

Nature Conservation and Other Legislation Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Nature Conservation and Other Legislation Amendment Bill 2015.

Policy objectives and the reasons for them

The previous government made a number of amendments to the *Nature Conservation Act 1992* (NCA) and other legislation which impact on the administration and management of the protected area estate managed by the Queensland Parks and Wildlife Service (QPWS). Many of the amendments were opposed by the current government when in opposition because the amendments were seen to undermine the purpose of the NCA and weaken certain protections in place under the legislation.

The Portfolio Priorities Statement for the National Parks portfolio also identifies the progression of amendments to the NCA to re-instate the conservation of nature as the sole object of the Act as a key priority.

The primary objective of the Bill is to reverse a number of amendments made by the previous government that do not align with the current government's commitments and priorities for the protected area estate. This includes:

- reinstating 'the conservation of nature' as the sole object of the NCA so that the preservation of the natural condition of national parks will take precedence over other objectives;
- reinstating the former national park (scientific), conservation park and resources reserve classes of protected area, and their associated management principles to restore the higher level of protection afforded to national parks (scientific) and clarify the management intent and uses that are appropriate for the different areas;
- removing provisions that allow management plans under the NCA, *Marine Parks Act 2004* (Marine Parks Act) and *Recreation Areas Management Act 2006* (RAM Act) to be amended without public consultation if the amendments relate to a change in State government policy, to provide increased transparency and ensure that appropriate consultation can occur;
- removing provisions that allowed the chief executive to grant stock grazing permits for emergency drought relief on six prescribed national parks until 31 December 2013 because they have become redundant; and

- reverting rolling term leases for agriculture, grazing or pastoral purposes within nature conservation areas and specified national parks back to term leases by excluding them from the rolling term lease provisions under the *Land Act 1994* (the Land Act) to allow inconsistent activities to be phased out upon expiry of the lease and allow these lands to be protected for the purpose that they were intended.

A second objective of the Bill is to amend the *Aboriginal Land Act 1991* (ALA) to:

- establish a process to make regional parks on Cape York Peninsula transferable; and
- streamline the process to convert regional parks to jointly managed national park (Cape York Peninsula Aboriginal land (CYPAL)).

The Queensland Government has made a commitment to the implementation of the Cape York Peninsula Tenure Resolution Program (the Program) which has the dual functions of returning land ownership to Aboriginal Traditional Owners and protecting the outstanding natural and cultural values of the Cape York Peninsula in jointly managed parks.

The legislation which underpins the Program was made through the passage of the *Cape York Peninsula Heritage Act 2007*. The passage of this Act received bi-partisan support and resulted in amendments to the ALA and the NCA. One of the amendments made all national parks on Cape York Peninsula ‘transferable’; meaning that they can be transferred to Aboriginal Traditional Owners as a jointly managed national park (CYPAL) without being revoked first.

To enable the planned conversion of two regional parks to National Park (CYPAL) in 2016, an amendment is now required to allow the regional parks to be converted in the same way as the national park conversion process.

Another objective of the Bill is to amend the *Environmental Protection Act 1994* to ensure adequate consultation occurs on the development of mining ‘ERA standards’ (eligibility criteria and standard environmental conditions for certain mining environmentally relevant activities). New mining ERA standards are currently being developed to replace the existing eligibility criteria and standards conditions. The project has been delayed by the complexities of updating standards that have not changed since 2001. It has been identified that deferment of the sunset clause by one year is needed to allow for adequate consultation.

Achievement of policy objectives

Amendments to reverse changes made to the nature conservation and related legislation by the previous government

- *Reinstating ‘the conservation of nature’ as the sole object of the Nature Conservation Act 1992 (NCA)*

Prior to changes made by the previous government, the sole object of the NCA was ‘the conservation of nature’.

The object of the NCA was amended by the *Nature Conservation and Other Legislation Amendment Act (No.2) 2013* (NCOLA No.2 2013) to read:

'The object of this Act is the conservation of nature while allowing for the following -

- a) the involvement of indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom;*
- 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'.*

The object of the NCA will be amended to remove the additional matters added by the previous government and reinstate 'the conservation of nature' as the sole object of the Act.

While the three matters added by the previous government are being removed from the object of the Act, they are still be provided for elsewhere in the Act in a way that does not take precedence over or confuse the Act's main objective. For example, the NCA, through a number of sections other than the object, articulates a commitment to involving indigenous people in the management of protected areas. Re-instating the original object of the NCA will not impact on delivering this and will not change how QPWS works with indigenous people, but will clarify that protected areas are primarily for the conservation of nature. It is not intended that reinstating the sole object of the Act would restrict or prevent the exercise of native title rights.

- *Reinstating certain classes of protected area*

The previous government amended the NCA to reduce the classes of protected area. In part, this included:

- combining the former national parks (scientific) and national parks (recovery) classes with the national parks class of protected area; and
- amalgamating the former conservation parks and resources reserves classes into a new class called regional parks.

