

Nature Conservation and Other Legislation (Indigenous Joint Management – Moreton Island) Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the Nature Conservation and Other Legislation (Indigenous Joint Management – Moreton Island) Amendment Bill 2020.

Policy objectives and the reasons for them

The primary policy objective of the Bill is to provide for the joint management of protected areas on Moreton Island (Mulgumpin).

Joint management is a specific model of protected area management that, in Queensland, provides for management of the land to occur jointly between the Queensland Parks and Wildlife Service (QPWS) within the Department of Environment and Science (DES) and the indigenous landholder – the trustee for the land under the *Aboriginal Land Act 1991* (ALA). Land management decisions made by the two parties occurs consistent with an indigenous management agreement (IMA), which must be entered into between the State of Queensland (State) and the trustee.

On 27 November 2019, the Federal Court of Australia made a native title consent determination recognising the Quandamooka People’s native title rights on Moreton Island. As part of the consent determination process, the State and the Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC), the representatives of the Quandamooka People, agreed to work towards the joint management of protected areas on Moreton Island, similar to existing joint management arrangements between the State and QYAC on Minjerribah (North Stradbroke Island).

Secondary policy objectives of the Bill are to make a number of minor amendments to provide clarification about the operation of existing provisions and provide consistency across related legislation.

Differing interpretations of the relationship between sections of the *Nature Conservation Act 1992* (NCA) that relate to the grant of a lease, agreement, licence, permit or other authority (permissions) over State land protected areas, an indigenous joint management area (IJMA), national parks (Cape York Peninsula Aboriginal land) and special wildlife reserves has identified the need to clarify the operation of these sections to ensure that permissions are not invalidated by an interpretation contrary to the intent of the provisions.

Amendments to the ALA will clarify the preservation of certain existing interests on land granted as Aboriginal land. These will be mirrored in the *Torres Strait Islander Land Act 1991* (TSILA), as it relates to the grant of Torres Strait Islander land, and will provide consistency in the related legislation.

Achievement of policy objectives

A number of key actions must occur in sequence before joint management of protected areas with QYAC on Moreton Island (Mulgumpin) is delivered as agreed in the Indigenous Land Use Agreement (ILUA) negotiated between QYAC and the State.

The land must first be made transferable land. Under the ALA, transferrable land may be granted as freehold land for the benefit of Aboriginal people. In the context of land on Moreton Island, once the land becomes transferable land, the Minister for the ALA may give direction to prepare Deeds of Grant and appoint QYAC as grantee of the land. Deeds of Grant need to be submitted to the Governor in Council and, if approved, subsequently handed over to the grantee.

The Aboriginal land will then be held in trust for the Quandamooka People and, as agreed between the State and QYAC as part of the resolution of the native title claim over Moreton Island, continue to be managed as protected area, as an IJMA established under the NCA. This approach is consistent with the outcome of transferring protected area lands to QYAC on Minjerribah (North Stradbroke Island) following the Quandamooka Peoples' native title determinations over that land in 2011.

The Bill will facilitate the creation of the IJMA and joint management by making amendments to the ALA, the NCA and the *Recreation Areas Management Act 2006* (RAMA) to:

- give prescribed protected areas on Moreton Island the status of transferable land under the ALA so they may be granted to QYAC as Aboriginal land;
- provide that the IMA prepared for the management of prescribed protected areas on Moreton Island is recognised under the ALA to facilitate the declaration of an IJMA under the NCA;
- provide for the declaration of an IJMA over prescribed protected areas to deliver joint management arrangements with QYAC on Moreton Island consistent with commitments in the ILUA; and
- ensure consultation and other requirements, as specified in the IMA, are met before certain permits and authorities are granted under the RAMA.

The Bill will achieve its secondary objectives of providing clarification and consistency of legislation by:

- amending the sections 35, 42AE, 42AO and 43G of the NCA to clarify that these sections operate independently from sections 34, 42AD, 42AN and 43F respectively;
- amending section 45 of the ALA to clarify the preservation of certain existing interests on land granted as Aboriginal land under the ALA; and

- amending section 41 of the TSILA to provide consistency by mirroring amendments being made to section 45 of the ALA.

