



# Submission to Health and Community Service Committee

National Parks Association of Queensland  
13th September 2013

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

The National Parks Association of Queensland (NPAQ) promotes the preservation, expansion and wise management of National Parks and the wider protected area estate in Queensland. NPAQ plays a key role in advocating for the preservation of existing National Parks in their natural condition. NPAQ welcomes the opportunity to provide comments on specific issues in regard to this Bill.

At its core, NPAQ believes that this latest set of amendments to the *Nature Conservation Act 1992* (NCA) will dramatically erode the Act's capacity to operate as a nature conservation statute. In reality, the legislation is now little more than a Nature Recreation Act. If the State Government wanted land on which all forms of outdoor recreation could take place, including the development of tourist resorts, then legislation to establish specific recreation areas would have been more appropriate.

NPAQ's primary concerns about this Bill include:

1. Changing the Object of the Act from the *conservation of nature* to encompass *social, cultural and commercial use of protected areas*.
2. Abolishing a number of classes of protected area (National Park (scientific), National Park (recovery), Conservation Park, Resources Reserve, Coordinated Conservation Area, Wilderness Area, World Heritage management area, International agreement area) and introducing a new class, Regional Park, to encompass Conservation Parks and Resources Reserves.
3. Substantially changing the management principles of National Parks, and thereby effectively neutralising the cardinal principle of National Park management.
4. Abolishing the requirement to prepare management plans for all protected areas and replacing it with a requirement to prepare management statements.
5. The designation and application of Special Management Areas, specifically those declared a *controlled action*, and what may constitute an *existing use*.

## **1. Modifying the Objects of the Nature Conservation Act**

The proposed amendment to the Object of the Act in Section 4 completely changes the purpose of the Act. No longer will it be primarily concerned with the conservation of nature, as is presently the case, but it will now have social, cultural and commercial use of protected areas as an object. The Objects of the Act provide a fundamental basis for interpreting provisions within the same.

Statements have been made that the amendments leave the cardinal principle for National Park management untouched. By changing the Object, the cardinal principle has lost much of its legal strength. This principle has been the foundation for the protection, to the greatest possible extent, of the natural and cultural resources on National Parks. It was introduced in 1959, as part of the Forestry Act, during a period of conservative government.

NPAQ strongly supports removal of these amendments to the Object of the Act. These proposed changes constitute an attack on National Parks, because the three proposed additions only refer to protected areas, when the Act also contains provisions relating to the conservation of wildlife outside protected areas. The additional Objects are all presently encompassed by the management principles for each class of protected area, where certain uses are qualified in terms of the extent to which they can apply. Placing them in the Object, in such a broad and unqualified manner, changes the whole basis of the Act.

In addition, since the NCA was introduced in 1992, *conservation* has been defined to include the *protection and maintenance of nature while allowing for its ecologically sustainable use*.<sup>1</sup> In this regard, the NCA has always provided for the 'use' of nature in some form, but only on an ecologically sustainable basis.<sup>2</sup> The addition of the new objects to the Act means there is no guarantee that use will be 'ecologically sustainable' because those new outcomes sit outside the definition of conservation.

### **Recommendation**

- A. That the proposed additions to Section 4 Object of Act be deleted from the Bill and that the existing Object be allowed to stand.**

## **2. Abolishing Classes of Protected Areas**

The proposed abolition of eight classes of protected area provide minimal gain and some potential losses. While no areas have been declared Wilderness areas, World Heritage management areas or International agreement areas, their presence has no effect, financially or in terms of so-called green tape, on the management of protected areas.

Conservation Parks and Resources Reserves have been abolished and rolled into a new class of protected area known as Regional Parks. NPAQ strongly objects to this new designation as it carries no implication of protection. When classes of protected area are combined, the resulting management principles tend to shift towards the lowest common denominator, delivering a net loss to the conservation of nature.

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<sup>1</sup> NCA section 9. Note *protection and maintenance* are not defined in the NCA. However, the NCA dictionary defines *protect* to include *rehabilitate*.

<sup>2</sup> See J. Rohde 'The Objects Clause in Environmental Legislation – The Nature Conservation Act 1992 (Qld) Exemplified' *Environment and Planning Law Journal* (April 1995, pg 89).

NPAQ believes that the loss of National Park (scientific) and National Park (recovery) should be reconsidered. National Parks (scientific) satisfies the IUCN category of protected area generally known as a Nature Reserve (the term used in NSW). 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, *inter alia*, bridled nailtail wallabies (Taunton National Park) and northern hairy-nosed wombats (Epping Forest National Park). These areas sometimes require strong manipulation of the environment (including other native species) in order to ensure the survival of an endangered species. Absorbing these areas into National Parks and providing for special management areas (scientific) is unnecessary.

Similarly National Park (recovery) was designed to allow for the restoration of land that was destined to become National Park. Absorbing these areas into National Parks confuses National Park status, as the restoration requirements could take many years to achieve. There is little to be gained by abolishing this class of protected area, and even less gained by creating special management areas (controlled action). These changes compromise the cardinal principle of National Park management. Many activities that were legitimately carried out on National Parks (scientific) and National Parks (recovery) would be in breach of the cardinal principle.

