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TO

The Health and Community Services Committee,

by email hcsc@parliament.qld.gov.au

09 September 2013

Please find below our comments on the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013.

In brief, the proposed amendments to the *Nature Conservation Act 1992* (NC Act) effectively prevent the Act from achieving its present Object, that is the conservation of nature.

Amending the Object to include "social, cultural and commercial use" inverts the original Object because **ALL uses would now have to be considered together**. It is mere sophistry to say that the cardinal principle has been retained. The amendment of the Object ensures that the Act can no longer be interpreted (for instance, in court) as allowing non-conservation uses only to the extent they do not offend against nature conservation and the cardinal principle. The proposed new Object ensures that activities adversely affecting nature conservation must be allowed.

(The poor outcomes for the GBRMP under the old GBRMPA Act ("conservation *and* reasonable use") were largely the result of pretending that two such opposed purposes could be combined meaningfully in one Object).

A separate Act enacted for the purpose of establishing and managing largely natural areas for outdoor recreation would have been acceptable, but only if it were not to interfere with increasing the size of the protected estate and its proper protection.

Please see below for our full submission, including our objections and recommendations.

Yours faithfully

Margaret Moorhouse

for
The Alliance to Save Hinchinbrook Inc.

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

COMMENTS

prepared for The Alliance to Save Hinchinbrook Inc

by Margaret Moorhouse 08 September 2013

The proposed amendments to the *Nature Conservation Act 1992* (NC Act) effectively prevent the Act from achieving its present Object, that is the conservation of nature.

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(The poor outcomes for the GBRMP under the old GBRMPA Act ("conservation *and* reasonable use") were largely the result of pretending that two such opposed purposes could be combined meaningfully in one Object).

A separate Act enacted for the purpose of establishing and managing largely natural areas for outdoor recreation would have been acceptable, but only if it were not to interfere with increasing the size of the protected estate and its proper protection.

ASH strongly objects to

1. **The loss of national parks in Queensland**, as presaged in changing the Object of the Act from "conservation of nature" to "social, cultural and commercial use of protected areas". This turns the Act on its head, and robs Queensland of legislation to establish areas dedicated to the conservation of nature. As a result of these amendments, there will be no Queensland parks where nature conservation comes first, regardless of what they might be named.

2. **Changing the management principles of national parks**. Although the explanatory notes state that the cardinal principle is to be retained, the changing of the Object of the Act dilutes the legal strength of the Object for nature conservation and renders the cardinal principle meaningless.

3. **The abolishment of a number of classes of protected area**. Specifically ASH is particularly concerned about the loss of tenure declarations such as wilderness area, World Heritage Management Area, and International Agreement Area.

4. **The introduction of a new class, regional park, to encompass conservation parks and resources reserves.** The concept of an outdoor nature-related recreation park would have been acceptable had it been established under a separate Act and only if it did not diminish the protected estate dedicated to nature conservation.

5. **Abolishing the forest reserve tenure**, thus robbing Queensland of a critical store of land selected for its conservation value and destined to become national park or other protected tenure.

6. **Coalescing several types of national park (scientific, recovery) together into the national park tenure**, hence diminishing the special purposes of these tenures and the potential for outcomes related to their purposes. Including them as national parks is wrong. National park (scientific) and national park (recovery) may be heavily modified for special conservation purposes and access needs to be strictly controlled. These two classes breach (for conservation purposes) the cardinal principle of "national park", hence cannot be included in the same classification.

7. **Abolishing the requirement to prepare management plans** for all protected areas. Management statements are toothless.

8. **Removing the democratic consultation processes** which has allowed the community to be fully engaged in the decision-making process about national and marine parks.

9. **Bypassing the parliament and reserving powers to the Minister**. Clearly this provides for purely political and unchallengeable decisions about land use and access.

ASH Recommendations

1. **The Object of the Act must not be changed**. Recreational and commercial uses are already accounted for in other parts of the Act.

2. **Retain the eight classes of protected area**. That some may not have been used is irrelevant. Why close off these options? No stated purpose is achieved by abolishing them. On the contrary, retaining them maintains flexibility.

