made available and published. The chief executive must publish a copy of a management statement or management plan on the department's website within 20 business days after the statement, plan, or an amendment of the plan or statement takes effect. This section also provides the requirement for the keeping of copies of the management statements and management plans available for inspection, without charge, during normal business hours at the department's head office and at each department office in the general area in which the area subject of the plan or statement is located.

A new section 120E provides details about obtaining a copy of a management statement or management plan. The clause provides that on payment of the fee decided by the chief executive, a person may obtain a copy of the plan or statement from the chief executive. The fee must not be more than the reasonable cost incurred by the chief executive for printing the copy and giving it to the person. If the person asks for the copy to be mailed to the person, the fee may include the reasonable cost of mailing the copy to the person.

A new Division 7 is being inserted to provide provisions for the review of management statements and management plans.

A new section 120F provides for the review of management statements to streamline processes and provide consistency with the amendments to the process for reviewing management plans under the new section 120G.

These new provisions will provide that an assessment of each management statement is required within 10 years of the statement being made. On completion of the assessment process, the chief executive may:

- prepare a new management statement for the protected area; or
- amend the existing management statement for the protected area; or
- leave the existing management statement for the protected area unchanged.

A new section 120G provides for the review of management plans to streamline processes and provide consistency with equivalent amendments to the RAM Act and MPA.

The provisions for the review of management plans have been updated and relocated from section 125 of the NCA which is being repealed. The new provisions provide that the Minister must review of the operation of each management plan for an area not later than 10 years after its approval. On completion of the review, the Minister may:

- prepare a new management plan for the protected area; or
- amend the existing management plan for the protected area; or
- leave the existing management plan for the protected area unchanged; or
- decide that the existing management plan should be replaced with a management statement for the protected area.

The current provision effectively requires the preparation of a new plan after 10 years. The amendments streamline the process by providing three new options to either amend the plan, leave the plan unchanged or develop a management statement instead. If a decision to prepare a new plan or amend the existing plan is made, the relevant processes under the Act must still be followed.

If a decision is made to replace a management plan with a management statement, the Governor in Council may revoke the existing plan and the chief executive must prepare a new management statement in accordance with part 7 of the NCA. However, the provisions clarify that in these instances, a management statement is not required if the area is amalgamated with another area and there is an existing statement or plan that will apply to the amalgamated area.

A new Division 8 is being inserted to provide for the preparation, approval and implementation of conservation plans.

Section 120I requires a conservation plan to be consistent with the management principles for the class of wildlife to which it refers, and provides for the State to be divided into wildlife districts to achieve the purposes of a plan.

Section 120J specifies that a conservation plan is subordinate legislation and does not have effect until approved by the Governor in Council.

Section 120K states that the chief executive must give effect to a conservation plan on its approval.

A new Division 9 heading is inserted to provide for miscellaneous provisions relating to part 7 of the NCA.

*Clause 73* amends section 121 of the NCA to remove the reference to wilderness area which becomes redundant following the abolishment of this class of protected area. This clause further clarifies that either a management plan or a management statement for a coordinated conservation area replaces the interim management intent for the area.

*Clause 74* repeals section 124 and 125 of the NCA to reflect the restructuring of part 7 relating to management statements, management plans and conservation plans.

*Clause 75* amends section 131 of the NCA to provide a conservation officer or honorary protector the opportunity to produce an identity card for inspection by the person against whom the power is being exercised, at the first reasonable opportunity.

Such a provision would apply, for example, where enforcement letters requiring information about suspected offences are sent to individuals suspected of having committed an offence which could have otherwise been addressed at the time the suspected offence was occurring.

*Clause 76* amends section 132 of the NCA to remove the reference to the wilderness areas class of protected area which becomes redundant following the abolishment of this class of protected area. The clause also renumbers the section following removal of the redundant provisions.

*Clause 77* amends section 133 of the NCA to expand the provisions to provide that the chief executive must also keep a register of any management statements.

*Clause 78* amends section 137 of the NCA to reflect other amendments being made to remove the requirement to prepare a management plan, and provides that any licence, permit or other authority issued for the purposes stated in the existing section need only be consistent with a management plan if there is one in place for the area.

*Clause 79* amends section 141(3) of the NCA to add section 39G of the Act to the list of sections for which the chief executive may not delegate powers to another person.

Section 39G allows for a trustee of a regional park to be granted a right to deal with carbon abatement products on the land. Such a decision could have significant implications for future conservation management, for example, it could potentially constrain future fire management actions because these actions might have an impact on the granted rights.

It is therefore appropriate that a decision under section 39G should not be made at a lesser level than the chief executive.

*Clause 80* replaces section 142 of the NCA to extend current liability provisions to protect the State and nominated officials from civil liability in the management or operation of a State protected area.

This amendment reduces the State's exposure to liability in response to the Government's commitment to extend access to national parks and other public lands for recreational and commercial purposes and is consistent with similar amendments being made to the FA, MPA and RAM Act.

As per current provisions, sections 142(1) and (2) protect nominated officials of the State from civil liability for acts or omissions made honestly and without negligence. In these instances, the liability instead attaches to the State.

In addition to these provisions, a new section 142(3) protects the State and nominated officials from civil liability for any acts done, or omissions made, including those that constitute negligence, in:

- the performance or purported performance of a function under the NCA in relation to a State protected area; or

- the exercise or purported exercise of a power under the NCA in relation to a State protected area; or
- the management or operation of a State protected area.

These provisions provide civil liability protection in any proceeding for damages based on a liability for personal injury (including death), damage to property or any resulting economic loss.

However, the protection from liability under section 142(3) does not apply in circumstances set out in 142(4), namely:

- 142(4)(a) excludes the construction, installation or maintenance of a State fixture or State road that is defective from the protection from liability, except where that defect is the result of a natural event;
- 142(4)(b) excludes the failure to give adequate notice of a defective State fixture or State road from the protection from liability, except where that defect is the result of a natural event; and
- 142(4)(c) excludes carrying out a State management activity from the protection from liability.

The definition of a State fixture is a building, structure or other thing constructed or installed by the State; for example a lookout or stairway. The definition of a State road is linked to the definition of State-controlled road under the *Transport Infrastructure Act 1994*; and the definition of road under the *Transport Operations (Road Use Management) Act 1995*, where that road has been constructed by the State. A State management activity is limited to programmed shooting or poisoning of animals and programmed burning or poisoning of vegetation.