The primary objective will be predominantly achieved by amending or mirroring existing sections of the NCA and ALA that currently apply in the Cape York Peninsula Region and the North Stradbroke Island Region, which have been specifically defined to provide for joint management of protected areas in these areas. The amendments will broaden existing provisions so that they will also apply to Moreton Island. Expansion of an existing legislative model is considered to be the most reasonable, efficient and effective way to achieve the policy objectives.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

The State will incur additional costs to facilitate the joint management of prescribed protected areas on Moreton Island.

A series of land dealings must be resolved prior to the declaration of an IJMA, which will allow formal joint management to occur between the State and QYAC on Moreton Island.

While not relying on any amendments in the Bill, certain State lands on Moreton Island will be surveyed and approval will be sought from the Governor in Council to dedicate and amalgamate these additional State lands into the protected area estate.

The lands that are proposed to be transferable land and granted as Aboriginal land will also be surveyed. Subject to passage of the amendments in the Bill, the Minister for the ALA may give direction to prepare Deeds of Grant and appoint QYAC as grantee of the land. Deeds of Grant need to be submitted to the Governor in Council and, if approved, provided to the grantee, formalising QYAC as the indigenous landholder.

Funds for the land surveys have been allocated by the State and the costs of the subsequent Governor in Council processes will be managed within existing budget allocations.

When the Aboriginal land has been granted to the indigenous landholder, the Minister for the NCA may recommend to the Governor in Council that a Regulation be made declaring the land to be an IJMA. The State has allocated additional funding for the first four years plus recurrent funding to support joint management on Moreton Island. A portion of this will be revenue collected under the RAMA, which will be reallocated from DES to QYAC to offset existing costs of managing the Moreton Island Recreation Area. Funding will allow QYAC to create six new positions to support the joint management of Moreton Island, as well as support the employment of a number of community rangers on a project basis. Future increases in RAMA revenue will be shared equally between QYAC and DES for the management of the area.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Clause 9 of the Bill corrects a historical error by excluding the application of a section of the ALA to national park land in the North Stradbroke Island Region. This amendment should have occurred following the previous native title determinations over Minjerribah for the Quandamooka People in 2011, when joint management arrangements were negotiated between the State and QYAC. Consideration was given to whether this amendment should apply retrospectively, however, the requirements under the section have not been acted on, so the amendment will be beneficial and not adversely affect rights and liberties, or impose obligations, retrospectively.

Consultation

QYAC was consulted on the amendments relevant to delivering joint management of protected areas on Moreton Island. This outcome is the result of confidential negotiations between the State and QYAC as part of the settlement of the Quandamooka native title claim through a consent determination process. As such, no other consultation occurred in relation to these amendments.

A draft of the relevant amendments was provided to the chief executive officer of QYAC on 17 March 2020. QYAC requested clarification be provided to ensure new section 175(B)(3) in clause 8 of the Bill did not apply to transferable land other than prescribed protected areas on Moreton Island. While the section did limit application to prescribed protected areas on Moreton Island, it was agreed to amend subsection 175(3) to provide further clarification that the section does not apply to other transferable land under the ALA.

Other amendments to provide clarity and consistency are technical amendments and do not change the intent of the existing legislation. The amendments have no negative consequences and therefore consultation on these amendments was not considered necessary.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. Each jurisdiction has its own approaches to support joint management outcomes with traditional owners, but there is no consistent approach across all jurisdictions.

Notes on provisions

Part 1

Clause 1 states that, when enacted, the Bill will be cited as the *Nature Conservation and Other Legislation (Indigenous Joint Management – Moreton Island) Amendment Act 2020*.

Part 2 Amendment of Aboriginal Land Act 1991

Clause 2 states that Part 2 amends the *Aboriginal Land Act 1991*.

Clause 3 amends section 10 to provide for a further category of land that is transferable land under the ALA. The category is a prescribed protected area on Moreton Island as identified under new section 175A of the ALA. This amendment is necessary as land must be transferable land under the ALA before it can be granted as Aboriginal land.

Once the land is transferable land, the Minister responsible for administering the ALA may then give direction to prepare Deeds of Grant and appoint QYAC as grantee of the land.