3. **Retain present national park tenures** (scientific), national park (recovery), and forest reserve.

4. **Retain present declarations** for Wilderness area, World Heritage Management Area, and International Agreement Area**.**

5. **Rename proposed Regional parks according to their use** - eg Outdoor Recreation Park. By definition (their use) they do not qualify to be included in the national park estate.

6. **Mandate Management Plans in national parks for approved activities which breach the cardinal principle**. Such plans to be prepared *before* the activity can be approved, and only *after* an assessment of the values and condition of the park. Such management plans to be published for public consultation, with time frames suited to the lay public including those without internet access.

DETAILED RESPONSES

Policy objectives and the reasons for them

The objectives ... to amend the NCA 1992 and other related legislation in order to:

• **increase access** to national parks and other public lands;

• achieve **red tape reduction**; and

• **streamline legislative processes**.

The amendments cannot achieve the primary objective (conservation) because the rewriting (not mere *streamlining*) of the NCA and other related legislation allows for new types and levels of commercial and recreational access that must, as defined in the amendments, offend against genuine on-the-ground nature conservation in other so-called protected areas.

The downgrading of the parks plans system and the effective removal of public consultation is not mere *red tape removal.* It will ensure that cosy relationships between land developers will flourish at the expense of the public good.

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 ...

The amendments do not *broaden* the object of the NCA, they narrow the broadest object imaginable:

'conservation of nature', which is to be achieved by 'an integrated and comprehensive conservation strategy for the whole of the State' to a mere *focus* on nature conservation in the context of commercial and recreational uses.

The fact that an existing Act does not reflect what a government wants is not a substantive reason for change, it is merely a statement of the obvious: a tautology.

Nothing here to suggest the government has any commitment to achieving world-class protection of biodiversity for perpetuity.

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**:

National Parks and other protected areas are already subject to the activities set out in the three dot points.

Where is the nature conservation principle that says that protected areas must generally be accessible to commerce and visitation?

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

re 'wilderness area', 'World Heritage management area' and 'international agreement area'

The fact that the above tenures have not been used is not because they are not relevant but because of the state government's repeated refusal to use such tenures when they are appropriate, such as for Hinchinbrook Island National Park, where ASH has repeatedly asked for both Wilderness Area (for most of the island) and World Heritage Management Area (all of the island) declaration and management.

In view of the stated intention of the state to remove Commonwealth oversight of Queensland world heritage areas, keeping and using these three tenures would have at least given the impression that the state government had appropriate intentions towards the management of these areas. Instead, the stated intention here to abolish these tenures while also seeking to remove Commonwealth oversight signals that our best-protected biodiversity, acknowledged world wide for its importance to the whole planet, is to suffer from short term utilitarian activities rather than be protected from human activities so that it can flourish into the long term.

c) Revise the management principles for protected areas consistent with the new tenure classes... to achieve a **greater balance between nature conservation and** access for recreational and commercial purposes.
... national parks. The cardinal principle has been retained as the basis of national park management...

Given the general thrust of these amendments, the lands on grandfathered tenures will clearly not be protected as they should be. The retention of the cardinal principle is undermined by the amended Object of the Act.

greater balance between nature conservation

The concept of balance *between* nature and commerce/recreation is a fallacy. Nature is out of balance now, entirely because of human activities.

Because there are so many of us, and so few truly natural areas left, every human action is now impacting seriously on the earth, its life-supporting systems and its biodiversity.

What balance there might have been (centuries ago) has long been lost. This is the time when all surviving natural areas should be properly protected, rehabilitated and increased in size. This is the time when we should be securing more properly protected habitat areas so that our surviving species and natural ecosystems will have the best chance of surviving and evolving in the coming climate disturbances.

It is only the length of the time lag between impact and outcome, in the previously unimagined dynamic systems of the earth, that confuses the public. What happened to government as leader?

The Bill provides management principles for the newly created tenure of **regional park.**

The establishment of Regional parks for recreational and commercial visitation would be a welcome move IF it reduced the perceived need to "open up" national parks. This is not however the case, given one of the stated purpose of the amendments is to "**increase access** to national parks and other public lands".

