

30 November 2015

The Committee Secretary
Agriculture and Environment Committee
Committee Office, Queensland Parliamentary Service
Parliament House, Cnr George & Alice Streets, Brisbane Qld 4000
Via Email: aec@parliament.qld.gov.au

**SUBMISSION ON THE NATURE CONSERVATION AND OTHER LEGISLATION
AMENDMENT BILL 2015**

The Environmental Defenders Office Northern Queensland (EDO NQ) welcomes the opportunity to provide a submission on *The Nature Conservation and Other Legislation Amendment Bill 2015 (NCOLA)* that was referred to the Agriculture and Environment Committee on Tuesday 27th October 2015 by the Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef (Hon Steven Miles).

Who we are:

The Environmental Defenders Office (Northern Queensland) (**EDO NQ**) is a not-for-profit, non-government, community legal centre specialising in public interest environmental law. We provide legal representation, advice and information to individuals and communities, in both urban and rural areas, regarding environmental law matters of public interest. We also deliver community legal education and undertake law reform activities, including the review of and comment on proposed planning and environmental legislation such as this Bill.

The EDO NQ is concerned primarily with ensuring that land management complies with the principles of ecological sustainability. This includes the management of the protected estate, including national parks, as they often are protecting both significant ecological values and indigenous heritage values.

We ask that you consider the following comments on the NCOLA Bill.

- 1. Clause 5 of NCOLA Bill** – We support the reinstatement of ‘the conservation of nature’ as the sole object of the NCA so that the preservation of the natural condition of national parks will take precedence over other objectives. However, we have serious concerns about the necessity of inclusion of Traditional Owners and indigenous land management practices and values in national parks which are discussed further below.

The present Object of the Act is as follows:

Section 4 - Object of Act

The object of this Act is the conservation of nature while allowing for the following-

- (a) the involvement of indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or island custom;*

- (b) the use and enjoyment of protected areas by the community;*
- (c) the social, cultural and commercial use of protected areas in away consistent with the natural and cultural and other values of the areas.*

The EDO NQ generally supports the intention to refocus the Act on the conservation of nature and has no objection to subsection (b) or (c) being removed. However, we have concerns about the removal of any specific reference to the role of indigenous peoples in pursuing this goal in the objects by the deletion of subsection (a). The High Court decisions in the Mabo and Wik cases made it clear that the sovereignty of Australia's indigenous people had never been extinguished. They'd never ceded it by treaty, or in any other way, nor were they recognized as citizens in the Constitution at Federation.

This means that Aboriginal or Torres Strait Island people may still retain the right to manage and control their country regardless of any subsequent Australian law, and should have the right to decide any management plans for National Parks on their country. This would also include sea country that was lived on during the last ice age as the stories of this submerged country still exist as do the cultural sites below the Coral Sea and Gulf of Carpentaria.

This is consistent with the United Nations Declaration on the Rights of Indigenous People, as adopted by the Australian government in 2009. The expansion of the protected area estate will become increasingly hard to justify without the informed consent of Traditional Owners and explicit recognition of their rights to determine what happens on their country.

We offer the following two suggestions for changes to the NC Act to better reinforce the essential indigenous role in managing National Parks:

First Proposal:

Section 4 - Object of Act

The object of this Act is the conservation of nature and indigenous cultural heritage within protected areas in accordance with traditional indigenous cultural and land management practices for the protected area:

- (a) as defined by the Traditional Owners or Native Title holders for a protected area wherever possible, otherwise*
- (b) in accordance with Aboriginal tradition and aspirations or Island custom and aspirations.*

OR:

Second Proposal:

Section 5 - How object is to be achieved

The conservation of nature is to be achieved by an integrated and comprehensive conservation strategy for the whole of the State that involves, among other things, the following—

- (f) adoption of traditional indigenous cultural and land management practices, as defined by the Traditional Owners or Native Title holders for a protected area in accordance with Aboriginal tradition and aspirations or Island custom and aspirations.*

2. Section 11 of NC Act – Meaning of ecologically sustainable use –

We believe that this section should also be amended to better reflect the

principles of ecologically sustainable development, as enshrined in the Commonwealth Government's National Strategy for Ecologically Sustainable Development (1992), rather than the very abbreviated version currently in the NC Act.

3. Clauses 6, 7, 8 and 9 of NCOLA Bill –

We support the proposed amendment to s14 of the NCA and the reinstatement of the former national park (scientific), conservation park and resources reserve classes of protected area. We also support the associated management principles that restore the higher level of protection afforded to national parks (scientific) and clarify the management intent and uses that are appropriate for the other classes of protected areas. However, we are concerned that certain classes of protected area, in particular *nature refuges* and *coordinated conservation areas*, have no specific protection under the proposed amendments. In effect they are just padding out the protected area estate and not addressed any further in the NCOLA Bill. The Ministers Second Reading speech stated “*Reinstating these classes of protected area will also provide better consistency with the International Union for Conservation of Nature categories of protected area*”.

However, the classes of protected area could be better aligned with the following IUCN Protected Areas Categories as these categories are recognised by international bodies such as the United Nations and by many national governments as the global standard for defining and recording protected areas and as such are increasingly being incorporated into legislation elsewhere.

- Ia Strict Nature Reserve
- Ib Wilderness Area
- II National Park
- III Natural Monument or Feature
- IV Habitat/Species Management Area
- V Protected Landscape/seascape
- VI Protected area with sustainable use of natural resources

In particular Class IV Habitat/Species Management Area could be applied to some areas of the Wet tropics for better protection of iconic species such mahogany gliders, cassowaries and spectacled flying foxes.

4. Ecotourism facilities should be removed from Section 35 of the NC Act:

Such facilities are incompatible with the newly defined object of the Act and we would recommend that they be located on some form of alternative tenure excised from the national park to avoid compromising the management principles of the national park.

5. Clause 29 of NCOLA Bill - Removes Section 173S of the NC Act that allowed the chief executive to grant the stock grazing permits for emergency drought relief in certain national parks. The harm that this retrograde measure caused to the vegetation communities and wetlands in some of these parks was extreme and we heartily endorse its deletion.

6. Schedule 1 of NCOLA Bill - Minor and consequential amendments – Mineral Resources Act 1989 (page 35) – the definition of “protected area” should also include national parks (Cape York Peninsula Aboriginal land).

Our final thoughts

We very much appreciate the opportunity to provide comment on a Bill that has such an impact on the many areas of protected area estate in Northern Queensland. Our main concerns with the proposed amendments are that:

- they should move towards the future of government relationships with Australia's Traditional Owners and include explicit recognition of their rights to determine what happens on their country, and
- clearly reflect and incorporate all the principles of ecologically sustainable development.

If you have any queries relating to this submission, please contact Brynn Mathews at EDO NQ on ([REDACTED])

Yours faithfully,



**Mark Buttrose – President of Management Committee
Environmental Defenders Office of Northern Queensland Inc**