In addition, the protection from liability under section 142(3) does not apply to a proceeding against an injured worker's employer for damages based on a liability for an injury for which compensation is payable under the WCRA. This provision is broadly consistent with section 5 of the CLA. Section 142(5) clarifies that in a proceeding, where compensation is payable under the WCRA, the State can be a party liable in the proceeding in its role as an employer; but it cannot become liable as a non-employer third party in a proceeding by an employee of a private sector employer.

Section 142(5) further clarifies that the protection from liability under section 142(3) does not apply to a proceeding for damages based on a liability of the State or an official as an insured person under the *Motor Accident Insurance Act 1994* (MAIA). This will allow for the usual scope of the MAIA to apply to personal injury actions, including any coverage provided under a compulsory third party (CTP) insurance policy.

The nominated officials for this provision are the relevant Minister; chief executive; an indigenous landholder with whom an indigenous management agreement has been entered into for a State protected area; a conservation officer; an authorised State employee; and any person acting under a direction given under the Act by another type of official. The term 'a direction given under the Act' is only intended to apply to persons (including volunteers) who are acting under an authorised direction given by a person who has the authority to give such a direction under the NCA. This term is not intended to extend to contractors acting under a contract on a State protected area.

*Clause 81* amends section 158 of the NCA to insert a new offence of giving a document containing information that the person knows is false, misleading or incomplete in a material particular to an authorised person, unless the person informs the authorised person the extent to which the information is false, misleading or incomplete.

The section is being renumbered as section 143A and relocated to part 8.

This broadens the scope from providing information to a conservation officer, to including any information provided to the department and those acting on behalf of the department. Consequently, the inclusion of a new offence raises a fundamental legislative principle and requires that sufficient regard be given to the rights and liberties of individuals. The new offence retains the maximum penalty of 100 penalty units and is necessary to improve the proper administration of the NCA by responding to the increasingly common manner in which a person may provide information to the department, including by way of online application.

A material particular in a document is necessary for substantial compliance on the grounds that materially relevant information is required for the proper administration of the NCA. This is consistent with section 49 of the *Acts Interpretation Act 1954*.

The new offence places a greater onus on individuals to check information before it is passed onto an authorised person. A penalty may apply in cases where due diligence has not been carried out and false, misleading or incomplete information is consequently provided. The prosecution however would still be required to prove that the person knew the information was false, misleading or incomplete in a material particular.

*Clause 82* inserts a new Division 5 into Part 12 of the NCA to provide transitional provisions for the Nature Conservation and Other Legislation Amendment Act (No.2) 2013.

The clause inserts Subdivision 1 which provides transitional provisions about management of protected areas and conservation plans.

A new section 189 provides definitions of ‘amended part 7’, ‘commencement’, ‘previous part 7’ and ‘properly made submission’ for the subdivision.

A new section 190 supports the amendments to the management planning processes for protected areas. Transitional provisions are required given that the requirement to have a management statement for a protected area under the new part 7 only applies from the commencement, and therefore only applies to dedications/declarations that occur after commencement.

The section provides that where an approved management plan does not exist for a protected area at commencement of the section, the provisions under the new part 7 now apply ie. a management statement is required to be prepared by the chief executive unless the Minister determines that a management plan is necessary. The section further provides that where the Minister had already started a process of preparing a plan prior to commencement:

- these processes are taken to have been done by the chief executive, or by the Minister if the Minister decides to continue with the development of the plan under the new part 7; and

- where notice has been given under the previous part 7 about a proposal to draft a management plan or a draft management plan, any properly made submissions will still need to be considered when developing the statement or plan under new part 7.

A new section 191 supports the recognition of management statements as a planning tool for protected areas. The section provides that a document consistent with the requirements for a management statement that was prepared and published on the department's website prior to the new part 7 commencing, is taken to be a management statement prepared for the protected area under the new part 7. These provisions allow for the management statement to take effect from the date of commencement as if sections 113A and 113B had been complied with.

A new section 192 supports the amendments to the management planning and conservation planning processes. The section provides that the processes under the new part 7 will apply to the preparation of management plan amendments, conservation plans and conservation plan amendments, even where the Minister had started, but not completed, the process of preparing the plan prior to commencement. Similar provisions relating to the preparation of management plans are provided under the new section 190.

This section 192 is intended to clarify that despite the *Acts Interpretation Act 1959*, which stipulates that an amendment to an Act does not affect anything begun under the Act, the new management and conservation planning processes will apply from the date of commencement of the new part 7. However, the section does clarify that where notice has been given under the previous part 7 about a proposal to prepare a plan or a draft plan, any properly made submissions will still need to be considered when preparing the final plan under new part 7.

A new section 193 provides transitional provisions so that a reference in an Act or document to a wilderness area, World Heritage management area and international agreement area is, if the context permits, redundant. This reflects the abolishment of these classes of protected area under this Bill.

A new section 194 provides that the chief executive must lodge existing leases granted under sections 35, 35A, 36, 42AEA, 42AO and 42AOA with the chief executive (lands) for registration as soon as practicable after the commencement. This new section complements requirements under section 188 for the chief executive to lodge existing lease documents for leases granted under sections 34, 42AD(1), 42AE(1) and 42AN(1). Therefore, sections 188 and 193 together will ensure that all relevant existing lease documents granted under the NCA will be lodged for registration.

*Clause 83* amends the Schedule (Dictionary) to remove the definitions of "international agreement area", "wilderness area", "World Heritage Convention" and "World Heritage management area". The clause also inserts amended definitions of "conservation agreement", "coordinated conservation area" and "protected wildlife"; and a new definition of "management statement". These amendments reflect changes being made to the protected area tenure classes and management planning under the Bill.

## **Division 6                      Amendment of Recreation Areas Management Act 2006**

*Clause 84* provides that this division amends the *Recreation Areas Management Act 2006* (RAM Act).

*Clause 85* amends section 19 of the RAM Act to streamline the public notice requirements applying to draft management plans to provide consistency with similar amendments to the NCA and MPA. The amendments provide that the Minister must publish a notice about the draft plan on the department's website, removing the current requirement for a notice to be published in a newspaper circulating throughout the State. This amendment streamlines management planning processes, however is not intended to preclude the option of publishing of a notice in a newspaper or by any other means considered necessary.