New management overlays known as 'special management areas (scientific)' were declared over former national parks (scientific) and 'resource use areas' were declared over former resources reserves to allow both the conservation and other outcomes associated with these former areas to continue on regional parks under the new framework.

- *Reinstating national parks (scientific)*

Previously, only a resolution of Parliament could change the status of a national park (scientific). A revocation was required to change the class of protected area to another class with less protection.

Amendments made through the NCOLA No.2 2013 amalgamated the former national parks (scientific) class of protected area with the national parks class and as a consequence, removed the high level of protection that was previously afforded to these areas because these areas now have special management areas (scientific) declared over them. The chief executive has the power to declare and therefore remove a special management area (scientific) which effectively downgrades the level of protection that applies to these areas.

The intent is to reinstate the former national parks (scientific) class of protected area and therefore the requirement that only a resolution of Parliament (see sections 32 and 33 of the NCA) can revoke or lessen the level of protection that applies to this class of protected area.

- *Reinstating conservation parks and resource reserves*

The amalgamation of conservation parks and resources reserves into a new class called regional parks has caused some confusion about the use and management of regional parks as they can be used for different purposes, depending on whether a resource use area has been declared over the park or not. For example, extractive industries may occur on a regional park or part of a regional park that has a resource use area declared over it, but not on other parts that are not declared resource use areas.

The intent is to reinstate the former conservation park and resources reserve classes to provide a clear distinction between these two areas which have different purposes. As a consequence, the regional parks class of protected area will become redundant and will be removed.

- *Management principles*

As a consequence of reinstating the former national parks (scientific), conservation parks and resources reserves classes of protected area, the former management principles that applied to these different areas will also be reinstated. This will provide a clear distinction between the different areas and the different use and management approaches that apply.

- *Redundant provisions*

As a consequence of reinstating the classes of protected area and their management principles, a number of provisions become redundant and will be removed. These include provisions for declaring a special management area (scientific) and a resource use area.

Provisions related to this initiative are proposed to commence on 1 July 2016 to address implementation issues and allow supporting amendments to subordinate legislation to be made following the passage of the proposed Bill.

• *Reinstating certain consultation requirements on amendments to management plans*

The previous government introduced an exemption from undertaking public consultation on amendments to management plans under the NCA, RAM Act and the Marine Parks Act if the amendments are being made to provide consistency with State government policy.

The Bill will remove the exemption, to provide increased transparency and ensure that appropriate consultation can occur on management plans.

• *Removing redundant stock grazing provisions*

The previous government made amendments to authorise stock grazing on six prescribed national parks for the purpose of drought relief until 31 December 2013. These provisions have therefore been redundant for almost two years and no permits granted under these provisions remain in effect.

While these provisions do not allow any more permits to be granted, they will be removed because they have become redundant.

- *Reverting certain rolling term leases to term leases*

Amendments made to the Land Act under the previous government transitioned certain term leases to rolling term leases. This included term leases for agriculture, grazing or pastoral purposes, some of which are granted over protected areas (for example, national parks) managed by the QPWS.

The Bill will exclude leases used for agriculture, grazing or pastoral purposes from the rolling term lease provisions under the Land Act if they are within ‘nature conservation areas’ and ‘specified national parks’ (these are two existing definitions in the Land Act that capture all protected areas other than nature refuges and coordinated conservation areas which are not managed by QPWS). It is intended that all existing rolling term leases within these protected areas for agriculture, grazing or pastoral purposes will revert back to term leases and that no new rolling term leases will be created over these areas for these purposes.

Expiring term leases for agriculture, grazing or pastoral purposes within nature conservation areas and specified national parks will be subject to a renewal application process under the Land Act, which requires the views of the NCA chief executive to be taken into account before a decision on the application is made. This will remove the ability to extend (by renewal or any other means) a lease for an activity that is inconsistent with the management principles of national parks.

As was previously the case before rolling term leases were introduced, a decision not to renew a lease for the above reasons will not be an appealable decision. This will enable incompatible leases to be phased out upon expiry, and enable the government to allow these lands to be protected for the purpose they were intended.

The intent is not to impact on any other existing rights under the lease (e.g. the term, conditions, authorised use) by virtue of reverting the rolling term lease to a term lease.

Amendments to the *Aboriginal Land Act 1991* (ALA) to facilitate land dealings relating to the Cape York Peninsula Tenure Resolution Program

All national parks in the Cape York Peninsula region are already made ‘transferable’ under amendments to the ALA made through the passage of the *Cape York Peninsula Heritage Act 2007*. This amendment to the ALA is required to make regional parks in the Cape York Peninsula region ‘transferable’ by regulation.

To achieve the objectives of the Cape York Peninsula Tenure Resolution Program (the Program), the Bill will remove the requirement for regional parks on Cape York Peninsula to be revoked prior to becoming ‘transferable’. This is an important strategy to streamline the process and ensure the best outcome for the state and Aboriginal people is achieved in a timely manner. This amendment is consistent with implementation of the Program and current negotiations with Aboriginal Traditional Owners on Cape York Peninsula regarding the conversion of regional parks to jointly managed national parks (CYPAL).

