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

Submission to:

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Chair, Health and Community Services Committee
Parliament House
Brisbane Qld 4000

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Recognising that the Bill is a very disjointed document with some later clauses actually amending some amendments in earlier clauses, I have presented my comments under broad headings that relate to the primary areas of change that need to be considered.

1 Object of the Act

The proposed amendments to Section 4 Object of Act (Clause 24) are extremely damaging and threaten the integrity of the statute. The title of the Act and its object are presently in accord. There is no ambiguity or conflict in terms of what the Act is attempting to achieve. This then leads to a range of protected area classes which form a hierarchy in terms of the level of protection their management principles prescribe.

All of the matters proposed to be added to the Object are catered for in the existing management principles with the necessary constraints concurrent with the level of protection designated by the class of protected area. There is a natural, logical and sensible progression from the Object to the classes of protected area to the management principles for those areas.

That clear sequence is totally ignored, and effectively overridden, by inserting such undefined and unconstrained components to the Object such as “the social, cultural and commercial use of protected areas”.

Any interpretation of the provisions of an Act by a court of law will start with the Object. If that Object is so broad and all-encompassing as to include social use, cultural use, commercial use, community use and community enjoyment, it is difficult to see how the management principles can constrain any use of any protected area. In particular, it makes a mockery of the cardinal principle for the management of national parks.

Recommendation: That the proposed additions to Section 4 Object of Act be deleted from the Bill and the existing Object be allowed to stand.

2. Management plans and management statements

The proposal to remove the mandatory requirement for management plans for protected areas and to introduce a requirement for a management statement has some merit. However, the exercise has gone too far in terms of removing or constraining public scrutiny in relation to both activities.

Whilst a management plan is no longer mandatory, the Bill does specify when a plan would be appropriate (see section 112). The Bill also removes one of the two public consultation requirements that presently provide for the development of a management plan. This move is considered appropriate. However, what is not appropriate is the removal of the requirement for the Minister to give public notice when a draft plan has been prepared, and a requirement that such notice must be published in appropriate newspapers. This has been replaced with a very lame and inappropriate requirement (see 115A(2)) that a notice (no longer a public notice) be published on the department's website. There can be few more covert ways to invite public submissions than to hide the invitation somewhere in a large website that the public would not regularly consult. The *Marine Parks Act 2004* also required public notice of a draft plan being available for submissions. The word "public" has been removed and the only notification requirement is the departmental website. This is equally inappropriate.

Recommendation: That the requirement to advertise the draft management plan and call for public submissions should continue to be published in relevant newspapers as is presently provided for in the existing Nature Conservation Act. This recommendation also applies to the management planning process in the Marine Parks Act (see Clause 17) where a public notice will no longer be required.

Section 115A(5) of the Bill (Clause 68) also includes an extremely wide range of very vague circumstances when public consultation doesn't need to be invited in relation to a draft management plan. The reason for this is bemusing, to say the least, particularly in the context of the potential contents of a management plan as listed in Section 112(2) (Clause 67). None of the reasons listed in s.115A(5) has any relevance to the total scope of a draft plan and could only relate to a small component of any such plan. That certainly is no basis for denying the capacity for public consultation. The ultimate insult in this section is to give the Minister the power (s.115A(5)(c)) to deny consultation if he/she considers there has been adequate other public consultation….". So, one public consultation process has been removed, and the remaining one can also be removed for a large number of reasons that have little or no relevance to the overall contents of any plan.

Why would the government want to do this, when a plan is no longer a mandatory requirement? Under the circumstances, plans will only occur when the government considers there is a good reason for having one? [Note: management plans are the prerogative of the Minister; management statements are the responsibility of the chief executive.] That being the case, why would the government want to ensure the contents were as covert as possible and provide additional grounds to restrain public input?

Recommendation: That all of subsection 115A(5) in the Bill (part of Clause 68) be removed. In other words, remove all of the reasons for not allowing any public consultation on a draft management plan.

Section 120A in the Bill (Clause 72) relates to amending management plans. The recommendations above relating to s.115A are also relevant to s.120A as the amendment process follows the same steps and a draft plan. The section also lists a number of reasons why the amended plan should not need to go through a public consultation stage. Several of these are reasons that were listed in s.115A for why a draft plan should not need to undergo public consultation. They were not acceptable in the context of a whole new plan. However, they are a valid reason not to subject an amended plan to public consultation. Nevertheless, one of the reasons for not undergoing public consultation is almost laughable. It is provided in s.120A(2)(a)(iii) and reads as follows: *make a change to ensure the plan is consistent with State government policy about the management of the area to which the plan applies*. What, in heaven's name does this relate to? Is it a policy that the government espoused at an election, or something the Minister thought of a few days ago? Who would know of its existence or its ramifications? The architects of the Bill obviously also had some concerns, because s.120A(3) states that an amendment made pursuant to s.120A(2)(a)(iii) must be published on the website. This, however, is after the event and, as mentioned above, the public don't constantly trawl through such a website in search of such matters. Also, this website provision does not apply to any of the several other exemptions from public consultation. One could ask why?

