

“Working together – healthy landscapes, viable communities”

Nature Conservation Bill (No2) 2013

Comments



QMDC's Comments on the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013

13 September 2013

Submission to:

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These comments are presented by the Chief Executive Officer, Geoff Penton, on behalf of the Queensland Murray-Darling Committee Inc. (QMDC). QMDC is a regional natural resource management (NRM) group that supports communities in the Queensland Murray-Darling Basin (QMDB) to sustainably manage their natural resources.

1.0 Background

QMDC has consistently made submissions and depositions to both the Australian and Queensland Governments seeking improvement to legislation, policies, and planning in order to manage impacts on both national and regional natural resources.

For an array of reasons state and national strategies and policies have failed to prevent decline in the condition and extent of these resources. They have not effectively managed ecosystem vulnerability, nor past and present threats to bioregions and their landscapes, such as encroaching human development, weed and pest infestation, climate changes etc.

Actions QMDC sought from the government, included innovative and “good neighbour” management options for conservation and the sustainable use of vegetation. This Bill, in QMDC's opinion, undermines what gains there have been from conservation efforts of the past. It also lacks insight into what is needed to provide long term sustainable management strategies for national parks, conservation areas and state forests.



QMDC asserts that the proposed new legislation is clearly **not designed** to ensure that:

- Priority landscape scale ecosystems are maintained or improved.
- Natural assets including native vegetation are managed or conserved to maintain ecological processes and ecosystem linkages, and increased in extent and abundance at priority catchment scales.
- Areas of identified high nature conservation significance are maintained in current condition and improved against the Common Nature Conservation Classification System.
- Decline in populations of 'at risk' flora and fauna species are halted.
- The biodiversity condition and ecological health of native flora and fauna in priority catchments are maintained or improved.

2.0 General comments

In QMDC's opinion it is paramount for the future of Queensland's biodiversity that the *Nature Conservation and Other Legislation Amendment Bill 2013* (the Bill) sits within a legislative framework that clearly articulates the cumulative upper and lower threshold limits for changes to natural resource asset condition and function in defined zones and timeframes to protect the integrity, health and value of the asset, and productive capacity, of those zones. Exceeding such limits should not be permitted under any circumstance, and it should be an offence to do so.

The *Nature Conservation Act 1992* (the Act), and other legislation the *Nature Conservation (Administration) Regulation 2006*, *Nature Conservation (Protected Areas Management) Regulation 2006* and *Nature Conservation (Protected Areas) Regulation 1994* were specifically enacted to protect land, vegetation and wildlife in Queensland. These protected areas are far and few and remain to be mere remnants of land (less than 2% in the QMDB). All activities, developments, policies or laws that overtly or inadvertently decimate further "Queensland's biological diversity, outstanding natural and cultural features and wilderness" should be avoided. National parks were created to protect tracts of land worthy and in desperate need of long term conservation. The values past governments adopted to protect these areas were based on "the public good" or "interest" and clearly sought a balance between protection and conservation and human impact caused by exploitation or occupation.

QMDC asserts that the Bill has not considered all possible impacts and their long term impact so that this balance is successfully reached. This is even more obvious when a large majority of submitters on the first amended Bill opposed its intent and most of its clauses. This Bill like its predecessor will inevitably also lack community and stakeholder support.

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Although QMDC in general supports the opportunity to advance ecotourism in the region, we do not however support those opportunities if the potential disturbance and human impact will compromise the integrity of national parks. New eco-tourism opportunities and infrastructure therefore must be weighed up against the current capacity of the national park that will be affected to maintain its natural integrity should more infrastructure and higher human impact be permitted in its landscape.

QMDC recommends a full scientific investigation for each development proposal to ensure a balance can be maintained. It is clear an economic analysis on tourism opportunities outlines a potential increase in state income. An analysis on environmental risks and their management is also appropriate. A number of threatening processes, for example, still impact on the overall integrity of a national park including invasive species, fragmentation, and altered hydrological and fire regimes. In addition, a key emerging threat to the integrity of a national park is climate change, as with even a small increase in temperature, large declines in the range size for almost every endemic vertebrate species confined to the park may occur. Add to these existing threats - the impacts of building and infrastructure construction, increased human traffic and occupation, what will be the total cumulative impact?