Clause 4 amends section 45 to clarify the preservation of certain existing interests (such as a sublease or easement) on land granted as Aboriginal land that is subject to an available State land agreement made under the ALA.

The amendment has application when an available State land agreement has been entered into for land that is subject to a lease under the *Land Act 1994* and the agreement provides for the lease to end and a new lease be granted by the trustee of the Aboriginal land, upon the grant of the Aboriginal land. The option for this arrangement is an existing provision of the ALA and parties to the agreement enter them at their own volition.

The amendment clarifies and removes beyond doubt that encumbrances, interests or administrative advices registered or noted over a lease immediately before the transfer of land to Aboriginal land, continue in force as interests in land post transfer, and the lessor and lessee relationships of continuing subleases of the new lease granted.

Clause 5 amends the heading of Part 11 to include reference to Moreton Island. This part will provide for IMAs to apply to Aboriginal land that is a prescribed protected area on Moreton Island.

Clause 6 amends section 169 to require the entering into of an IMA about the proposed management of land that is to become an IJMA on Moreton Island.

This amendment is required to provide for indigenous joint management arrangements of Aboriginal land that is a prescribed protected area on Moreton Island.

Clause 7 amends section 170(1)(b)(ii) to include a reference to Moreton Island. This will provide that an IMA about land that is to become an IJMA area on Moreton Island, must state that the land will be managed in perpetuity as an IJMA.

Clause 8 inserts a new Division (Division 4) in Part 11 that applies to protected areas on Moreton Island. Two new sections are being added to this Division for different purposes.

Firstly, clause 8 inserts a new section 175A to identify prescribed protected areas on Moreton Island as transferable land under the ALA. A definition of prescribed protected area is being inserted, which defines the term to mean a national park or a conservation park under the NCA, other than an area that is an excluded protected area.

A definition of excluded protected area is being added, which defines the term to mean land shown on lots 1 to 7 on DP283833. These include access roads and sites that support Maritime Safety Queensland and Australian Maritime Safety Authority facilities for navigation safety purposes.

Secondly, clause 8 inserts a new section 175B requiring that before prescribed protected areas on Moreton Island that are transferable land under 175A are granted under the ALA, the proposed trustee must enter into an IMA with the State about the management of the land as an IJMA. Section 175B further provides that the grant of the land is subject to the condition that the land must become an IJMA.

Clause 9 amends the definition of national park in section 284 of the ALA for two purposes.

Firstly, clause 9 amends section 284 to exclude national park land on Moreton Island granted under the ALA, from a requirement that it is leased to the State, in perpetuity, for the purposes of managing the national park land.

This amendment will allow the land to remain as national park and be jointly managed as an IJMA in accordance with the ILUA agreed between the State and QYAC. The agreement to create a jointly managed protected area means that there is no need for the land to be leased to the State in perpetuity to maintain the protected area, which would otherwise apply.

Secondly, clause 9 amends section 284 to correct an error by excluding application of the section to national park land in the North Stradbroke Island Region. This section should have been amended to exclude national parks in the North Stradbroke Island Region from the section following the previous native title determinations over Minjerribah for the Quandamooka People in 2011 when an IJMA was agreed between the State and QYAC. The indigenous joint management of national park land in the North Stradbroke Island Region is captured under existing provisions in the ALA and NCA.

Clause 10 inserts a definition of Moreton Island in the Dictionary of the ALA. This simply refers to the definition of Moreton Island in the NCA.

Part 3 Amendment of Nature Conservation Act 1992

Clause 11 states that Part 3 amends the *Nature Conservation Act 1992*.

Clause 12 amends section 35, which relates to the grant of permissions on national parks, to clarify that the section does not limit, and is not limited by, section 34. The amendment is being made to resolve past uncertainty regarding the independent operation of the two

sections and clarifies that permissions under section 35 apply to certain activities that are inconsistent with the management principles of the protected area and is distinct from section 34, which applies to permissions for activities that are consistent with the management principles for the protected area. The amendment is necessary to remove the risk that permissions granted under these sections could be found to be invalid by an interpretation contrary to the intent of the provisions.