Recommendation: That s.120A(2)(a)(iii) be deleted and, as a flow-on consequence, s.120A(3) be also deleted. In other words, the capacity to amend a management plan without any public consultation in order to ensure it is consistent with "State government policy" should be removed.

New Section 111 in the Bill provides for a new entity that effectively replaces management plans – a management statement. Such statements are the responsibility of the chief executive as opposed to management plans which are the prerogative of the Minister. Management statements are mandatory, unless a management plan already exists. The amendment is difficult to come to grips with because it occurs in two different parts of the Bill (Clauses 65 and 148).

Unlike management plans, management statements will not be subject to any public scrutiny prior to them coming into effect. This is totally inappropriate, particularly as the statement is likely to be the only document with any legal status relating to the management of that particular protected area. There should be a stage in the development of a management statement when the public has an opportunity to comment on the contents of the statement. Section 113 (Clause 68) specifies that a management statement must "state management outcomes for the protection, presentation and use of the area and the policies, guidelines and actions to achieve the outcomes". These are substantial matters and readily justify some scrutiny at the formative stage.

Recommendation: Introduce a new provision that requires a new management statement to be subject to a period of public consultation, ensuring that there is public notification not just simply a notice on the departmental website.

3. Protected area classes and special management areas

The Bill abolishes eight classes of protected area - (i) national park (scientific), (ii) national park (recovery), (iii) conservation park, (iv) resources reserve, (v) coordinated conservation area, (vi) wilderness area, (vii) World Heritage management area, and (viii) international agreement area. And it introduces a new class, regional park, to encompass conservation parks and resources reserves. National parks (scientific) and national parks (recovery) are to be rolled into national parks.

It should be pointed out that all classes of protected area initially established under the Nature Conservation Act were in keeping with the international protected area categories established by IUCN (International Union for the Conservation of Nature). These categories area applied globally. It is important that Queensland positions its protected areas nationally and internationally. The amendments effectively sever that connection. The IUCN categories, and the existing Nature Conservation Act classes, provide for areas offering a hierarchy of resource protection. That hierarchy will now be lost, thereby diminishing the flexibility of the protected area system.

In some cases, it would appear that certain protected area classes have been abolished simply because they have not yet been used. This is not a particularly valid reason for taking such action. A crime would not be removed from the Criminal Code simply because it hadn't been committed for some time. No wilderness areas, World Heritage management areas and international agreement areas have been declared to date. Therefore there will be no loss of substance by abolishing these classes. However, there is a potential future loss. Very little, if anything, is gained by abolishing them. What is lost is future flexibility when circumstances occur which favour their use. As someone who has worked with protected areas, I can assure you that they have been seriously considered in the past, but were not proceeded with for a number of reasons that didn't threaten their viability. World Heritage management areas and international agreement areas, in particular, are likely to have important uses in the future. They also have the potential to send a message internationally that Queensland is conscious of Australia's obligations in relation to convention/treaty arrangements.

Recommendation: That the wilderness area, World Heritage management area and international agreement area classes of protected area not be abolished and be retained in their present form.

The move to combine conservation parks and resources reserves into one class to be known as regional parks potentially has some merit, but ignores the original reason for establishing resources reserves. They were introduced to act as a holding area for land that has strong conservation values, but may have mineralisation that the State may wish to remove. The resources reserve status ensured that the land did not lose its nature

conservation values while mineral resource assessment was being undertaken. In most cases the department charged with administering the Mineral Resources Act took responsibility as trustee of those reserves. By rolling conservation parks and resources reserves together, conservation parks have been substantially diminished in status. In fact simply changing the name to regional park removes any perception that the area seeks to provide some protection for plants, animals and landscapes. The new name, regional park, robs existing conservation parks of any status. This is unacceptable. If the term regional park needs to be used at all, it should be constrained to those areas that are presently resources reserves.

Recommendation: That the protected area class know as conservation park not be abolished and be retained in its present form. Also, that if the regional park title needs to be assigned, then it be used to replace the class that is now known as resources reserve.

By far the most damaging amendment in relation to protected areas is the abolition of national park (scientific) and national park (recovery) and the rolling up of these classes into the national park class. One needs to appreciate the important purposes served by the two classes to be abolished. They are well used classes of protected area. They are not broken in any way that needs fixing, so their combination with national parks can only be interpreted as a move to diminish the strength of national parks as a means of protecting the State's plants, animals and landscapes. There is absolutely no need to abolish national park (scientific) and national park (recovery) and there is nothing to be gained by doing so. To the contrary, there is a lot to lose.