Risk assessment traditionally hangs its hat on “assimilative capacity, which assumes humans, and the environment, can absorb a certain amount of pollution or danger and render it harmless. QMDC’s major concern is that eliminating risk to protected areas set aside to conserve nature altogether is not the goal of this Bill. QMDC asserts the government’s over-riding economic development agenda is turning a blind eye to the cumulative impacts of all industry and development activities (housing, tourism, mining), and is aiding the creation of more hazards, risks and environmental harm.

3.0 Specific comments

3.1 Object of the Act

The proposed amendment to the Object of the Act in Section 4 wholly undermines the purpose of the Act. The object of the Bill should be primarily concerned with the conservation of nature and how that is promoted by cultural aspirations and Aboriginal law. It should not be conflicting or subsumed within an agenda to exploit protected areas for social and commercial profit or use. When interpreting any provision of an Act, a court of law is bound to interpret all its sections and intent in accordance with the object of the Act. This change will open national parks and conservation areas up to development as a right permitted under the Bill.

QMDC does not agree with statements claiming that the amendments leave the fundamental principle for national park management untouched. By changing the Object, conservation takes a back seat to social and commercial use. Conservation inherently will lose much of its legal strength. The ethic of conservation has been the foundation for the protection of the natural and cultural resources on national parks, to the greatest possible extent. It relied on the Object for its decree. This change is clearly intended to diminish the integrity of national parks, and the conservation of wildlife outside protected areas. This change and the other proposed changes have no place in the Object of an Act designed to primarily conserve nature. By placing them in the Object in such a broad and unqualified manner changes the whole basis of the Act.

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National parks are defined by government as “special places which protect and conserve outstanding examples of Queensland's natural environment and cultural heritage.” It is clear the Bill is not keeping with this definition and is QMDC’s opinion not designed to ensure that development within a national park will not:

- (a) destroy or threaten “the ecological integrity of one or more ecosystems for present and future generations” “. (World Conservation Union (IUCN), 1994);
- (b) permit exploitation or occupation adverse to the purposes of designation of the area; and
- (c) undermine “a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally compatible”. (World Conservation Union (IUCN), 1994).

QMDC is concerned that permanent commercial tourist infrastructure for long term leases creates the opportunity for Queensland’s limited areas of national park to be exploited and/or occupied potentially resulting in unnecessary damage and irreversible harm to native flora and fauna species.

QMDC argues that because such a small percentage of the QMDB landscape is currently managed for biodiversity it is not unreasonable to protect those areas solely for biodiversity purposes. Protection of such a small landscape representation of the biodiversity of the QMDB and its ecosystems is not a big impost to put on social and economic interests of this region. As a small percentage of the region biodiversity values need to be the priority rather than expecting them to compete with economic development where the creation of jobs or business opportunities is the priority. These areas are not “locked up” without purpose or value. They are safeguarded for current and future uses e.g. research and scientific discovery of, for example, new medicines from native plants or for passive recreation aligned to biodiversity values.

QMDC asserts new development and infrastructure could potentially lead to the disturbance and mortality of protected species. Has the government decided what number of deaths or injuries is acceptable according to species type? What is the likely cumulative impact within regions and across the whole of Queensland and Australia should new development and social uses occur? What methodology will be used to consider “overall environmental sustainability”?

QMDC asserts that an analysis or environmental audit of all infrastructure and social activities by a third party auditor should be required as part of an EIS process for each development proposal. The purpose of this environmental audit is a thorough and robust evaluation of the tourism operator’s current compliance and non-compliance with *Nature Conservation Act* and *Environmental Protection Act* requirements related to the protection of national parks and biodiversity etc. New ventures and operators need to be also rigorously screened and evaluated.

The environmental audit needs to be a review of linear infrastructure development to ascertain whether operations and practices have met environmental protection requirements and legitimised a company’s social licence to operate.

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QMDC believes the objectives for this environmental audit include:

- providing community with confidence in the safety and integrity of the industry's operations and activities for any future developments;
- verifying compliance with current Environmental Authority and other operating permit requirements where relevant ;
- evaluating the effectiveness of in-place environmental management systems, and
- assessing risks both site specific and cumulative from regulated and unregulated materials and practices.

QMDC seeks this environmental audit report to not only encourage the use of environmental auditing by tourism and recreational business/ organisations to help achieve and maintain compliance with environmental laws and regulation, but also to help identify and correct unregulated environmental hazards

The resulting environmental audit report must be supported by clear audit protocols which will provide detailed regulatory checklists that are customized to address specific issues pertinent to this Bill and key primary environmental management objectives for national parks and conservation areas.