Clause 13 is a consequential amendment to provide that section 40 of the NCA does not apply to national park land on Moreton Island when it becomes Aboriginal land under the ALA. Without this amendment, the national park land on Moreton island would need to be dedicated as a separate class of protected area under the NCA called ‘national park (Aboriginal land)’, which would be inconsistent with the outcome negotiated with QYAC for the native title consent determination.

Clause 14 amends section 42AE, which relates to the grant of permissions on national parks (Cape York Peninsula Aboriginal land), to clarify that the section does not limit, and is not limited by, section 42AD. The amendment is being made to resolve past uncertainty regarding the independent operation of the two sections and clarifies that permissions under section 42AE apply to certain activities that are inconsistent with the management principles of a national park (Cape York Peninsula Aboriginal land) and is distinct from section 42AD, which applies to permissions for activities that are consistent with the management principles for of a national park (Cape York Peninsula Aboriginal land). The amendment is necessary to remove the risk that permissions granted under these sections could be found to be invalid by an interpretation contrary to the intent of the provisions.

Clause 15 replaces section 42AG to insert a reference to Moreton Island to provide that the purpose of the subdivision is to enable the declaration of prescribed protected areas in the North Stradbroke Island Region and on Moreton Island as an IJMA. The section is currently limited to only declaring an IJMA for prescribed protected areas within the North Stradbroke Island Region, which as defined, does not include Moreton Island.

Clause 16 amends section 42AH, which is currently limited to the North Stradbroke Island Region, to insert a reference to Moreton Island. This will provide for the declaration of an IJMA over prescribed protected area on Moreton Island when the land becomes Aboriginal land and the Minister is satisfied that an IMA about the management of the land has been entered into. On the land becoming Aboriginal land, the Minister must recommend to the Governor in Council the making of a regulation declaring the protected area land as an IJMA.

Clause 17 amends section 42AI, which is currently limited to the North Stradbroke Island Region, to insert a reference to Moreton Island. This will provide for the declaration of an IJMA over Aboriginal land on Moreton Island if the indigenous landholder has entered into an IMA and the Minister for the NCA and the indigenous landholder agree that the land is to be managed as an IJMA. The Minister must recommend to the Governor in Council the making of a regulation dedicating the land as a prescribed protected area and declaring the land as an IJMA.

Clause 18 amends section 42AO, which relates to the grant of permissions on IJMAs, to clarify that the section does not limit, and is not limited by, section 42AN. The amendment is being made to resolve past uncertainty regarding the independent operation of the two

sections and clarifies that permissions under section 42AO apply to certain activities that are inconsistent with the management principles of an IJMA as distinct from section 42AN, which applies to permissions for activities that are consistent with the management principles for of an IJMA. The amendment is necessary to remove the risk that permissions granted under these sections could be found to be invalid by an interpretation contrary to the intent of the provisions.

Clause 19 amends section 43G, which relates to the grant of permissions on special wildlife reserves, to clarify that the section does not limit, and is not limited by, section 43F. The amendment is being made to resolve past uncertainty regarding the independent operation of the two sections and clarifies that permissions under section 43G apply to certain activities that are inconsistent with the management principles of a special wildlife reserve as distinct from section 43F, which applies to permissions for activities that are consistent with the management principles for a special wildlife reserve. The amendment is necessary to remove the risk that permissions granted under these sections could be found to be invalid by an interpretation contrary to the intent of the provisions.

Clause 20 inserts two definitions into the Dictionary of the NCA.

Firstly, clause 20 inserts a definition of Moreton Island which means land on Moreton Island that is above the ordinary high-water mark at spring tide. This reflects the area that was subject to the native title claim and the Federal Court native title consent determination.

Secondly, clause 20 inserts a definition of North Stradbroke Island Region. The term is currently defined in the *North Stradbroke Island Protection and Sustainability Act 2011* but used in the NCA in relation to IJMA references. Inserting this new definition into the NCA will allow all areas where joint management can occur to be defined in the NCA.

Part 4 Amendment of Recreation Areas Management Act 2006

Clause 21 states that Part 4 amends the *Recreation Areas Management Act 2006*.