*Clause 86* inserts a new section 22A into the RAM Act to streamline the management planning provisions. This amendment provides clarity that a single management plan can be prepared for multiple areas, by allowing a plan under the RAM Act to be combined with a management plan for another recreation area; a marine park under the MPA; and/or an area declared or dedicated under the NCA.

*Clause 87* amends section 26 of the RAM Act to streamline the public notice requirements applying to draft amendments to management plans to provide consistency with similar amendments to the NCA and MPA. The amendments provide that the Minister must publish a notice about the draft amendment on the department's website, removing the current requirement for a notice to be published in a newspaper circulating throughout the State. This amendment streamlines management planning processes, however is not intended to preclude the option of publishing of a notice in a newspaper or by any other means considered necessary.

*Clause 88* amends section 27 of the RAM Act to provide the ability for amendments to be made to a management plan without notice of the draft plan amendment or inviting submissions, where the amendment is made to ensure the plan is consistent with State government policy. In such instances, the Minister must publish a notice on the department's website stating the amendments made to the plan and the reasons for the amendments. Equivalent amendments are also being made to the NCA and MPA under the Bill.

*Clause 89* replaces section 29 of the RAM Act to streamline management planning provisions to provide that a minor amendment of a management plan made under section 27 may be approved by the Minister, rather than the Governor in Council, by gazette notice.

*Clause 90* replaces section 31 of the RAM Act to provide consistency with similar amendments to the NCA and MPA for the review of management plans. The provision provides that the Minister must review the operation of each the management plan for each recreation area not later than 10 years after its approval. On completion of the assessment process, the Minister may:

- prepare a new management plan for the recreation area; or
- amend the existing management plan for the recreation area; or
- leave the existing management plan for the recreation area unchanged.

If a decision to prepare a new plan or amend the existing plan is made, the relevant processes under the Act must still be followed.

*Clause 91* inserts a new section 55A into the RAM Act to provide that a commercial activity permit issued under the Act may be combined with either or both of the following:

- a commercial activity permit granted under the NCA;
- a permit to conduct a commercial activity in a State forest granted under the FA.

This amendment allows for a single (combined) commercial activity permit to extend across more than one tenure type (protected areas, State forests and recreation areas) and complements amendments already made to regulations in the National Parks, Recreation, Sport and Racing Legislation Amendment Regulation (No. 3) 2012.

*Clause 92* amends section 69 of the RAM Act to provide that a commercial activity agreement entered into under the Act may form part of either or both of the following:

- a commercial activity agreement entered into by the person under the NCA;
- a commercial activity agreement entered into with the person under the MPA.

This amendment allows for a single (combined) commercial activity agreement to extend across more than one tenure type (protected areas, marine parks and recreation areas) and complements amendments already made to regulations in the National Parks, Recreation, Sport and Racing Legislation Amendment Regulation (No. 2) 2012.

*Clause 93* amends section 111 of the RAM Act to reflect amendments to the definition of “commercial activity” under clause 98 of the Bill. The definition of “prescribed structure” is removed from this section and relocated to the schedule (Dictionary).

*Clause 94* amends section 118 of the RAM Act to replace references to a “guide, hearing or assistance” dog with a reference to a “support” dog. This is consistent with references in regulation for other Queensland Parks and Wildlife Service managed areas i.e. the Marine Parks Regulation 2006, Nature Conservation (Protected Areas Management) Regulation 2006 and Forestry Regulation 1998. Clause 98 amends the Schedule (Dictionary) to include a definition of “support dog”.

*Clause 95* amends section 120 of the RAM Act to replace references to a “guide, hearing or assistance” dog with a reference to a “support” dog. This is consistent with references in regulation for other Queensland Parks and Wildlife Service managed areas i.e. the Marine Parks Regulation 2006, Nature Conservation (Protected Areas Management) Regulation 2006 and Forestry Regulation 1998. Clause 98 amends the Schedule (Dictionary) to include a definition of “support dog”.

*Clause 96* amends section 121 of the RAM Act to replace references to a “guide, hearing or assistance” dog with a reference to a “support” dog. This is consistent with references in regulation for other Queensland Parks and Wildlife Service managed areas i.e. the Marine Parks Regulation 2006, Nature Conservation (Protected Areas Management) Regulation 2006 and Forestry Regulation 1998. Clause 98 amends the Schedule (Dictionary) to include a definition of “support dog”.

*Clause 97* amends section 228 of the RAM Act to extend current liability provisions to protect the State and nominated officials from civil liability in the management or operation of a recreation area.

This amendment reduces the State's exposure to liability in response to the Government's commitment to extend access to national parks and other public lands for recreational and commercial purposes and is consistent with similar amendments being made to the FA, MPA and NCA.

Current sections 228(1) and (2) protect nominated officials of the State from civil liability for acts or omissions made honestly and without negligence. In these instances, the liability instead attaches to the State.

In addition to these provisions, a new section 228(3) protects the State and nominated officials from civil liability for any acts done, or omissions made, including those that constitute negligence, in:

- the performance or purported performance of a function under the RAM Act; or
- the exercise or purported exercise of a power under the RAM Act; or
- the management or operation of a recreation area.

These provisions provide civil liability protection in any proceeding for damages based on a liability for personal injury (including death), damage to property or any resulting economic loss.

However, the protection from liability under section 228(3) does not apply in circumstances set out in 228(4), namely:

- 228(4)(a) excludes the construction, installation or maintenance of a State fixture or State road that is defective from the protection from liability, except where that defect is the result of a natural event;
- 228(4)(b) excludes the failure to give adequate notice of a defective State fixture or State road from the protection from liability, except where that defect is the result of a natural event; and
- 228(4)(c) excludes carrying out a State management activity from the protection from liability.

The definition of a State fixture is a building, structure or other thing constructed or installed by the State; for example a lookout or stairway. The definition of a State road is linked to the definition of State-controlled road under the *Transport Infrastructure Act 1994*; and the definition of road under the *Transport Operations (Road Use Management) Act 1995*, where that road has been constructed by the State. A State management activity is limited to programmed shooting or poisoning of animals and programmed burning or poisoning of vegetation.

In addition, the protection from liability under section 228(3) does not apply to a proceeding against an injured worker's employer for damages based on a liability for an injury for which compensation is payable under the WCRA. This provision provides consistency with section 5 of the CLA. Section 228(5) clarifies that in a proceeding, where compensation is payable under the WCRA, the State can be a party liable in the proceeding in its role as an employer; but it cannot become liable as a non-employer third party in a proceeding by an employee of a private sector employer.