Although not a protected area, Forest Reserves were established to act as a holding tenure in the SEQ Forest Agreement process. Many State Forests that have been transferred to National Park contained a number of encumbrances (e.g. grazing, occupation licences, etc.) that had to be determined and negotiated before the land was dedicated as National Park. Forest Reserves have been a useful holding tenure in the past. The loss of this tenure category would appear to reflect the State Government's desire not to transfer any State Forests to protected area. As with other abolitions, there is nothing gained by its loss, but future opportunities have been lost if this category no longer exists.

Revocation of a Forest Reserve can also take place under the Forestry Act if the Forest Reserve is to become a State Forest. The strong requirements making it difficult to revoke a Forest Reserve under the NCA are effectively sidestepped in another Act; a resolution of Parliament would no longer be involved. Smoothing the process of preventing Forest Reserves becoming protected areas has been facilitated by using another Act.

### **Recommendations**

- B. That the Wilderness area, World Heritage management area and International agreement area classes of protected area be retained in their present form and not be abolished.**
- C. That the category of Conservation Park be retained in its present form and not be abolished.**
- D. That if the Regional Park title is assigned, then it be used to replace the class that is now known as Resources Reserve.**
- E. That National Park (scientific) and National Park (recovery) be retained in their present form and not be abolished.**
- F. That the Forest Reserve tenure established under the NCA be retained in its existing form and not be abolished.**

### 3. Management Principles

As currently proposed, the new management principles will weaken the cardinal principle of national park management which is to *provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values*. The application of *greatest possible extent* will be eroded where other non-conservation principles are specifically provided for (i.e. educational, recreational and ecotourism uses). What is possible may be reduced to what is practical when considering the increased scope for social, cultural and commercial use of national parks.

In addition, one of the new management principles does not require 'use' to be ecologically sustainable, it merely requires that this principle be *consistent*:

*(d) provide opportunities for educational and recreational activities in a way consistent with the area's natural and cultural values.*<sup>3</sup>

This provision provides no definition of what *consistent* means.

### Recommendation

**G. That the application of the cardinal principle to the management of National Parks be fully reinstated.**

### 4. Management Plans

The slow rate of production of management plans for protected areas was identified in an audit of the NCA in 2010. Action has been taken in the amendments to abolish the requirement for each National Park to have a management plan, replacing this with a requirement to prepare a management statement. The capacity to prepare a management plan is still available, though there is no compulsion and little incentive to do so. Management plans are required to go through a public consultation process which previously had two consultation steps, but has now been reduced to one. Management statements involve no consultation with the public prior to coming into force. It is important that some public feedback be facilitated and NPAQ argues that these statements be subject to a public consultation process.

NPAQ also strongly recommends that any National Park subject to activities that are contrary to the cardinal principle, such as tourist resort development or grazing, should have a management plan developed before such activity is authorized. That would ensure that the key values of the Park had been clearly assessed and expressed.

### Recommendations

**H. That the requirement to advertise draft management plans and call for public submissions continue to be published in relevant newspapers (as provided for in the existing NCA); that this recommendation also apply to the management planning process in the Marine Parks Act.**

**I. That the capacity to amend a management plan without any public consultation in order to ensure it is consistent with State Government policy be removed (Sections 120A(2)(a)(iii) and 120A(3)).**

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<sup>3</sup> NCOLA Bill (No.2) Clause 116(1)

- J. That all of the reasons for not allowing any public consultation on a draft management plan be removed (Subsection 115A(5), part of Clause 68).**
- K. That a new provision be introduced requiring any new management statement to be subject to a period of public consultation (ensuring that there is public notification and not simply a notice on the Departmental website).**
- L. That any National Park subject to activities that are contrary to the cardinal principle, such as tourist resort development or grazing, have a management plan developed before such activity is authorized.**

## **5. Special Management Areas**

NPAQ is especially concerned about the application of Special Management Areas (SMA), specifically those declared a controlled action. The definition of this type of SMA is particularly vague:

*For a special management area (controlled action), either or both of the following (apply):*

- *The manipulation of the area's natural and cultural resources to protect or restore the area's natural or cultural values;*
- *The continuation of an existing use of the area consistent with maintaining the area's natural and cultural values.*

Under such a designation, NPAQ believes that it would be possible to allow cattle to continue to graze National Parks beyond the December 31st 2013 deadline. The cumulative impacts of allowing cattle into protected areas (loss of understorey vegetation, weed spread, trampling of mammal burrows, degradation of streambeds, banks and billabongs) outweigh any conceivable advantage that could be attributed to this *controlled action* or *existing use* (reduction of fuel loads). Grazing is listed as a threatening process in numerous rare species recovery plans, has had and continues to have a devastating impact on biodiversity, and already occupies 83% of the state of Queensland (compared to the tiny 4.8% that is National Park).

NPAQ strongly argues that *the control of threatening processes relating to threatened wildlife, including threatening processes caused by other wildlife and controlling threatening processes by manipulating the threatened wildlife's habitat* apply to **both categories** of Special Management Areas. Arguably it would be more efficient to retain the existing categories of National Park (scientific) and National Park (recovery).

## **Recommendations**

- M. That special management areas be removed from the proposed amendment, and from the management principles for National Parks.**
- N. If special management areas are assigned, that the *control of threatening processes relating to threatened wildlife, including threatening processes caused by other wildlife and controlling threatening processes by manipulating the threatened wildlife's habitat* apply equally to both proposed SMA categories.**

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