To appreciate the statements in the previous paragraph, a brief understanding of the two classes will clarify what will be lost by proceeding with their abolition. National park (scientific) was created to be equivalent with the IUCN protected area category that was primarily designed for wildlife protection. It equates to what is often known as a nature reserve, an area where the public is not permitted other than under an authority. In Queensland it is used for parks that protect endangered or threatened species. Two prime examples are Taunton National Park (scientific) protecting the endangered bridled nailtail wallaby and Epping Forest National Park protecting the endangered northern hairy-nosed wombat. These species are so endangered that native species (plants and animals) sometimes have to be severely manipulated to enhance the habitat of the endangered species and assist their survival.

National park (recovery) was established to allow the rehabilitation of areas that were destined to become national parks. It accepted that the area had national park potential, but would require substantial rehabilitation in order to meet the requirements for national park status. That rehabilitation could involve such action as the logging of plantation areas and the serious manipulation of other habitats in order to ultimately restore the natural habitat.

The two classes are proposed to be absorbed into national parks by the establishment of special management areas (SMAs) which can be declared over all or part of the national

parks (see s.17(1A), Clause116). There will be a SMA (controlled action) to absorb national park (recovery) and a SMA (scientific) to absorb national park (scientific). This means that a wide range of activities can take place on national parks that are clearly contrary to the cardinal principle. In fact, the explanatory notes state as follows: "Subsection (1A) is being inserted to provide clarification about the relationship between particular management principles. Namely, to the extent of the inconsistency, the management principles for a SMA prevail over the management principles for a national park". This is decidedly weird language, because the SMAs actually are national parks. However, the explanatory notes speak of them as something separate from themselves. It is a clear indication that the legislative architects find themselves in a difficult situation with the action that has been taken.

Leaving that weirdness aside, we are left with the ludicrous situation of having a management principle that requires the park to be managed 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". It is mandated in the legislation to be the cardinal principle, in other words the first amongst all the other principles. However it is actually subordinate to most of the other management principles as espoused in the explanatory notes. This situation effectively makes a mockery of the cardinal principle. What is actually being said is that the Act will continue to talk about the cardinal principle, but in reality it's nothing more than a worthless phrase and it certainly has no legal status any more.

What is also unclear is how SMA status could be used to allow a wide range of things to happen on national parks that have never before been contemplated. For instance, could it be used to allow grazing back into national parks? In Taunton SMA, it will in fact be doing that because some grazing is presently legally employed in order to manipulate the buffel grass to the advantage of bridled nailtail wallabies. It's a small step to contemplate a range of excuses for grazing to occur on parks elsewhere.

What has been done in a rather covert manner is a frightening move to destroy the cardinal principle, the foundation of national park management in Queensland, which has existed in law, unchallenged by governments of all persuasions, for more than half a century. I would hope that the legislators give pause and contemplate the rather ludicrous situation they are seeking to create in order to undermine the protective framework that has underpinned national park management in this State.

As stated earlier, there is no need to do what the Bill proposes to do in relation to national park (scientific) and national park (recovery), other than to destroy the long term fabric of national parks. That being the case, the question becomes what is being gained? Other than a potential administrative nightmare, very little else emerges as an answer.

Recommendation: That (a) national parks (scientific) and national park (recovery) be retained in their present form and not abolished, (b) special management areas be removed from the management principles for national parks, and (c) the cardinal principle of the management of national parks be reinstated to its appropriate status.

4. Forest reserves

Forest reserve has been abolished as a tenure. It was established to act as a holding tenure in the SEQ Forest Agreement process. Many State forests that were being transferred to national park status contained a number of encumbrances (eg grazing, occupation licences etc) that had to be determined and negotiated before the land could be dedicated as national park or another class of protected area. It has been an extremely useful holding tenure and there would appear to be no strong reason why it should no longer be available. Why remove that flexibility when it has served a very useful purpose in the past? The demise of forest reserve status would seem to reflect the governments desire not to transfer any State forests to protected area. In fact there is a move to return many forest reserves to State forest status, and the Forestry Act has been amended to facilitate that move. There is no obvious reason why forest reserve tenure should not be retained. As with other abolitions, there is nothing gained by its loss, but future opportunities have been lost if it no longer exists.

Whatever the government chooses to do with existing forest reserves is not relevant to allowing the continuing capacity to declare such a reserve.

Recommendation: That the forest reserve tenure established under the Nature Conservation Act be retained in its existing form.

It would be greatly appreciated if the Health and Community Services Committee could give close consideration to this submission.

Yours sincerely

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