Amending a sunset clause in the *Environmental Protection Act 1994*

Through an amendment to section 707B of the Act, this bill will achieve its policy objectives in relation to the *Environmental Protection Act 1994* matter by the deferment of the

expiration of current eligibility criteria and standard conditions for mining activities by one year from 31 March 2016 to 31 March 2017.

Alternative ways of achieving policy objectives

In relation to the amendments to the nature conservation and related legislation which will reverse certain changes made by the previous government, the Bill addresses provisions already contained in primary legislation, and as such, the policy objectives cannot be achieved without changes to legislation.

There are no other viable alternatives to amending the *Aboriginal Land Act 1991* that will achieve the policy objectives.

The amendment to section 707B of the *Environmental Protection Act 1994* is the preferred option to achieve the policy objectives. Other options to achieve the policy objectives do not provide as much certainty as an amendment and will be administratively ineffective.

Estimated cost for government implementation

Costs associated with implementation of the proposed amendments to the nature conservation and related legislation to reverse changes made by the previous government will be met from within existing departmental allocations.

The changes proposed with respect to the object of the NCA, removing redundant stock grazing provisions and reverting certain rolling term leases under the Land Act back to term leases are largely administrative in nature.

The most significant implementation issue relates to reinstating the former classes of protected area. This will require consequential amendments to a range of Acts and regulations. Any maps, signs, forms, notices, guidelines, website content and any other materials that currently refer to special management areas (scientific) and regional parks will need to be amended, where the context permits, to refer to the national parks (scientific), conservation parks and resources reserves classes of protected area.

Reinstating public consultation on amendments to management plans when there is a change in government policy will not have a significant impact. The public will have an opportunity to provide submissions if they choose to do so. There will be an additional work load associated with managing this process, however, it is anticipated that this will be managed within existing departmental resources.

The Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) is currently funded to implement the Cape York Peninsula Tenure Resolution Program to June 2016 and there are no additional financial implications in these amendments. NPSR has recurrent funding to meet financial commitments under Indigenous Management Agreements for existing and proposed national parks (CYPAL) and these amendments will have no financial implications for them.

Apart from undertaking consultation, there are no costs to government associated with the amendments to section 707B of the *Environmental Protection Act 1994*.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Amendments to the *Aboriginal Land Act 1991* to facilitate land dealings relating to the Cape York Peninsula Tenure Resolution Program

Amendments to the ALA contained in clause 35 of the Bill will bring particular protected areas within the scope of section 174 which expedites the conversion of protected areas into national parks (Cape York Peninsula Aboriginal land) by deeming the land to be transferable land. Section 174 is confined to regional parks dedicated under the NCA and within the Cape York Peninsula Region as defined in the *Cape York Peninsula Heritage Act 2007*.

The amendment provides for regional parks to be made transferable by regulation. This is possibly inconsistent with the FLP that legislation have sufficient regard to the institution of Parliament as it defines which of these areas are taken to be transferable land in subordinate legislation.

The is justified on the basis that the process of converting protected areas on Cape York Peninsula to jointly managed national park (CYPAL) involves a long period of consultation and negotiation with key stakeholder groups on Cape York Peninsula including the conservation sector, Aboriginal traditional owners and native title holders. To achieve comprehensive consultation with all relevant parties, the Cape York Peninsula tenure resolution program works through formalised contractual arrangements with the Balkanu Cape York Development Corporation and Cape York Land Council Aboriginal Corporation to engage and negotiate with Aboriginal traditional owners. Once agreement with all the relevant parties is reached in relation to the conversion of these properties to national park (CYPAL), there is a long period of public notification regarding the conversion, which provides for any objections to be received and considered by the Minister responsible for the administration of the Aboriginal Land Act, prior to making the decision to convert the properties. Agreements reached between the parties about the management of the national park (CYPAL) are reflected in an Indigenous Land Use Agreement and Indigenous Management Agreements between the State and the native title parties and the Aboriginal traditional owners.

The conversion of regional park land on Cape York Peninsula to national park (CYPAL) will increase the level of protection that applies to these areas and contributes to achievement of the government's objectives in relation to management of the protected area estate. It should be noted that the amendments do not apply to any other areas outside of the Cape York Peninsula Region and that it is not the intention of the amendment to make all protected areas on Cape York Peninsula Region transferable. Currently the State is negotiating with Aboriginal traditional owners and native title holders in relation to the Jardine and Heathlands Regional Parks. The act of making these areas transferable by regulation is essential to the conversion process to jointly managed national park Cape York Peninsula Aboriginal land. The ability to regulate other regional parks as transferable through regulation provides the flexibility to include other regional parks in the program in the future.

