

Nature Conservation and Other Legislation Amendment Bill 2015

Submission to:

Ms Jennifer Howard MP
Chair
Agriculture and Environment Committee
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Submission from:

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Overview

The Wildlife Preservation Society of Queensland (Wildlife Queensland) is a leading and respected State-wide NGO advocating the protection of our native flora and fauna in concert with educating the community to better understand the principles of conservation and preservation of the natural environment.

Wildlife Queensland has only minor issues with the provisions in the Bill. However, we feel strongly that this NCOLA Bill 2015 does not go far enough towards rectifying the destructive amendments to the *Nature Conservation Act 1992* of 2012 and 2013.

By not taking action to remove both categories of Special Management Area (SMA) from the management principles of national parks, the cardinal principle of national park management remains severely compromised. SMA status renders the cardinal principle irrelevant, as it has no effect in a declared SMA. This is the subject of further explanation and a recommendation below.

The continuing loss of a number of protected area classes is not considered appropriate. These include the following: national park (recovery), coordinated conservation area, wilderness area, World Heritage management area, and international agreement area. These were all part of a continuum of protected areas (from highly protected to more lightly protected) based on the criteria for global protected area systems established by the International Union for the Conservation

of Nature (IUCN). This organisation, of which the Queensland Government is a member, hosted the World Parks Congress in Sydney last year (November 2014). Strong emphasis was placed at that congress on the value of jurisdictions using the IUCN categories to establish a range of protected areas, but with national parks generally being the key areas of maximum protection. This matter is also subject to a recommendation below.

The retention of the reference to “ecotourism facility” in Section 35(1)(a) further compromises the cardinal principle for the management of national parks, as that section applies despite the management principles of national parks. This was amended via the NCOLA Bill 2012. The establishment of tourist resorts inside national parks would overturn more than 100 years of national park management on mainland parks in Queensland. The argument that such action is acceptable because resorts are present in some other Australian jurisdictions is a flawed argument. Simply because somebody else did something, doesn’t validate it for others. That argument also ignores the historical reasons for the establishment of such resorts early in the life of the parks before there was an overriding agency managing all parks in those jurisdictions. For example, NSW did not have overriding legislation for the administration of national parks until 1967. In contrast, Queensland had such legislation in 1906. Because section 35 is not the subject of amendment in the Bill, a separate recommendation is presented here.

Recommendation

That section 35(1)(a) be omitted in order to remove the reference to “ecotourism facilities”. This would also mean the removal of the definition of ecotourism facilities in the Dictionary.

Wildlife Queensland believes that national parks are the primary vehicles for the protection of Queensland’s native plants and animals. Their main purpose is to protect that biodiversity along with its underlying ecological structure and supporting environmental services, and to promote education, research and recreation that are compatible with that protection. That has been the objective of the cardinal principle for the management of national parks, and that principle remains severely compromised.

The following comments relate to key clauses in the Bill. Where a clause is not referred to, it can be assumed that the provision is endorsed.

Clause 4 Object of the Act (section 4)

Clause 4 reinstates the previous Object of the Act (the conservation of nature) and is strongly supported. The components removed by this amendment are all adequately covered in Section 5 (Clause 5) which establishes how the conservation of nature is to be achieved.

Clause 6 Amendment of Section 14

The reinstatement of (i) national parks (scientific), (ii) conservation parks, and (iii) resources reserves is strongly supported.

However, certain previous classes of protected area have not been reinstated and we believe that further consideration needs to be given to reinstating the following: (i) national parks (recovery), (ii) coordinated conservation area, (iii) wilderness areas, (iv) World Heritage management areas, and (v) international agreement areas. The latter two areas had not been applied previously, but all have the capacity to play a part in allowing the State to provide appropriate regulations for those parts of World Heritage Areas and Ramsar Sites that don't also lie within other classes of protected area.

The reinstatement of these areas would also require the reintroduction of procedures for declaration as well as the management principles. Coordinated conservation areas are still listed as a class of protected area in section 14 of the Act, but the capacity for declaring one has been removed from section 46. In other words, the existing coordinated conservation areas have been grandfathered, and any capacity to declare a new one has been removed. That would need to be rectified.

The issues relating to national parks (recovery) are discussed below in relation to Clause 8 by proposing that those areas which were previously national parks (recovery) and are now declared as special management areas (controlled action) should be returned to their previous status or redesignated as conservation parks. Neither of those actions would compromise the areas in any way, and both would allow rehabilitation action to proceed with the long-term objective being to upgrade them to national park status.

Recommendation:

- (a) That the following discarded classes of protected area should be reinstated: World Heritage protection areas, international agreement areas, wilderness areas, and coordinated conservation areas.**
- (b) That the discarded national park (recovery) class of protected area should either be reinstated, or the areas that were previously part of that class should be redesignated as conservation parks.**

Clause 8 Management principles of national parks

Two categories of special management area (SMA) are presently provided for in Section 17(1A). The proposed amendment to remove one of those, SMA (scientific) is endorsed and these areas will revert to their previous status of national park (scientific).

However, the amendment does not go far enough. SMA (controlled action) should also be omitted in association with one of the following two actions: (1) reinstating national parks (recovery), or (2) redesignating all SMAs (controlled action) as conservation parks.

In other words, a key amendment should be the removal of all SMAs from the Act. The easiest way to achieve that is to return the SMAs to the classes of protected area that they previously belonged to. However, if that is, for some obscure reason, a bridge too far, then consider giving all SMAs (controlled action) a home with conservation parks, thereby removing SMAs as an undermining influence in the management principles of national parks, in particular because they are able to override the cardinal principle expressed in section 17(1)(a).