Clause 22 replaces the heading of Part 4, Division 1 from ‘Activities permitted’ to ‘Preliminary’. This will better reflect the nature of the clauses within this Division once new section 35A is inserted into this Division through clause 23 of the Bill.

Most of Moreton Island is comprised of protected areas under the NCA (Moreton Island National Park and Cape Moreton Conservation Park). These areas are also a declared recreation area, which is a management overlay governed under the RAMA, to provide a framework for the protection and management of recreational values and use. Therefore, it is common for a permit granted under the RAMA to authorise activities that occur within both the recreation area and the protected area. Provisions under the NCA recognise such permits as legitimate for conducting the authorised activity on the national park. This arrangement avoids an applicant having to obtain two permits for conducting the same activity in the recreation area and the national park.

Clause 23 inserts a new section 35A to provide that the chief executive may only issue a permit for a recreation area situated in an IJMA if all requirements relating to issuing the permit under the IMA for the area have been satisfied. Examples of these requirements

include consulting with the indigenous landholder and obtaining the prior written consent of the indigenous landholder for the issuing of a permit.

Similar provisions already exist in sections 34 and 35 of the *Nature Conservation (Administration) Regulation 2017* for Aboriginal land protected areas in the Cape York Peninsula Region and IJMAs. The amendment will ensure that consistent requirements exist across the protected area and the recreation area, requiring the chief executive of DES and any delegates to only grant certain authorities subject to the requirements of the ILUA and/or IMA, irrespective of whether an application is made under the NCA or the RAMA.

This will protect the consultation rights of the indigenous landholder within the IJMA and ensure that permit decisions made by the State on the basis of the consultation requirements are valid, and less vulnerable to challenge on administrative law grounds on the basis of the decision maker considering matters outside of the requirements of RAMA.

Clause 24 amends section 53 to list an additional matter that the chief executive must have regard to in deciding an application for a commercial activity permit. In effect this amendment provides that if the proposed permit relates to a recreation area situated in an IJMA, the chief executive must have regard to whether the requirements under an IMA have been satisfied in relation to the proposed permit under section 35A. This supports the amendment under clause 23 to require that all the requirements relating to the issue of a permit under an IMA are satisfied before the permit is granted.

Clause 25 amends section 55D to provide that the chief executive may grant an application to renew a commercial activity permit if the permit relates to a recreation area situated in an IJMA and all requirements relating to the permit under the IJMA for the area have been satisfied in relation to the renewal.

Clause 26 amends section 70 to reflect the amendment being made to section 53 by clause 24. The amendment to section 70 will provide that the requirements under section 53 in relation to deciding an application for a commercial activity permit will also apply to a commercial activity agreement. This supports the requirement under section 35A that all the requirements relating to the issue of a permit under an IMA are satisfied before the permit is granted.

Clause 27 inserts two definitions into the Dictionary of the RAMA.

Firstly, the amendment inserts a definition of indigenous joint management area, which means an area declared under the NCA as an indigenous joint management area.

Secondly, the amendment inserts a definition of indigenous management agreement, which refers to the definition in schedule 1 of the ALA.

Part 5 Amendment of Torres Strait Islander Land Act 1991

Clause 28 states that Part 5 amends the *Torres Strait Islander Land Act 1991*.

Clause 29 amends section 41 to clarify the preservation of certain existing interests (such as a sublease or easement) on land granted as Torres Strait Islander land that is subject to an

available State land agreement made under the TSILA. This amendment is being made to provide consistency with a similar amendment being made to section 45 of the ALA.

The amendment has application when an available State land agreement has been entered into for land that is subject to a lease under the *Land Act 1994* and the agreement provides for the lease to end and a new lease be granted by the trustee of the Torres Strait Islander land, upon the grant of the Torres Strait Islander land. The option for this arrangement is an existing provision of the TSILA and parties to the agreement enter them at their own volition.

The amendment clarifies and removes beyond doubt that encumbrances, interests or administrative advices registered or noted over a lease immediately before the transfer of the land to Torres Strait Islander land, continue in force as interests in land post transfer, and the lessor and lessee relationships of continuing subleases of the new lease granted.