All non-compliance of current EA conditions and other relevant permits specific to activities that will be permitted under this Bill need to be identified and a full analysis offered as to why there were breaches or non-compliance.

3.2 Abolition of 8 classes of protected area

QMDC believes the proposed abolition of 8 classes of protected areas will lead to possibly some significant losses. World Heritage management areas (WHMA) and international agreement areas (IAA) could play a very important role in the future and have already been considered for declaration in the past.

The Bill's politically driven economic development agenda is guaranteed to increase uncertainty, stakeholder conflict and the cost of new tourism businesses. In particular, it leaves tourist operators exposed to the risk of widespread community backlash when they operate beyond the terms of community tolerance and fail to secure a 'social license' to operate within a national park or conservation area.

QMDC argues that the State Planners and Policy makers have not fully evaluated future scenarios and asked the communities they serve (and themselves), what happens if the national parks, forest reserves and protected estates devolve into an undesirable state of condition? What scenario would Queensland's communities prefer to be in and how can they get there? Flexible mechanisms such as WHMA and IAA which can provide some future solution and should therefore not be abolished.

The Bill does not provide adequate assurance that it has taken into consideration all costs, environmental and economic related to the proposed increased access for social and tourism use activities and Infrastructure development in national parks and conservation areas.

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These include, for example:

- Risks associated with the impacts of climate variability and extreme weather events on a project's ability to successfully implement environmental management and contingency and emergency plans, rehabilitation strategies and any associated EA conditions;
- Risks associated with integrating operations and infrastructure across different sectors of industry;
- The creep of incidental activities into the protected areas after an initial development licence is permitted;
- The temporary and permanent loss of ecosystem services; and
- Temporary and permanent surface and groundwater contamination.

QMDC asserts all these issues need to be addressed so that a full cost benefit analysis can be conducted and information made available on the potential loss for the long term public good and interest.

3.3 New class of regional park

Conservation parks and resources reserves should not be abolished and rolled into a new class of protected area known as regional parks. This redefinition is rejected by QMDC as these "regional parks" are not safeguarded from development as they should be and the very name "regional park" invisibilises the purpose of conservation and natural resource protection. The creation of this new class of protected area will result in them being viewed as a low priority.

3.4 Loss of national park (scientific) and national park (recovery)

The abolition of national park (scientific) and national park (recovery) classes is not supported. The loss of these two classes of protected area achieves no real purpose. Rolling them both up into a single national park class substantially undermines the knowledge and experience gained through many years of scientific research and recovery/restoration activities.

National parks (scientific) satisfies the IUCN category of protected area generally known as a nature reserve. These areas involve strict protection and management for a particular conservation purpose. Public access is strongly controlled. This class of national park is used for parks that protect key native fauna species.

These areas sometimes require the environment (including other native species) to be controlled in a manner that ensures the survival of an endangered species. To simply absorb them into national parks and provide for a special management area (scientific) is unacceptable and unnecessary.

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Similarly, national park (recovery), which was designed to allow for restoration of land that was destined to become national park, should not be absorbed into national parks. This also makes a sham of the national park status as restoration could take many years even decades to achieve. Once again, there is little to be gained and much to be lost by abolishing this class of protected area. The amended special management area (controlled action) that has been created to cater for a national park on which this work is being carried out does not improve what is currently available in the Act.

National parks lose a lot by being obliged to absorb these two other protected area categories. QMDC asserts that many new activities that will be deemed legitimate in national parks currently recognised for their scientific and recovery values will compromise many years of financial, scientific and human labour investment.

3.5 Abolished forest reserves

QMDC does not support the forest reserve tenure being abolished. This tenure was established to serve as a holding tenure in the South East Queensland Forest Agreement process. It has been an extremely useful holding tenure and is in QMDC's opinion no good reason to remove it. In order for State forests to be transferred to national park status a number of encumbrances (e.g. grazing, occupation licences etc) had to be determined and negotiated before the land could be dedicated as national park. The ability to change a reserve's status has in QMDC's opinion served a very useful purpose in the past. Forest reserve tenure should be retained. As with the other proposed abolitions, there is nothing gained by its loss, but rather future opportunities will be lost if it no longer exists.