Reverting certain rolling term leases to term leases

Amendments to the Land Act contained in clauses 39 and 43 of the Bill will revert rolling term leases for agriculture, grazing or pastoral purposes within nature conservation areas and specified national parks back to term leases and provide that any applications that have been made to extend such leases are taken to be withdrawn if they have not been decided. While the amendments do not impact on any aspect of the lease, such as the remaining term of the lease, the conditions of the lease or any uses authorised under the lease, reverting to a term lease does have the following consequences which may impact on the rights and liberties of individuals:

- For a lease holder that would like to continue with a lease (rather than allowing it to expire at the end of its term), the lease holder will need to make an application for the renewal of the term lease. They will only be able to do this after 80% of the existing term has expired, rather than any time in the last 20 years of the term of the lease as is currently the case for rolling term leases.
- A broader range of matters must be considered by the chief executive in deciding whether to grant or refuse the renewal of a term lease when compared to the extension of a rolling term lease. One consideration is whether the land is needed for environmental or nature conservation purposes. A decision to refuse the renewal of a term lease is not appealable unless the decision was based on the applicant not fulfilling the conditions of the lease.

The above consequences are considered justified on the basis that returning to the term lease arrangements provides a more appropriate mechanism for decision making with respect to leases on land managed by QPWS. This will allow decisions to be made based on contemporary information about the impact of the lease on the natural values of the area before deciding an application. Where the use under the lease is inconsistent with the management principles for the area, the term lease provisions are more effective in allowing these lands to be protected for the purpose they were intended. The term lease provisions will also remove the misconception that some lease holders may have that that these leases are perpetual. Appeals will not be available in relation to a decision to refuse the renewal of a term lease unless the decision was based on the applicant not fulfilling the conditions of the lease. Returning to this framework is more appropriate for leases for agriculture, grazing and pastoral purposes within nature conservation areas and specified national parks due to the need to manage their natural values properly.

Consultation

Targeted consultation (via face to face meetings or teleconference) on the amendments to reverse changes to the nature conservation and related legislation made by the previous government has occurred with: the Wildlife Preservation Society of Queensland, National Parks Association of Queensland, AgForce, Tourism and Events Queensland, Queensland Tourism Industry Council, Queensland South Native Title Services Ltd, Cape York Land Council Aboriginal Corporation and Carpentaria Land Council Aboriginal Corporation. The Queensland Resources Council and the Australian Petroleum Production and Exploration Association have been informed of the proposals via letter.

The conservation groups consulted support the amendments as ‘a step in the right direction’ but generally wanted to see a wholesale reversal of changes made under the previous

government. The tourism industry representatives did not raise any concerns with the proposals. Queensland South Native Title Services Ltd, Cape York Land Council Aboriginal Corporation and Carpentaria Land Council Aboriginal Corporation had no concerns with the proposals; however Queensland South Native Title Services did suggest that the explanatory material for the Bill indicate that the change to the object of the NCA would not restrict or prevent the exercise of native title rights.

DATSIP has consulted with the Cape York Land Council Aboriginal Corporation and Balkanu Cape York Development Corporation regarding the amendment to the *Aboriginal Land Act 1991* and they support the amendment.

No consultation has occurred in relation to the deferment of the sunset clause outlined in section 707B of the *Environmental Protection Act 1994*. This will extend the expiration of the eligibility criteria by one year to 31 March 2017 to allow sufficient time to appropriately consult with the community on new mining ERA standards, to ensure any concerns and impacts are properly considered.

The former Office of Best Practice Regulation (OBPR), now part of the Queensland Productivity Commission, assessed the proposed amendments to the NCA and related legislation intended to reverse changes made by the previous government. OBPR noted that there have been detailed discussions with stakeholders previously on these matters and consider that the impacts should already be well understood by both decision makers and stakeholders. On this basis, OBPR has advised that the proposal is unlikely to benefit from further assessment and public consultation under the Treasurer's Regulatory Impact Statement guidelines.

The Queensland Productivity Commission (QPC) was consulted and confirmed that the deferment of the sunset clause outlined in section 707B of the *Environmental Protection Act 1994* is excluded from further analysis under the Regulatory Impact Statement System. This is on the basis that the proposed amendment will not make changes to the current eligibility criteria and that the extra time provided by the deferment will ensure that industry is appropriately consulted. This amendment is minor as it does not impact on existing operators or new activities as they can continue to apply under existing eligibility criteria.

The QPC was also consulted on the amendment to the *Aboriginal Land Act 1991* that allows regional parks on Cape York Peninsula to be declared by regulation to be transferable land and considered that the proposal was unlikely to benefit from further analysis and assessment under the Treasurer's Regulatory Impact Statement guidelines. This was on the basis that Cape York Land Council Aboriginal Corporation and Balkanu Cape York Development Corporation were aware of the issue, and the impacts of the proposal should already be well understood by both decision makers and stakeholders.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and amends existing Queensland legislation.

