



EDO Qld.

Environmental Defenders Office

*Using the law to protect
our environment.*

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13 September 2013

Health and Community Services Committee
Parliament House, George Street,
BRISBANE QLD 4000

By email only: hcsc@parliament.qld.gov.au

Dear Sir/Madam,

**SUBMISSION ON NATURE CONSERVATION AND OTHER LEGISLATION
AMENDMENT BILL (NO. 2) 2013**

Who we are

The Environmental Defenders Office Queensland (**EDO Qld**) is 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 use our experience to deliver community legal education and inform law reform.

Summary

The Nature Conservation and Other Legislation Amendment Bill (No.2) 2013 (**the Bill**) proposes significant changes to the *Nature Conservation Act 1992* (Qld) (**NCA**).

We make the following **key points**:

1. The changes in the Bill will allow for uses which aren't 'ecologically sustainable' in protected areas. Given that national parks are less than 5% of Queensland this unacceptably threatens biodiversity; and
2. The Bill removes key opportunities for public participation in the management of our protected areas. This reduces transparency and accountability in the management of our protected areas.

The Bill should not be passed in its current form. We have **attached** our detailed submissions and suggested solutions.

Yours faithfully,

Jo-Anne Bragg
Principal Solicitor
Environmental Defenders Office (Qld) Inc.

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1. The changes in the Bill will allow for uses which aren't 'ecologically sustainable' in protected areas. Given that national parks are less than 5% of Queensland this unacceptably threatens biodiversity

Changes to the Objects Clause

When the NCA was first introduced, the Government of the day stated:

“Much of the legislation entering this House deals with protection of the rights of individual people and private property, and it is a pleasure for me to introduce this Bill guaranteeing the future of all aspects of nature ...”¹

The current Bill does nothing to ‘guarantee’ all aspects of nature. If anything, it exposes Queensland’s vulnerable protected areas, which cover less than 5% of the State² to ‘uses’ which are not required to be ecologically sustainable.

Consider the wording of the proposed new objects clause:

“The object of this Act is the conservation of nature while allowing for:

- (a) the involvement of indigenous people in the management of protected areas in which they have an interest;*
- (b) the use and enjoyment of protected areas by the community;*
- (c) the social, cultural and commercial use of protected areas in a way consistent with the natural and cultural and other values of the areas.”³*

Firstly, the new paragraph (c) merely requires uses to be ‘consistent’ with natural values but does not specify what consistent means? The wording is loose and vague and is open to varying interpretations.

Secondly, the new paragraph (b) does not provide any limitations on the ‘use and enjoyment’ of protected areas, not even that it be consistent with the values of the area as required by (c). This is a conflicting standard for ‘using areas’ and open to varying interpretations as to what types of use will be allowed. For instance, what if a community is using an area for social or cultural purposes? This flexibility takes away from the protection and maintenance and ‘ecologically sustainable’ use of nature.

The Government’s rationale for amending the Objects clause is that the current “*NCA [object] does not reflect the government’s commitment to achieving recreational and commercial outcomes...*”⁴

¹ Hon. P. COMBEN (Minister for Environment and Heritage), Second Reading Speech in Legislative Assembly (28 April 1992) Record of Proceedings (Hansard), at 4576 of transcript.

² National Parks Association of Qld, Annual Report 2011/12 page 3

³ Bill Clause 24

⁴ Explanatory Notes to Bill at page 2

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This statement represents a distinct move away from ecological sustainability. It fails to acknowledge that the NCA has always allowed ecologically sustainable use of protected areas within the very objects of the Act.⁵

It can therefore only be assumed that the Government's policy is not to achieve recreational and commercial outcomes that are ecologically sustainable. This policy approach is contrary to the *Intergovernmental Agreement on the Environment* (1992) between the Commonwealth and States (including Queensland). That agreement says that the principles of ecologically sustainable development (ESD) should "inform policy making and program implementation."⁶

This is problematic as 'ecological sustainability' is a well-recognised benchmark in environmental literature and regulation and always has been since the 1992 United Nations Conference on Environment and Development. It is clear that ecological sustainability was intended to play an integral part in the operation of the NCA as section 11 of the NCA makes specific reference to the principles underpinning the term (e.g intergenerational equity). This Bill does attempt to amend section 11, but merely to side-step it.

We are therefore left with conflicting objects of the NCA. On the one hand it anticipates the protection and maintenance of nature while allowing for ecologically sustainable use, but on the other, it anticipates uses which have no connection with the principles of ecological sustainability at all.

Solution:

Do not amend the objects of the NCA. The NCA is Queensland's premier piece of conservation legislation and protects our most pristine and vulnerable environments. 95% of Queensland is available for development and other 'use' activities. The object of the NCA must always first and foremost be about conservation. Any use whatsoever must always be in accordance with the principles of ecological sustainability.

New management principles for national parks

The proposed mega category of national parks includes five management principles in total.

If the Bill is passed, section 17(1) if the NCA would read:

"(1) A national park is to be managed to—

- (a) 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; and*
- (b) present the area's cultural and natural resources and their values; and*
- (c) ensure that the only use of the area is nature-based and ecologically sustainable.*

⁵ See definition of conservation in section 9 of the NCA.