3.6 Hazards and risks to National Parks

QMDC argues that the Bill has not adequately assessed the potential severity of the impact for each possible accident or failure such as fire, spillage of contaminants, soil erosion, weed infestations etc, associated with the construction and operation of each type of infrastructure permitted by this Bill, such as:

- the size and nature of potential area affected;
- the number of people at risk;
- the type of risk (physical harm, toxic, acute, chronic);
- long-term residual effects;
- impacts on environmentally sensitive areas;
- financial consequences; and
- consequential secondary risks and impacts.

The probability of occurrence should be assessed, either qualitatively or using a quantitative assessment. Points to consider include:

- the probability of individual events;
- the probability of simultaneous events (such as an earthquake resulting in rupture of a pipeline); and
- complications from unique environmental considerations, such as severe terrain, location on a floodplain, fire hazard conditions and so on.

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QMDC recommends that a specialist team should be appointed to inform the Bill on the above matters. For example do all National Parks have the resources to facilitate and carry out appropriate practices and procedures to deal with risks, emergencies and accidents.

These include:

- established criteria for triggering an emergency and contingency plan and alarm signals, with backup;
- clear reporting procedures both internally and upward in the organization, and externally to appropriate authorities;
- communications equipment that can reach all potential affected parties, such as mobile phones, pagers, short-wave radios, depending on location;
- media contacts and a media relations strategy, including relevant descriptive material of the operation;
- specialised hazard monitoring and training, such as dealing with chemical fumes or water pollution;
- adequate emergency equipment for spill containment or collection, such as additional supplies of booms and absorbent materials;
- alerting the public and co-ordinating evacuation using sirens or other warnings, with well-rehearsed warnings, evacuation procedures and easily reached shelters;
- clear roles of participants in different areas of response, such as firefighting, community protection;
- alternative drinking water supplies in case usual supplies are contaminated;
- rapid test kits for chemical spills;
- readily available access to information on dealing with chemical hazards; and
- examination of options for cleanup following the accident – both immediate actions to be taken and the approach that would be taken to a longer cleanup programme.

The Bill needs to illustrate how emergency and contingency plans dealing with the risks associated with the proposed new infrastructure will be integrated to:

- ensure that any newly developed plan is consistent with any regional or national disaster plans;
- ensure their consistency with legislation and any codes that are relevant to emergency planning and community engagement;

The Bill needs to put in to place checks and balances that ensure these plans are robust in relation to all identified risks and emergency scenarios and in relation to response tasks, resources, roles and accountabilities to ensure there are no weak components.

3.7 Management plans

QMDC supports management practices that promote a 'good neighbour' principle, namely coordinated management where landholders/neighbours to national parks and conservation areas are engaged in a coordinated and collaborative management planning process.

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The aim of this process is to address - the control of invasive weeds and pests, the prevention or reduction of fire risks and hazards, fencing and stock movement etc.

The slow rate of production of management plans for protected areas was identified in an audit of the Act some three years ago as a major departmental failing. Amendments to abolish the requirement for each park, or aggregation of parks, to have a management plan have not seriously considered the above issues re potential hazards and risks. The requirement to prepare a management statement is in our opinion not satisfactory. QMDC asserts it should be mandatory that a management plan including clearly articulated environmental management procedures is prepared, especially since many of the new proposed activities, such as tourist resort development and grazing are likely to challenge conservation principles.

Currently management plans are required to go through a public consultation process. Amendments to reduce the current two-step process to one, effectively disempowers local communities, key stakeholders and the public from exercising their public interest rights. Management statements involve no consultation with the public prior to being approved. It is important that the public interest be allowed proper and due legal process. If this is not permitted, then it is difficult to know what value the management statement actually has.

4.0 Recommendations

4.1 That the amendments to the Object of the Act should be rescinded.

4.2 That the State government describe what methodology it is using to consider the Bill and its amendment in terms of an overarching commitment to environmental sustainability.

4.3 That an analysis or environmental audit of all infrastructure and social activities by a third party auditor should be required as part of each development proposal.

4.4 That amendments to abolish management strategies such as World Heritage management areas (WHMA) and international agreement areas (IAA) are rescinded.

4.5 That amendments to abolish national park (scientific) and national park (recovery) classes are rescinded.

4.3 That the amendment to abolish forest reserves be rescinded.

4.4 That management plans are not abolished but are made mandatory and are subject to a public consultation process.

4.5 That management statements be subject to a public consultation process.

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