Legislation of other states and territories provide for the establishment and management of protected areas. In general each jurisdiction has adopted their own approaches to the conservation, management, planning and uses permitted in protected areas.

Other jurisdictions, including the Commonwealth, New South Wales and Victoria have suites of legislation to achieve Aboriginal joint management which are generally consistent with that of Queensland.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that, when the Bill is enacted, the Act may be cited as the *Nature Conservation and Other Legislation Amendment Act 2015*.

Clause 2 provides that certain provisions commence on 1 July 2016. This includes:

- part 2 (other than sections 3, 4, 5, 27 and 29);
- part 8; and
- schedule 1.

The provisions commencing on 1 July 2016 all relate to the reinstatement of the former national parks (scientific), conservation parks and resources reserves classes of protected under the *Nature Conservation Act 1992* (NCA) through clause 6. Amendments also include reinstating the former management principles that applied to these areas and removing provisions that will become redundant as a consequence of the changes. Schedule 1 makes consequential amendments to 15 other Acts that refer to protected areas under the NCA.

Commencement of these provisions will be on 1 July 2016 to address implementation issues and to allow the preparation of an amendment regulation to provide the consequential amendments to subordinate legislation to reflect the changes.

Part 2 Amendment of Nature Conservation Act 1992

Clause 3 provides that part 2 amends the NCA.

Clause 4 amends section 4 to reinstate ‘the conservation of nature’ as the sole object of the Act.

Clause 5 makes a technical amendment to section 5 to reflect the amendment in clause 4 which reinstates the ‘the conservation of nature’ as the sole object of the Act.

Clause 6 amends section 14 to reinstate the former national parks (scientific), conservation parks and resources reserves classes of protected area.

The *Nature Conservation and Other Legislation Amendment Act (No.2) 2013* (NCOLA (No.2) 2013) amalgamated the former national parks (scientific) class of protected area with national parks and combined the former conservation parks and resources reserves classes into a new class called regional parks. These former classes are being reinstated. As consequence, the regional parks class will become redundant and is also being removed through the amendments to this section.

Clause 7 inserts a new section 16 to reinstate the former management principles of the national parks (scientific) class of protected area that is being reinstated through clause 6. This section replicates the management principles that were omitted through the NCOLA (No. 2) 2013 when the national parks (scientific) class of protected area was removed when it was combined into the national parks class.

National parks (scientific) are set aside for the protection of highly significant natural values and represent the highest level of protection under the NCA. This class of protected area is intended to protect biodiversity, and is managed to strictly control and limit human access, use and impacts to ensure protection of conservation values, and provide an area indispensable for scientific research and monitoring and, in some cases, to manage populations of threatened wildlife.

The following management principles apply to national parks (scientific):

- (1) A national park (scientific) is to be managed to—
 - (a) protect the area's exceptional scientific values and, in particular—
 - (i) to ensure that the processes of nature continue unaffected in the area; and
 - (ii) to protect the area's biological diversity to the greatest possible extent; and
 - (b) allow controlled scientific study and monitoring of the area's natural resources.
- (2) However, if threatened wildlife is a significant natural resource for the area, management of the area may include—
 - (a) manipulation of the wildlife's habitat; and
 - (b) the control of threatening processes relating to the wildlife, including threatening processes caused by other wildlife.
- (3) Subject to subsections (1) and (2), a national park (scientific), or a part of a national park (scientific), that is also an indigenous joint management area is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

Clause 8 amends section 17 to remove the management principles for a national park declared as a special management area (scientific) because they become redundant with the reinstatement of the national parks (scientific) class of protected area and reinstatement of the associated management principles through clauses 6 and 7 respectively.

The current section includes reference to two types of special management area. This includes special management area (controlled action) and special management area (scientific). As a consequence of removing the special management area (scientific) provisions, the section is being updated to reflect that section 17(1A) will only apply to the remaining special management area (controlled action).

Clause 9 replaces section 21 which currently contains the management principles for a regional park. These provisions will become redundant when the former conservation parks and resources reserves classes of protected areas are reinstated, and the regional park class is removed, through clause 6.

Section 21 is being replaced with a new section 21 to reinstate the former management principles that applied to the conservation parks class of protected area. This section replicates the management principles that were omitted through NCOLA (No.2) 2013 when the conservation parks class was amalgamated into the new regional parks class with resources reserves.

Conservation parks provide high levels of protection for what are often locally, regionally, or in some cases nationally significant areas of habitat that make an important contribution to

the conservation of ecosystems and their wildlife. Within the context of protecting the conservation values of this class of protected area, conservation parks also provide for ecologically sustainable uses where they are consistent with maintaining the management intent and protection of the park.

The following management principles apply to 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.
- (2) Subject to subsection (1), a conservation park, or a part of a conservation park, that is also an indigenous joint management area is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

A new section 21A is being inserted to reinstate the former management principles that applied to the resources reserves class of protected area. This section replicates the management principles that were omitted through NCOLA (No.2) 2013 when the resources reserves class was amalgamated into the new regional parks class with conservation parks.