⁶ See section 3.5 of the Agreement: <http://www.environment.gov.au/about/esd/publications/igae/>

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- (d) *provide opportunities for educational and recreational activities in a way consistent with the area's natural and cultural values; and*
- (e) *provide opportunities for ecotourism in a way consistent with the area's natural and cultural values."*

Paragraph (d) does not require use to be 'ecologically sustainable', but merely requires it to be 'consistent'. As with the newly proposed objects clause (above), the changes give no indication of what 'consistent' means. This wording is vague and uncertain and open to varying interpretations. It does little for the conservation or protection of nature. It certainly does not guarantee the security of nature as originally intended in 1992.⁷

Further, the introduction of an additional management principle to allow for ecotourism in national parks is contradictory and misleading. This is because the management of 'ecotourism facilities' currently authorised under section 35 of the NCA, specifically override section 15(1) of the NCA⁸ which prescribes that:

"Each protected area is to be managed in accordance with ...the management principles prescribed by this division for the class of protected area."

In other words, ecotourism facilities can operate contrary to the management principles of national parks, including the cardinal principle.

This begs the question; what is the point in having management principles if they can simply be overridden in other sections of the Act?

Solution:

Do not allow new management principles which actively encourage uses with no clear sustainable benchmarks. Remove the new management principles. Consult again with key conservation groups on this key policy issue.

New management principles for regional parks

The introduction of management principles for regional parks⁹ (previously conservation parks and resources reserves) allows for new uses which were previously not considered by the management principles of those areas. Consider the current management principles of conservation parks:

- (1) *A conservation park is to be managed to—*
 - (a) *conserve and present the area's cultural and natural resources and their values; and*
 - (b) *provide for the permanent conservation of the area's natural condition to the greatest possible extent; and*
 - (c) *ensure that any commercial use of the area's natural resources, including fishing and grazing, is ecologically sustainable.*¹⁰

⁷ See note 1.

⁸ NCA section 35(2)

⁹ Bill Clause 117

¹⁰ NCA section 20(1)

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Under the new ‘regional parks’ model the management principles would include:

- “(1) ... to –
- (a) *conserve and present the area’s cultural and natural resources and their values; and*
 - (b) *ensure the area is maintained, to the greatest possible extent, in its natural condition; and*
 - (c) *provide for the controlled use of the area’s cultural and natural resources; and*
 - (d) *provide opportunities for enjoyment and appreciation of the area and for recreational and commercial activities in the area.*¹¹

The words ‘permanent conservation’ have been removed and replaced with ‘maintenance’. This is specific reduction in protection for current conservation parks.

Problematically, there also appears to be no limitations placed on the commercial activities in regional parks. In fact, as that section reads, it is to be specifically managed to provide opportunities for commercial activities. There is no requirement that they be on an ecologically sustainable basis, or at the very least consistent with values of the park.

Solution:

Recreational and commercial use should not be permitted in regional parks as a ‘management principle’. If it is to be permitted, at the very least a cardinal principle should be established (similar to NCA section 17 for national parks) and any use may only be permitted on an ‘ecologically sustainable basis’. Do not remove the words ‘permanent conservation’ for conservation parks and replace it with ‘area is maintained.’

2. The Bill removes key opportunities for public participation in the management of our protected areas. This reduces transparency and accountability in the management of our protected areas.

Section 6 of the NCA has always provided that public participation should be a key part of the operation of the NCA framework. It reads:

“Community participation in administration of Act

This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, landholders and interested groups and persons, including Aborigines and Torres Strait Islanders.”

This Bill specifically removes opportunities for interested members of the public to be involved in the administration and management of protected areas by replacing the requirement for management plans with management statements. The explanatory notes write:

¹¹ Bill Clause 117

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“The process for preparing management plans is “extremely resource intensive...by contrast...management statements will provide greater management flexibility and deliver on the Governments commitments to reduce legislative complexity and red tape.”¹²

This is a particularly negative outcome given the uncertainty of the nature of the sweeping changes proposed. In fact, it would be hard to locate any opportunities left for public participation in administration of the NCA considering that this Bill also:

- Abolishes international agreement areas¹³ which currently require public notification and consultation;¹⁴ and
- Abolishes world heritage management areas¹⁵ which currently require public notification and consultation.¹⁶

The public is not even invited under the NCA to partake in considering what developments in protected areas might be in the ‘public interest’ in terms of service facilities (CSG pipelines, communication towers etc.) or the newly introduced ‘eco-tourism facilities’.¹⁷

The only ‘community participation’ rights left in the NCA (apart from being permitted to view the register¹⁸) is for concerned members of the public to apply to the Planning and Environment Court as a last resort if the Department fails to take action for a limited number of nominated offences.¹⁹ Having said that, the Government has made this ‘participation’ all the more difficult with recent changes to the costs provisions in the Planning and Environment Court.²⁰

Solution:

Management Statements should be subject to public review and submissions. This is in keeping with section 6 of the NCA and allows concerned community groups to have a say on how our parks should be appropriately managed.

Ecotourism facilities should go through an impact assessable public consultation process. Whilst this is alluded to in the Department’s implementation framework as a ‘policy’²¹ there is currently no requirement at law that proposals be publicly notified.²² This is creating a double standard as urban development may be advertised for public submission and appeal, but construction in and around national parks and other protected areas (less than 5% of the state) does not provide for similar legal rights.

¹² Explanatory Notes to Bill at pages 4-5

¹³ Explanatory Notes to Bill page 3

¹⁴ NCA section 57

¹⁵ Explanatory Notes to Bill page 3

¹⁶ NCA section 53

¹⁷ NCA section 35

¹⁸ NCA section 133

¹⁹ NCA section 173B and Section 173D

²⁰ *Sustainable Planning Act 2009* (Qld) section 457. The changes were introduced by the *Sustainable Planning and Other Legislation Amendment Act 2012*. EDO Qld, made a submission to the relevant Committee at the time:

<http://www.edo.org.au/edoqld/law-reform/>

²¹ www.nprsr.qld.gov.au/tourism/pdf/ecofacilities-framework.pdf

²² NCA section 35.