Section 228(5) further clarifies that the protection from liability under section 228(3) does not apply to a proceeding for damages based on a liability of the State or an official as an insured

person under the *Motor Accident Insurance Act 1994* (MAIA). This will allow for the usual scope of the MAIA to apply to personal injury actions, including any coverage provided under a compulsory third party (CTP) insurance policy.

The nominated officials for this provision are the relevant Minister; chief executive; an officer or other employee of the relevant department; and any person acting under an authority or direction given under the Act by another type of official. The term ‘a direction given under the Act’ is only intended to apply to persons (including volunteers) who are acting under an authorised direction given by a person who has the authority to give such a direction under the RAM Act. This term is not intended to extend to contractors acting under a contract on a recreation area.

*Clause 98* amends the Schedule (Dictionary) of the RAM Act to remove definitions for “assistance dog”, “guide dog” and “hearing dog”. The clause instead inserts a definition of “support dog” to align with definitions under the *Guide, Hearing and Assistance Dogs Act 2009*.

The clause also amends the definition of “commercial activity” to provide that a commercial activity does not include filming or photography that involves no more than two persons and does not involve the erection, construction or use of a prescribed structure. The definition of “prescribed structure” has also been relocated from section 111 of the Act. These definitions align with equivalent provisions in the Nature Conservation (Administration) Regulation 2006 and Forestry Regulation 1998.

### **Part 3                    Amendments about tenure commencing by proclamation**

#### **Division 1                Amendment of Forestry Act 1959**

*Clause 99* provides that this division amends the FA.

*Clause 100* replaces the definition of “protected area” in schedule 3 (Dictionary) of the FA to reflect amendments to the protected area tenure classes being made to the NCA.

#### **Division 2                Amendment of Fossicking Act 1994**

*Clause 101* provides that this division amends the *Fossicking Act 1994*.

*Clause 102* amends section 3 (Definitions) of the *Fossicking Act 1994* to replace the definition of “protected area” to reflect the amendments to the protected area tenure structure being made to the NCA.

#### **Division 3                Amendment of Geothermal Energy Act 2010**

*Clause 103* provides that this division amends the *Geothermal Energy Act 2010*.

*Clause 104* amends the definition of “owner” in schedule 2 (Dictionary) to reflect the amendments to the protected area tenure structure being made to the NCA.

#### **Division 4                   Amendment of Greenhouse Gas Storage Act 2009**

*Clause 105* provides that this division amends the *Greenhouse Gas Storage Act 2009*.

*Clause 106* amends the definition of “owner” in schedule 2 (Dictionary) to reflect the amendments to the protected area tenure structure being made to the NCA.

#### **Division 5                   Amendment of Land Act 1994**

*Clause 107* provides that this division amends the *Land Act 1994* (LA).

*Clause 108* amends schedule 6 (Dictionary) of the LA to remove the definition of “conservation park”; replace the definitions of “nature conservation area” and “national park” and insert a definition of “regional park (general)” to reflect the amendments to the protected area tenure structure being made to the NCA.

#### **Division 6                   Amendment of Land Protection (Pest and Stock Route Management) Act 2002**

*Clause 109* provides that this division amends the *Land Protection (Pest and Stock Route Management) Act 2002*.

*Clause 110* amends schedule 3 (Dictionary) of the *Land Protection (Pest and Stock Route Management) Act 2002* to replace part of the definition of “State-controlled land” to reflect the amendments to the protected area tenure structure being made to the NCA.

#### **Division 7                   Amendment of Mineral Resources Act 1989**

*Clause 111* provides that this division amends the *Mineral Resources Act 1989*.

*Clause 112* amends schedule 2 (Dictionary) of the *Mineral Resources Act 1989* to replace the definition of “protected area” to reflect the amendments to the protected area tenure structure being made to the NCA.

#### **Division 8                   Amendment of Nature Conservation Act 1992**

*Clause 113* provides that this division amends the NCA.

*Clause 114* amends section 14 of the NCA to reduce and change some of the terminology that is used to describe the different classes of protected areas to which the Act applies.

The 13 different classes of protected area currently described under this section will be simplified to reduce and streamline legislative and regulatory complexity. The current classes of protected area will be reduced by either abolishing or incorporating them into significantly fewer classes with groupings around like classes as follows:

- the national park, national park (scientific) and national park (recovery) classes will be combined into one class called “national parks”;
- the conservation parks and resources reserves classes will be combined into one class called “regional parks”;
- the “nature refuges” class will be retained;

- the “national parks (Aboriginal Land)”, “national parks (Torres Strait Islander Land)” and “national parks (Cape York Peninsula Aboriginal Land)” classes will be retained;
- the “coordinated conservation area” class will be grandfathered from future use (commencing on assent); and
- the “wilderness area”, “World Heritage management area” and “international agreement area” classes will be abolished because they are not being used (commencing on assent).

The amendments will reduce the 13 classes of protected area under this section to the following 7 classes:

- national parks; and
- national parks (Aboriginal land); and
- national parks (Torres Strait Islander land); and
- national parks (Cape York Peninsula Aboriginal land); and
- regional parks; and
- nature refuges; and
- coordinated conservation areas.

To reflect the grandfathering of the coordinated conservation area tenure class, the power to declare these areas will be removed through clause 44, however references in other provisions will be retained to allow for the continued management and revocation of existing areas.

*Clause 115* repeals section 16 of the NCA which becomes redundant following the merging of the class of protected area known as national park (scientific) into the national park class through clause 114 of the Bill.

The management principles in this repealed section form the basis of new management principles that are being introduced under clause 116 of the Bill when a SMA (scientific) is declared over a national park, or part of a national park.

*Clause 116* amends section 17 of the NCA to amend the management principles applying to the national parks class of protected area to support changes made to this class of protected area under clause 114 and implement government commitments to improve access to national parks.

The management principles for national parks retain a strong focus on nature conservation and cultural values. To remove any doubt that a national park may be managed to achieve educational, recreational or ecotourism outcomes, two new management principles are being inserted to:

- provide opportunities for educational and recreational activities in a way consistent with the area’s natural and cultural values; and
- provide opportunities for ecotourism in a way consistent with the area’s natural and cultural values.

A definition of “ecotourism” is also inserted, based on the current Ecotourism Australia definition which is included in the NPRSR draft Queensland Ecotourism Plan 2013–2020.