Resources reserves are protected areas with very high nature conservation values, but which contain underlying values that preclude them from inclusion in national parks or conservation parks. Resources reserves provide protection while the future of underlying mineral rights or other values are explored and developed. However such uses should only occupy a part of each resources reserve and upon cessation, if appropriate, the lands may be upgraded to a conservation park or national park.

The following management principles apply to resources reserves:

- (1) Subject to subsection (2), a resources reserve is to be managed to—
 - (a) recognise and, if appropriate, protect the area’s cultural and natural resources; and
 - (b) provide for the controlled use of the area’s cultural and natural resources; and
 - (c) ensure that the area is maintained predominantly in its natural condition.
- (2) The felling of timber for a commercial purpose must not be conducted in a resources reserve.
- (3) Subject to subsections (1) and (2), a resources reserve, or a part of a resources reserve, that is also an indigenous joint management area is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

Clause 10 amends section 27 to reflect the reinstatement of the national park (scientific) and conservation parks classes of protected area and removal of the regional parks class which becomes redundant through the amendments in clause 6.

Clause 11 amends the definition of protected area in section 28 to reflect the reinstatement of the national park (scientific), conservation parks and resources reserves classes of protected

area and removal of the regional parks class which becomes redundant through the amendments in clause 6.

Clause 12 amends section 29 to reflect the reinstatement of the national park (scientific), conservation parks and resources reserves classes of protected area and removal of the regional parks class which becomes redundant through the amendments in clause 6.

Clause 13 amends section 31 to reflect the reinstatement of the conservation parks and resources reserves classes of protected area and removal of the regional parks class which becomes redundant through the amendments in clause 6.

Clause 14 amends section 34 to reflect the reinstatement of the national park (scientific), conservation parks and resources reserves classes of protected area and removal of the regional parks class which becomes redundant through the amendments in clause 6.

Clause 15 amends the definition of owner in section 39D to reflect the reinstatement of the conservation parks and resources reserves classes of protected area and removal of the regional parks class which becomes redundant through the amendments in clause 6.

Clause 16 replaces the heading of Part 4, division 3A to reflect removal of provisions through clauses 17 and 19 that become redundant as a result changes to the classes of protected area in clause 6. This includes provisions that allow the chief executive to declare special management areas (scientific) and resource use areas.

Clause 17 amends section 42A which allows the chief executive to declare special management areas (scientific) and special management areas (controlled action). Amendments to this section will remove provisions that allow the chief executive to declare a special management area (scientific) because they become redundant due to the reinstatement of the national park (scientific) class of protected area through clause 6. The ability to declare special management areas (controlled action) will remain and as such, the section is also being updated in several places so that it only refers to special management areas (controlled action).

The definition of prescribed national park in subsection (4) is also being amended to reflect the reinstatement of the national park (scientific) through clause 6.

Clause 18 amends section 42B to reflect the amendments made in clause 17 and clarify that the section only applies to special management areas (controlled action).

Clause 19 omits section 42C to remove provisions that allow the chief executive to declare a resource use area because they become redundant due to the reinstatement of the resources reserve class of protected area through clause 6.

Clause 20 amends section 61 to reflect the reinstatement of the national park (scientific), conservation parks and resources reserves classes of protected area and removal of the regional parks class which becomes redundant through the amendments in clause 6.

Clause 21 amends section 62 to reflect the reinstatement of the conservation parks and resources reserves classes of protected area and removal of the regional parks class which becomes redundant through the amendments in clause 6.

Clause 22 amends section 69 to reflect amendments being made through clauses 17 and 19 which remove redundant provisions that allow the chief executive to declare a special management area (scientific) and a resource use area. This section is being updated to remove the reference to resource use area and clarify that the reference to special management area in this section is a special management area (controlled action).

Clause 23 amends section 70 to reflect the reinstatement of the conservation parks class of protected area through the amendments in clause 6.

Clause 24 amends section 70AA to remove the reference to section 42C which becomes redundant and is being omitted through clause 19.

Clause 25 amends the definition of protected area in section 70B to reflect the reinstatement of the national park (scientific), conservation parks and resources reserves classes of protected area and removal of the regional parks class which becomes redundant through the amendments in clause 6.

Clause 26 amends section 111 to reflect the reinstatement of the national park (scientific), conservation parks and resources reserves classes of protected area and removal of the regional parks class which becomes redundant through the amendments in clause 6.

Clause 27 amends section 120A. This section includes a number of exemptions that apply to preparing a draft amendment of a management plan and publishing a notice that invites written submissions to be made about the draft plan. In effect, subsection (2)(a)(iii) currently allows amendments to be made to management plans without consultation if the amendment is being made to provide consistency with State government policy. Instead, subsection (3) simply requires details of the amendments and reasons for the amendments to be published on the department's website. Subsection (2)(a)(iii) is being removed so that this exemption no longer applies. As a consequence, subsection (3) becomes redundant and is also being removed.