The express exclusion of tree-felling is welcome.

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.

No mining on National Parks is welcome.

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

... **management statements** are a simpler expression of management intent for protected areas **without requiring public consultation** and **are considered a satisfactory** planning instrument ...

1. The replacement of the statutory requirement for formal management plans for protected areas (by which the area must be managed) by a toothless management statement (to be used and considered) is **entirely inappropriate.**

2. So is the **undemocratic exclusion** of the regional and local community and the Australian community (where applicable, as in world heritage areas) from decisions about the management of activities in protected areas.

3. The passive-verb statement **are considered a satisfactory planning instrument** is what one uses when there is no supporting evidence and the author does not want to own the idea. Where is the evidence that would support this orphan assertion?

... 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...
• the requirement for management plans to go through a full review process if the plan is (a) still operating effectively or (b) only if 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.

All three dot points (above) and the reserving of additional powers to the Minister amount to an attack on Australian democracy, by excluding the regional and local community and the Australian community (where applicable, as in world heritage areas) from decisions about the management of activities in protected areas.

...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

A post-facto unchallengeable statement of reasons published on the website says nothing about transparency. Because such a statement cannot be challenged, reasons the government does not wish to divulge will obviously not be published.

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.

This amendment is an **undemocratic exclusion** of the regional and local community and the Australian community (where applicable, as in world heritage areas) from decisions about the protection of listed species and unlikely to result in better outcomes for the subjects of such plans.

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

The commercial killing of dugongs and turtles will probably flourish under this amendment, which seems to allow the sale of dugong and turtle meant from almost everywhere except butcher shops. Hos is this consistent with the conservation of endangered species?

4. Amend the Marine Parks Act 2004 (MPA) in order to:
a) Streamline the process for 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 amendment is an **undemocratic exclusion** of the regional and local community and the Australian community (where applicable, as in world heritage areas) from decisions about conservation of nature and the management of activities in protected areas.

Estimated cost for government implementation

The majority of reforms under the Bill will result in little or no cost to government .... reforms to the management planning process for protected areas will result in significant time, cost and resource savings for government ...; and for business and community members in their participation in consultation processes.

Obviously, costs to government will be reduced by removing meaningful and detailed public consultation. The costs of consultation are the nothing more than what it costs to live in a parliamentary democracy. Responding to government consultation processes is not mandatory, so the costs to the community are not a relevant consideration in this context.

..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:

It is an extraordinary circumstance that the Queensland government should disregard the advice and considerations of the Office of the Queensland Parliamentary Counsel (OQPC) on seven matters.

Reducing the State's exposure to liability on QPWS lands
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.

We are aware of the increasing tendency to injury-related litigation, and the impossibility of providing perfect safety for visitors to the protected area estate. Nevertheless, when the declared intention is to increase visitation to untended areas, it is wrong to simply legislate to make the government immune to legal suit.

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

This OQPC objection is about replacing democratic processes with autocratic (dictator-like) decision-making.

The government's statement *meets the Government's* ***policy objective*** is not a "justification"; it is merely a reiteration of the government's intention to carry out what it wants to do.

> ***Streamlining management planning processes under the NCA***
> Fourth, ... 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 ...** 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

This OQPC objection is about replacing democratic processes with autocratic (dictator-like) decision-making.

The government's statement "*it provides the only mechanism that will enable the Minister to amend a management plan to reflect government policy"* is no logical justification; rather, it is merely a reiteration of its intention to carry out what it wants to do, without regard to democratic principles.

> ...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.

This OQPC objection is about reducing democratic access to government decision-making processes. People without good internet access will be systematically excluded from what consultation processes remain.

The fact that there is *an increasing trend towards accessing all information online* is no excuse for excluding the people who have limited or no internet access, particularly when time frames have been cut so short and postage times from the north of Queensland are so lengthy.

> ... 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.

This OQPC objection is about bypassing the authority of the parliament. The government intention is that Marine Park management plans will not be statutory instruments, hence no need to go through parliament. This represents an unacceptable downgrading of marine park protection.