A new subsection (1A) is being provided to clarify if the whole or part of a national park is declared as a special management area (SMA), the management of the area or part may include:

- For a special management area (controlled action), either or both of the following:
  - the manipulation of the area’s natural and cultural resources to protect or restore the area’s natural or cultural values;
  - the continuation of an existing use of the area consistent with maintaining the area’s natural and cultural values.

“existing use” in the context of a SMA (controlled action) is defined to mean a lawful use made of the area or part immediately before the declaration of the area or part as an SMA (controlled action).

- For a special management area (scientific), the following:
  - activities or measures to protect the area’s exceptional scientific values;
  - controlled scientific study and monitoring of the area’s natural resources;
  - the control of threatening processes relating to threatened wildlife, including threatening processes caused by other wildlife and controlling threatening processes by manipulating the threatened wildlife’s habitat.

Subsection (1A) is being inserted to provide clarification about the relationship between particular management principles. Namely, to the extent of the inconsistency, the management principles for a SMA prevail over the management principles for a national park. This is necessary given that the type of activities, including management activities, that are currently allowed on national parks (scientific) and (recovery) are, in some instances, inconsistent with the management principles of national parks. The use of SMAs will allow these activities to continue when they transition into the new tenure structure.

Transitional provisions under clause 153 of the Bill will provide that existing national park (recovery) areas will transition to a national park with a SMA (controlled action) declared over it; and existing national park (scientific) areas will transition to a national park with a SMA (scientific) declared over it.

*Clause 117* omits the management principles in sections 19A to 21 of the NCA which become redundant following the changes to the classes of protected area currently known as national park (recovery), conservation parks and resources reserves through clause 114 of the Bill.

The merging of the conservation park and resources reserves tenure class into the regional parks tenure class forms the basis for new management principles being inserted for regional parks.

The new section 21, inserted by this clause, provides management principles for the new class of protected area known as regional park. These management principles focus on access for recreational and commercial activities, while maintaining a level of protection for the natural and cultural values of the land. These new management principles retain existing provisions around the exclusion of felling of timber for a commercial purpose and the management, as far as practicable, in a way consistent with any Aboriginal tradition applicable to an area that is also an indigenous joint management area.

*Clause 118* renumbers section 19AA of the NCA to section 20, given the section changes under clause 117.

*Clause 119* amends section 27 of the NCA to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill. The references to a national park (scientific) and a national park (recovery) are removed, while the reference to a conservation park is replaced by a reference to a regional park (general).

The definition of regional park (general) that is being included in the schedule (dictionary) excludes any regional park that has a resource use area declared over it. The declaration of resource use areas is addressed under clause 139 of the Bill.

*Clause 120* amends section 28 of the NCA to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill. The reference to a national park (scientific), a national park, a national park (recovery), a conservation park, or a resources reserve are replaced by a reference to a national park or a regional park.

*Clause 121* expands the heading of Part 4, division 2, subdivision 2 to clarify that the provisions under this subdivision relate to the dedication, revocation and amalgamation of protected areas.

*Clause 122* amends section 29 of the NCA to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill. The reference to a national park (scientific), a national park, a national park (recovery), a conservation park and a resources reserve are replaced by references to a national park or a regional park.

The section continues to provide that the classes of protected areas are listed in descending order of the level of protection given to them under the Act. The clause also streamlines the section by relocating a subsection allowing a regulation to define the extent of the area by reference to a specified depth below the surface of land, or a specified height above the surface of land, to another section of the Act (as per clause 146).

*Clause 123* amends section 31 of the NCA to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill. The reference to conservation park and resources reserve is replaced by a reference to regional park.

*Clause 124* amends section 34 of the NCA to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill. The references to national park (scientific), national park or national park (recovery) are being replaced by references to a national park and the references to conservation park or resources reserve are replaced by references to a regional park.

*Clause 125* amends section 35 of the NCA to remove references to the national park (recovery) class of protected area which becomes redundant following the repeal of this class of protected area through clause 114 of the Bill. The clause also makes consequential amendments to renumber some subsections following removal of the redundant provisions.

*Clause 126* amends section 35A of the NCA to remove references to the national park (recovery) class of protected area which becomes redundant following the repeal of this class of protected area through clause 114 of the Bill. This clause also removes the definition of

‘existing service facility’ from section 35A because it has been inserted into the schedule (dictionary), as a definition that is used in multiple sections of the NCA.

*Clause 127* amends section 36 of the NCA to remove references to the national park (recovery) class of protected area which becomes redundant following the repeal of this class of protected area through clause 114 of the Bill.

*Clause 128* amends section 39D of the NCA to amend the definition of “owner” to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill. The references to conservation park or resources reserve are replaced by references to a regional park.

*Clause 129* amends section 41 of the NCA to remove a subsection that is being relocated to another section of the Act (as per clause 146) to achieve legislative streamlining. This relocated subsection allows a regulation that is dedicating land as national park (Aboriginal land) or national park (Torres Strait Islander land) to define the extent of the area by reference to a specified depth below the surface of land; or a specified height above the surface of land. The clause also makes consequential amendments to renumber some subsections following removal of the provisions.

*Clause 130* amends section 42 of the NCA to remove a subsection that is being relocated to another section of the Act (as per clause 146) to achieve legislative streamlining. This relocated subsection allows a regulation that is dedicating an area as national park (Aboriginal land) or national park (Torres Strait Islander land) to define the extent of the area by reference to a specified depth below the surface of land; or a specified height above the surface of land. The clause also makes consequential amendments to renumber some subsections following removal of the provisions.

*Clause 131* amends section 42AB of the NCA to remove a subsection that is being relocated to another section of the Act (as per clause 146) to achieve legislative streamlining. This relocated subsection allows a regulation that is dedicating an area as national park (Cape York Peninsula Aboriginal land) to define the extent of the area by reference to a specified depth below the surface of land; or a specified height above the surface of land.

*Clause 132* amends section 42AC of the NCA to remove a subsection that is being relocated to another section of the Act (as per clause 146) to achieve legislative streamlining. This relocated subsection allows a regulation that is dedicating an area as national park (Cape York Peninsula Aboriginal land) to define the extent of the area by reference to a specified depth below the surface of land; or a specified height above the surface of land.