Clause 28 amends the definition of 'State protected area' in section 142(7) to reflect the reinstatement of the national park (scientific), conservation parks and resources reserves classes of protected area and removal of the regional parks class which becomes redundant through the amendments in clause 6.

Clause 29 omits section 173S which allowed the chief executive to grant stock grazing permits on six prescribed protected areas for drought relief purposes until 31 December 2013. These provisions are being removed because they have become redundant and no permits granted under these provisions remain in effect.

Clause 30 replaces the heading of Part 12, division 6 with transitional provisions for the *Nature Conservation and Other Legislation Amendment Act 2015*.

A new section 205 provides the following definition for this division:

old class, of protected area, means—

- (a) a national park in which an area of the national park was declared as a special management area (scientific) under the unamended Act; or
- (b) a regional park under the unamended Act.

A new section 206 provides that this division applies despite any provision of division 5, which included transitional provisions for the *Nature Conservation and Other Legislation Amendment Act (No.2) 2013*.

A new section 207 provides transitional provisions for an area that, immediately before the commencement, was a special management area (scientific). On the commencement, each special management area (scientific) is taken to be a national park (scientific).

There are nine special management areas (scientific) that will be returned to national parks (scientific). These are Capricornia Cays National Park; Dipperu National Park; Epping Forest National Park; Keppel Bay Islands National Park; Mount Abbot National Park; Mount Bauple National Park; Palmgrove National Park; Raine Island National Park; and Taunton National Park.

A new section 208 provides transitional provisions for an area that, immediately before the commencement, was a regional park (general). On the commencement, the area of each regional park (general) continues under this Act as a conservation park as if it had been dedicated under this Act as a conservation park.

A new section 209 provides transitional provisions for an area that, immediately before the commencement, was a regional park (resource use area). On the commencement, the area of each regional park (resource use area) continues as a resources reserve as if it had been dedicated under this Act as a resources reserve.

A new section 210 includes transitional provisions to provide that, from commencement, in an Act or document:

- (a) a reference to a special management area (scientific) may, if the context permits, be taken to be a reference to a national park (scientific); and
- (b) a reference to a regional park may, if the context permits, be taken to be a reference to a conservation park or resources reserve; and
- (c) a reference to a regional park (general) may, if the context permits, be taken to be a reference to a conservation park; and
- (d) a reference to a regional park (resource use area) may, if the context permits, be taken to be a reference to a resources reserve.

A new section 211 includes transitional provisions to provide that the trustee of a regional park (general) and trust over the area continues when the area becomes a conservation park.

A new section 212 includes transitional provisions to provide that the trustee of a regional park (resource use area) and trust over the area continues when the area becomes a resources reserve.

A new section 213 provides the following transitional provisions so that a change in class does not affect instruments applying to an area:

- (1) This section applies if, under this division, an area is changed from an old class of protected area to another class of protected area (the new class).
- (2) Any of the following (each a relevant instrument) in force for the area immediately before the commencement continues to apply to the area as a protected area of the new class—

- (a) a lease, agreement, licence, permit or other authority under this Act or another Act;
 - (b) a management statement;
 - (c) a management plan;
 - (d) a direction, requirement, notice or decision given or made, in writing, under this Act.
- (3) The relevant instrument continues in force for the area until it expires, is terminated or repealed or otherwise ends under its terms, under this Act or another Act.
- (4) Subsections (2) and (3) apply even if the relevant instrument authorises the carrying out of activities in the area that are not consistent with the management principles for protected areas of the new class.

A new section 214 includes transitional provisions to addresses circumstances where an application for a lease agreement, licence, permit or other authority was made under the NCA in relation to an old class of protected area, but not decided before commencement. In these cases, the application will be decided under the legislation in place at the time the application was made. This section also provides that if the application is granted, the applicant will receive the relevant authority for the equivalent new class of protected area, even if the activities are not consistent with the management principles for the area. However, the grounds on which the chief executive may refuse an application to renew the relevant authority include the ground that the carrying out of the activities under the authority is not consistent with the management principles for the new class of protected area.

Clause 31 amends the schedule (Dictionary) of the NCA to remove the definitions of *prescribed protected area*, *regional park*, *regional park (general)*, *regional park (resource use area)*, *special management area* and *special management area (scientific)* which have become redundant due to the reinstatement of the national park (scientific), conservation park and resources reserve classes of protected area.

New definitions are provided for conservation park, national park (scientific), prescribed protected area and resources reserve to reflect the reinstatement of classes of protected area through clause 6.

Part 3 Amendment of Aboriginal Land Act 1991

Clause 32 provides that Part 3 amends the *Aboriginal Land Act 1991*.

Clause 33 amends the heading of Part 11, division 2 to update the heading to reflect that the division will apply to prescribed protected areas instead of only national parks, as provided for through the amendments to sections 173 and 174 below.