Recommendation

That all of section 17(1A) be omitted, and all land designated as SMA (controlled action) be redesignated as a reinstated national park (recovery) or as conservation park.

Clause 17 Section 42A (Declaration of special management area (controlled action))

As argued previously in relation to Clauses 6 and 8, section 42A should be omitted in concert with either (a) the reinstatement of national parks (recovery) or (b) the redesignation of all SMAs (controlled action) as conservation parks.

However, if this proposed amendment to section 42A proceeds, then an error needs to be rectified. The amendment to s. 42A(4) includes national park (scientific) in the definition of a prescribed national park (see 42A(4)(a)). The other classes that are listed in the definition all rely on the management principles of national parks (section 17). The management principles of national parks (Aboriginal land), national parks (Torres Strait Islander land) and national park (Cape York Peninsula Aboriginal land) all state that they are to be managed as a national park. This means the management principles of national parks as stated in section 17 will apply. It is only in section 17 that the reference to SMA (controlled action) occurs and therefore it can only have effect on those national parks to which that section applies.

The management principles of national parks (scientific) do not have that connection with section 17. Section 16 provides a very specific set of management principles for this class of national park. It would therefore be legally difficult to argue that a SMA (controlled action) could be declared on a national park (scientific).

Quite apart from that, it would be a nonsense to contemplate declaring a SMA (controlled action) on such a park as the management principles already allow for any action that might be contemplated under the SMA.

Recommendation:

- 1. Omit section 42A in concert with action proposed in relation to clauses 6 and 8; OR**
- 2. Omit the proposed amendment to section 42A(4)(a). In other words, remove the reference to national park (scientific) in the definition of *prescribed national park*.**

Clause 18 Section 42B (When declaration of SMA ends)

As argued previously, we would prefer this section to be omitted along with all reference to special management areas (controlled action).

Failing that, we consider the procedure for ending a SMA (controlled action) to be limited and weak, and not providing adequate public notification. The same comment is true of the declaration process in section 42A.

Recommendation

If SMAs (controlled action) are retained, there needs to be more adequate provision for public notification of their declaration and when a declaration ends.

Clause 24 Section 70(3) Unlawful use of certain words

Section 70(3)(a) refers to the *Marine Parks Act 1982*. While the *Acts Interpretation Act 1954* probably allows for the latest version of the Act to be read in its place, it would be appropriate to replace it with the *Marine Parks Act 2006*.

Recommendation

In section 70(3)(a), replace *Marine Parks Act 1982* with *Marine Parks Act 2006*.

Clause 34 Amendment of s. 173 of the *Aboriginal Land Act 1991*

In new s.173(4), it is unclear why the definition of prescribed protected area refers to a regional park prescribed by regulation. When the amendments come into force, there will be no such entity as a regional park. Why doesn't the Bill refer to a conservation park or resources reserve prescribed by regulation? This comment also applies in relation to Clause 35 (replacement of s.174).

It is noted that Schedule 1 of the Bill actually replaces 'regional park' with 'resources reserve'. Why could this not have been done in Clause 34? In other words, why does it need an amendment to amend an amendment? It's also unclear why conservation parks are not part of the definition.

Recommendation

Consider whether the proposed new section 173(4)(b) should refer to a conservation park and/or resources reserve prescribed by regulation.

Schedule 1

Amendment of *Environmental Protection Act 1994*

The amendment to section 38(2)(k)(iv) does not appear to cover a resources reserve that does not have a trustee.

The amendment to section 579(6)(e)(iii) does not appear to take into account ownership in relation to a national park (Cape York Peninsula Aboriginal land), though it does include national park (Aboriginal land) and national park (Torres Strait Islander land).

Recommendation

- (a) **Make provision for resources reserves that don't have trustees in s.38(2)(k)(iv).**
- (b) **Insert a reference to national parks (Cape York Peninsula Aboriginal land) in s.579(6)(e)(iii).**

Amendment of Land Act 1991

Why does the amendment of the definition of national park in Schedule 6 of the Land Act exclude a reference to national park (Aboriginal land), national park (Torres Strait Islander land) and national park (Cape York Peninsula Aboriginal land)?

Amendment of Mineral Resources Act 1989

In the proposed amendment to Schedule 2 (definition of protected area), there is no reference to national park (Cape York Peninsula Aboriginal land). Is there a reason why it has been left off the list?

Recommendation

Unless there are reasons to the contrary, national park (Cape York Peninsula land) should be added to the list in the definition of protected area.

Amendment of Petroleum Act 1923

In the proposed amendment of Section 2, definition of owner (paragraph 1(q)), there is no reference to national park (Cape York Peninsula Aboriginal land).

Recommendation

Unless there are reasons to the contrary, national park (Cape York Peninsula land) should be added to the list of protected areas in paragraph 1(q) of the definition of owner.

Amendment of Petroleum and Gas (Production and Safety) Act 2004

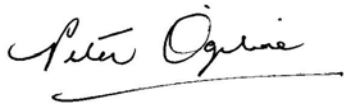
In the proposed amendment of Schedule 2, definition of owner (paragraph 1(q)), there is no reference to national park (Cape York Peninsula Aboriginal land).

Recommendation

Unless there are reasons to the contrary, national park (Cape York Peninsula land) should be added to the list of protected areas in paragraph 1(q) of the definition of owner.

Thank you for the opportunity to respond to the *Nature Conservation and Other Legislation Amendment Bill 2015*.

Yours sincerely

A handwritten signature in black ink, reading "Peter Ogilvie". The signature is written in a cursive style with a long horizontal flourish underneath.

Peter Ogilvie
President, Wildlife Preservation Society of Queensland
23 November 2015