*Clause 133* removes the definition of existing service facility from section 42AEA of the NCA because the definition is being inserted into the schedule (dictionary), as a definition that is used in multiple sections of the NCA.

*Clause 134* amends section 42AI of the NCA to remove a subsection that is being relocated to another section of the Act (as per clause 146) to achieve legislative streamlining. This relocated subsection allows a regulation that is declaring an area as an indigenous joint management area to define the extent of the area by reference to a specified depth below the surface of land; or a specified height above the surface of land.

*Clause 135* amends section 42AJ of the NCA to remove a subsection that is being relocated to another section of the Act (as per clause 146) to achieve legislative streamlining. This relocated subsection allows a regulation that is declaring an area as an indigenous joint management area to define the extent of the area by reference to a specified depth below the surface of land; or a specified height above the surface of land.

*Clause 136* amends section 42AO of the NCA to remove references to the national park (recovery) class of protected area which becomes redundant following the repeal of this class of protected area through clause 114 of the Bill. The clause also makes consequential amendments to renumber some subsections following removal of redundant provisions.

*Clause 137* amends section 42AOA of the NCA to remove references to the national park (recovery) class of protected area which becomes redundant following the repeal of this class of protected area through clause 114 of the Bill. The definition of existing service facility is also removed from this section and inserted into the schedule (dictionary), as a definition that is used in multiple sections of the NCA.

*Clause 138* amends section 42AP of the NCA to remove references to the national park (recovery) class of protected area which becomes redundant following the repeal of this class of protected area through clause 114 of the Bill.

*Clause 139* repeals Part 4, Division 3A of the NCA relating to the preparation of regeneration plans for national parks (recovery) which becomes redundant following the repeal of the national park (recovery) class of protected area through clause 114 of the Bill. This will not preclude the option of developing a regeneration plan for a national park with a SMA (controlled action) where required, or the option of incorporating regeneration activities as part of a management plan or statement for the area.

This clause inserts a new Division 3A, providing three new sections that provide a head of power for the declaration of SMAs and resource use areas.

A new section 42A is inserted to provide the chief executive with the power to declare, by notice, a SMA (controlled action) or SMA (scientific) over a prescribed national park, or part of a prescribed national park. A prescribed national park includes:

- a national park
- a national park (Aboriginal land)
- a national park (Torres Strait Islander land)
- a national park (Cape York Peninsula Aboriginal land)

A special management area (controlled action) can allow for activities of a type, or for a purpose, stated in the new section 17(1A)(a).

A special management area (scientific) can allow activities of a type, or for a purpose, stated in the new section 17(1A)(b).

The two types of SMAs will address the need for particular outcomes currently associated with the national park (scientific) and national park (recovery) classes of protected area to continue when existing areas transition into the national park tenure class.

The section provides requirements for the notice declaring the SMA, including requirements for the notice to:

- be erected or displayed at the entrance of the national park or part of the national park declared as an SMA; and
- be easily visible to passers-by; and
- identify the limits of the area to which the notice applies; and
- state the prescribed activities that may be carried out in the SMA.

When the notice is erected or displayed, the chief executive must publish a copy of the notice on the department's website; and a notice in the gazette about the declaration of the SMA.

A new section 42B is inserted to allow the chief executive to bring the declaration of an SMA to an end by removing the notice declaring the SMA.

When the notice is removed, the chief executive must remove the copy of the notice on the department's website; and publish a notice in the gazette about the ending of the declaration of the SMA.

A new section 42C is inserted to provide for the declaration of resource use area over a regional park, or part of a regional park, by regulation.

The ability to declare a resource use area over a regional park provides for the distinction between former resources reserves (where resource extraction activity is permitted) and conservation parks (where this activity is not allowed) to be maintained when these areas are transferred into the new regional park tenure class. A resource use area will not prohibit the granting of a mining interest, geothermal tenure and GHG authority as per section 27 of the NCA.

*Clause 140* amends section 46 of the NCA to remove a subsection that is being relocated to another section of the Act (as per clause 146) to achieve legislative streamlining. This relocated subsection allows a regulation that is declaring a nature refuge to define the extent of the area by reference to a specified depth below the surface of land; or a specified height above the surface of land. The clause also makes consequential amendments to renumber some subsections following removal of the provisions.

*Clause 141* amends section 61 of the NCA to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill. The reference to a national park (scientific), a national park, a national park (recovery), a conservation park and a resources reserve are being replaced by a reference to 'a national park or a regional park'.

*Clause 142* amends section 62 of the NCA to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill. The definition of national park is also being updated to remove the reference to national park (recovery) which is redundant following the repeal of this class of protected area.

*Clause 143* amends section 67 of the NCA to remove references to World Heritage management areas and international agreement areas which become redundant following the abolishment of these classes of protected area through the Bill. The amendments also remove redundant provisions referring to a regulation giving effect to a management plan for these areas.

*Clause 144* replaces section 69 to expand the provisions to provide that the interests of a landholder of land forming part of a protected area are not affected by the declaration of the protected area, or part of the protected area, as a SMA (controlled action), SMA (scientific) or resource use area. This extends the current provision which provides that the interests of a landholder of land forming part of a protected area are not affected by the dedication or declaration of the protected area.

*Clause 145* amends section 70 of the NCA to remove the reference to “conservation park” which becomes redundant following the repeal of this class of protected area through clause 114 of the Bill.

*Clause 146* inserts a new section 70AA into the NCA to streamline and consolidate existing provisions under sections 29, 41, 42, 42AB, 42AC, 42AI, 42AJ and 46. These provisions allow a regulation giving effect to the dedication or declaration of certain classes of protected area to define the extent of the area dedicated or declared under the regulation by reference to a specified depth below the surface of land; or a specified height above the surface of land. New section 42C is also included.

*Clause 147* amends section 70B to replace the definition of ‘protected area’ to reflect the revised classes of protected area being introduced by clause 114.

*Clause 148* amends section 111 of the NCA regarding the requirement to prepare a management statement after the dedication or declaration of an area. The classes of protected area listed in the section are also being updated to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill.

*Clause 149* amends section 134 of the NCA to remove references to World Heritage management areas and international agreement areas and associated provisions relating to regulations giving effect to management plans for these areas. These references become redundant following the repeal of these classes of protected area through the Bill. The clause also makes consequential amendments to renumber a subsection following the removal of redundant provisions.

*Clause 150* amends section 141(3) of the NCA to add section 42A of the Act to the list of sections for which the chief executive may not delegate powers to another person. This ensures that the chief executive’s power to declare a special management area under the new section 42A of the Act can not be delegated.

*Clause 151* amends section 142 of the NCA to update the definition of “State protected area” to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill.

*Clause 152* omits section 173R of the NCA to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill. However a new section 203 is inserted into the NCA by the Bill to provide that previous use authorities issued under section 173R are taken to continue in force.

*Clause 153* inserts a new Subdivision 2 into part 12, division 5 to provide transitional provisions relating to changes to protected areas.

A new section 195 inserts definitions for the Subdivision including “amendment Act”, “commencement”, “old class” and “unamended Act”.

A new section 196 provides a transitional provision for areas that, immediately before commencement, were dedicated as a national park (scientific). On commencement, the areas are taken to continue as a national park and are taken to be declared as an SMA (scientific) for the purposes set out in the new section 17(1A)(b). This section is intended to ensure that existing dedications of protected areas are not revoked but continue in existence and are deemed to be protected areas of the new type.

The section provides that as soon as practicable after commencement, the chief executive must erect or display a notice for the SMA and publish a copy of the notice on the department’s website and in the gazette.

A new section 197 provides a transitional provision for areas that, immediately before commencement, were dedicated as a national park (recovery). On commencement, the areas are taken to continue as a national park and are taken to be declared as an SMA (controlled action) to allow activities of the type, or for the purpose, set out in the new section 17(1A)(a)(i). This section is intended to ensure that existing dedications of protected areas are not revoked but continue in existence and are deemed to be protected areas of the new type.

The section provides that as soon as practicable after commencement, the chief executive must erect or display a notice for the SMA and publish a copy of the notice on the department’s website and in the gazette.

A new section 198 provides a transitional provision for areas that, immediately before commencement, were dedicated as a conservation park. On commencement, the areas are taken to continue as a regional park. This section is intended to ensure that existing dedications of protected areas are not revoked but continue in existence and are deemed to be protected areas of the new type.

A new section 199 provides a transitional provision for areas that, immediately before commencement, were dedicated as resources reserves. On commencement, the areas are taken to continue as a regional park and taken to be declared as a resource use area. This section is intended to ensure that existing dedications of protected areas are not revoked but continue in existence and are deemed to be protected areas of the new type.

A new section 200 provides transitional provisions so that the references in an Act or document to a former class of protected area may, if the context permits, be taken to be a reference to the new tenure class following commencement:

- A national park (scientific) may, if the context permits, be taken to be a reference to a national park and/or an SMA (scientific).
- A national park (recovery) may, if the context permits, be taken to be a reference to a national park and/or a SMA (controlled action).
- A conservation park may, if the context permits, be taken to be a reference to a regional park and/or a regional park (general).
- A resources reserve may, if the context permits, be taken to be a reference to a regional park and/or a regional park (resource use area).

This provision is necessary because there are numerous pieces of legislation, statutory instruments, regulatory notices, signs, and other documents which will continue to refer to the old terminology following commencement. While these will be progressively updated, not all documents will be updated to the new terminology in time for the commencement of this Bill. This section ensures that references in documents to the old terminology can be taken to be references to the new terminology during this transitional period.

A new section 201 provides that a trustee arrangement made over a conservation park or resources reserve under the Act is taken to continue over the area following the transfer of the area into the new regional park tenure class. This ensures that existing trustee arrangements are not affected in the transfer to the new protected area tenure structure.

A new section 202 provides that if an area is changed from an old class of protected area to another class of protected area (the new class); any of the following in force for the area immediately before the commencement continues to apply to the area until it expires, is terminated or repealed or otherwise ends under its terms or the Act:

- a lease, agreement, licence, permit or other authority;
- a management statement;
- a management plan;
- a direction, requirement, notice or decision given or made in writing under the Act.

This section clarifies that it applies even if the carrying out of the activities under the relevant authority is not consistent with the management principles for the new protected area class for the area.

A new section 203 reflects the omission of section 173R of the NCA through the Bill. This section provides that previous use authorities issued under section 173R as in force immediately before commencement are taken to continue in force.

A new section 204 addresses circumstances where an application for a lease agreement, licence, permit or other authority is made, but not decided, prior to the protected area tenure class changes being made. In these cases, the application will be decided on the same basis to that which applied to the protected area at the time of application. The section provides that if the application is granted, it is taken to be an authority for the area as a protected area under the new class, even if the carrying out of the activities under the relevant authority is not consistent with the management principles or a management plan for the new protected area class for the area. However, the grounds on which the chief executive may refuse an application to renew the relevant authority include the ground that the carrying out of the activities under the authority is not consistent with the management principles or a management plan for the new protected area class for the area.

A new section 205 provides a transitional regulation making power for matters relating to:

- a change in the classes of protected area under the NCA; or
- any matter related to the changes in the classes of protected areas under the NCA; and
- any other matter for which this Bill does not make provision.

This transitional regulation-making power raises fundamental legislative principles in that it enables an Act to be expressly or impliedly amended by subordinate legislation and will allow retrospective operation of such amendments. This section is justified on the basis that it

expires one year after commencement and is necessary in order to provide the ability to resolve any unforeseen consequences of the changes to the protected area tenure classes being made under the Bill.

*Clause 154* amends the Schedule (Dictionary) to remove the definitions of “conservation park”, “national park (recovery)”, national park (scientific)”, “regeneration plan”, “resources reserve” and replaces the definition of “prescribed protected area”. The clause also inserts definitions for “existing service facility”, “regional park”, “regional park (general)”, “regional park (resource use area)”, “special management area”, “special management area (controlled action)” and “special management area (scientific)”.

These amendments reflect changes being made to the protected area tenure classes and management planning under the Bill.

### **Division 9                   Amendment of Petroleum Act 1923**

*Clause 155* provides that this division amends the *Petroleum Act 1923*.

*Clause 156* amends the definition of “owner” in schedule 2 (Definitions) to reflect the amendments to the protected area tenure structure being made to the NCA. This clause removes references to national park (recovery) and national park (scientific) which become redundant following the changes to the classes of protected area through clause 114 of the Bill.

### **Division 10                 Amendment of Petroleum and Gas (Production and Safety) Act 2004**

*Clause 157* provides that this division amends the *Petroleum and Gas (Production and Safety) Act 2004*.

*Clause 158* amends the definition of “owner” in schedule 2 (Definitions) to reflect the amendments to the protected area tenure structure being made to the NCA. This clause removes references to national park (recovery) and national park (scientific) which become redundant following the changes to the classes of protected area through clause 114 of the Bill.

### **Division 11                 Amendment of Survey and Mapping Infrastructure Act 2003**

*Clause 159* provides that this division amends the *Survey and Mapping Infrastructure Act 2003*.

*Clause 160* amends the definition of “protected area” in section 66 of the *Survey and Mapping Infrastructure Act 2003* to reflect the amendments to the protected area tenure structure being made to the NCA.

*Clause 161* amends the definition of “protected area” in section 95 of the *Survey and Mapping Infrastructure Act 2003* to reflect the amendments to the protected area tenure structure being made to the NCA.

## **Division 12                   Amendment of Vegetation Management Act 1999**

*Clause 162* provides that this division amends the *Vegetation Management Act 1999*.

*Clause 163* amends section 7 of the *Vegetation Management Act 1999* to reflect amendments to the protected area tenure classes being introduced through clause 114 of the Bill.

## **Part 4                         Amendments about forest reserves commencing by proclamation**

### **Division 1                   Amendment of Forestry Act 1959**

*Clause 164* provides that this division amends the *Forestry Act 1959*.

*Clause 165* omits subsection 25(c) of the FA which clarifies the power for the Governor in Council to make a declaration of a State forest over a forest reserve. This clause also removes the editor's note referencing forest reserves under the NCA. These amendments will commence on proclamation, to reflect the abolishment of the forest reserve tenure, once the review and reclassification process of remaining forest reserves is complete.

### **Division 2                   Amendment of Nature Conservation Act 1992**

*Clause 166* provides that this division amends the *Nature Conservation Act 1992* (NCA).

*Clause 167* omits Part 4A, Forest reserves, of the NCA to reflect the abolishment of the forest reserve tenure.

As a result of the 1999 South East Queensland Forests Agreement, 425,000 hectares of State forest and timber reserve land were identified for addition to the conservation reserve system. This process extended to other areas across the State, such as the western hardwoods region. In order to facilitate the transfer of this land into protected area tenure, a new interim holding tenure (forest reserve) was established. This holding tenure was to allow for further assessment of the conservation values of each site prior to final transfer into the appropriate protected area tenure. Under the Act this process is to be finalised by 31 December 2025.

Remaining areas dedicated as forest reserve are currently being reviewed and reclassified under an appropriate tenure class, for example a protected area tenure class under the NCA or State forest under the FA. The review involves an assessment of the nature conservation and other values present in the forest reserve which will help identify the appropriate future tenure class.

This clause provides for the abolishment of the forest reserve tenure by proclamation once the review and reclassification process of remaining forest reserves is complete.

*Clause 168* inserts a new section 183A into the NCA to provide that from the commencement of the *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013*, part 4, division 2, a reference to a forest reserve, or land in a forest reserve, is a reference to land that was a forest reserve under this Act immediately before the commencement. This reflects the abolishment of this tenure through clause 167 of the Bill.

### **Division 3                      Amendment of Petroleum Act 1923**

*Clause 169* provides that this division amends the *Petroleum Act 1923*.

*Clause 170* replaces section 4 of the *Petroleum Act 1923* to clarify the relationship with the NCA following amendments being made by this Bill. The amendment removes the reference to forest reserves, reflecting the abolishment of this tenure through clause 167 of the Bill.

### **Division 4                      Amendment of Petroleum and Gas (Production and Safety) Act 2004**

*Clause 171* provides that this division amends the *Petroleum and Gas (Production and Safety) Act 2004*.

*Clause 172* replaces section 6A of the *Petroleum and Gas (Production and Safety) Act 2004* to clarify the relationship with the NCA following amendments being made by this Bill. The amendment removes the reference to forest reserves, reflecting the abolishment of this tenure through clause 167 of the Bill.

### **Division 5                      Amendment of Sustainable Planning Act 2009**

*Clause 173* provides that this division amends the *Sustainable Planning Act 2009*.

*Clause 174* amends part of the definition of “operational work” in section 10 of the *Sustainable Planning Act 2009* to remove the reference to a forest reserve under the *Nature Conservation Act 1992*. The amendment reflects the abolishment of this tenure through clause 167 of the Bill.

## **Part 5                              Consequential and minor amendments**

*Clause 175* provides that consequential and minor amendments are included as part of Schedule 1.

### **Schedule 1                      Consequential and minor amendments**

#### **Part 1                              Consequential and minor amendments commencing on assent**

Part 1 commences on assent. These are consequential and minor amendments to: make minor corrections to the *Environmental Protection Act 1994*, the *Nature Conservation Act 1992*; and the *Marine Parks Act 2004*; remove a duplicated definition from the *Land Act 1994* and make consequential amendments to the *Nature Conservation Act 1992* to reflect the omission of the rare wildlife class from the NCA and associated subordinate legislation.



## **Attachment 1**

### **Stakeholder briefings on the review of the *Nature Conservation Act 1992***

#### ***Stakeholders invited and attended briefings:***

- Queensland Outdoor Recreation Federation
- Tourism Queensland
- Association of Marine Park Tourism Operators
- Regional Tourism Organisation Network
- Ecotourism Australia
- Queensland Tourism Industry Council
- Great Barrier Reef Marine Parks Authority
- HQPlantations Pty Ltd
- National Parks Association of Queensland
- Queensland Conservation Council
- Wildlife Preservation Society
- Torres Strait Regional Authority
- Cape York Land Council Aboriginal Corporation
- North Queensland Land Council Native Title Representative Body Aboriginal Corporation
- Queensland Resources Council
- Cement Concrete and Aggregates Australia
- Origin Energy
- Queensland Gas Company
- Local Government Association of Queensland
- Urban Development Institute Australia
- Property Council of Australia
- AgForce
- Queensland Farmers Federation
- Growcom
- Bundaberg Fruit and Vegetable Growers
- Queensland Beekeepers Association
- Nursery and Garden Industry Queensland
- Timber Queensland
- Zoo and Aquarium Association of Queensland

#### ***Stakeholders invited but did not attend briefings:***

- Australian Petroleum Production and Exploration Association
- Queensland Small Miners Council
- World Wildlife Fund
- Carpentaria Land Council Aboriginal Corporation
- Queensland South Native Title Services Ltd