Clause 34 amends section 173, including the heading of the section to refer to ‘prescribed protected areas’; subsections (1), (2) and (3) to reflect that the section will apply to prescribed protected areas rather than just national parks; and inserts an additional subsection (4) to insert a definition of ‘prescribed protected area’ which means a national park or a regional park under the *Nature Conservation Act 1992* prescribed by regulation. The section provides that if a regional park becomes transferable land through amendments to section 174, it will be subject to the requirements of this section. These requirements include that the trustee or proposed trustee for the land must enter into an indigenous management agreement with the State about the management of the park, in the same way the provisions currently apply to

national parks that are transferable and that the regional park land must become a national park (Cape York Peninsula Aboriginal land).

Clause 35 amends section 174 which provides for all national parks in the Cape York Peninsula Region to become transferable. The amendment to section 174 is being made to provide that in addition to national parks which are already transferable, regional parks (as defined under the *Nature Conservation Act 1992*) in the Cape York Peninsula Region can also be declared by regulation to be transferable land. This will prevent the need to revoke the protected area status prior to converting the protected area to jointly managed national park (Cape York Peninsula Aboriginal land).

Part 4 Amendment of Environmental Protection Act 1994

Clause 36 provides that Part 4 amends the *Environmental Protection Act 1994*.

Clause 37 amends section 707B(3) to defer the expiration of the eligibility criteria by one year to 31 March 2017. The deferment of the sunset clause by one year is needed due to the complexities of updating standards that have not changed since 2001 and to allow for adequate consultation on the new ERA standards before their implementation.

Part 5 Amendment of Land Act 1994

Clause 38 provides that part 5 amends the *Land Act 1994* (Land Act).

Clause 39 amends section 164 which provides the circumstances around when a term lease becomes a rolling term lease. The section is being amended to provide that term leases for agriculture, grazing and pastoral purposes within a nature conservation area or specified national park are not rolling term leases.

This is being achieved by amending subsections (1)(b) and (1)(c) which both apply to leases used for agriculture, grazing and pastoral purposes. These subsections are being combined and restructured so that:

- (1)(b)(i) applies to leases on rural leasehold land which is 100ha or more in area;
- (1)(b)(ii) applies to leases on rural leasehold land which is less than 100ha in area and the Minister has approved the lease as a rolling term lease; and
- (1)(b)(iii) applies to leases on land that are not within a nature conservation area or specified national park.

The key change from the existing provisions is included in (1)(b)(iii) which provide that a lease used for agriculture, grazing and pastoral purposes is not a rolling term lease if the lease land is within a nature conservation area or a specified national park.

The terms ‘nature conservation area’ and ‘specified national park’ are existing terms defined in the schedule of the Land Act and include protected areas managed by the QPWS under the NCA which are not considered appropriate areas for rolling term leases.

Prior to the introduction of rolling term leases by the previous government under the *Land and Other Legislation Amendment Act 2014*, leases for agriculture, grazing and pastoral purposes within nature conservation areas and specified national parks were term leases. The

amendments to this section, including the transitional provisions (see below), revert these leases back to term leases. The amendments do not impact on any aspect of the lease. For example, the remaining term of the lease, the conditions of the lease and any uses authorised under the lease are unaffected.

As a consequence of combining (1)(b) and (1)(c), the other amendments in this clause are for renumbering purposes.

Clause 40 makes a consequential amendment to section 164A to reflect the renumbering of provisions through the amendment to section 164 in clause 39 above. This section contains a reference to section to 164(1)(c) which was renumbered to 164(b)(ii).

Clause 41 makes a consequential amendment to section 164B to reflect the renumbering of provisions through the amendment to section 164 in clause 39 above. This section contains two references to section 164(1)(c) which was renumbered to 164(b)(ii).

Clause 42 makes a consequential amendment to section 164H to reflect the renumbering of provisions through the amendment to section 164 in clause 39 above. This section contains a reference to section to 164(1)(c) which was renumbered to 164(b)(ii).

Clause 43 inserts a new Part 1N into chapter 9 to provide transitional provisions for *Nature Conservation and Other Legislation Amendment Act 2015*.

A new section 521ZP is being inserted to provide definitions for Part 1N. The key definition is ‘protected area lease’ which means a rolling term lease under the unamended Act, section 164(1)(b), in which the lease land, or part of the lease land, is within a nature conservation area or a specified national park.

A new section 521ZQ inserts a transitional provision for protected area leases. It provides that on commencement, a protected area lease stops being a rolling term lease and that the rolling term lease provisions in chapter 4, part 3, division 2, subdivision 3 of the Land Act do not apply to a protected area lease. The consequence is that protected area leases revert back to term leases.

A new section 521ZR inserts a transitional provision that provides that any applications to extend a protected area lease are taken to be withdrawn if they have not been decided on commencement. This provision is required because extension applications for rolling term leases can be made any time in the last 20 years of the term of the lease which does not allow decisions to be made based on contemporary information.

Part 6 Amendment of Marine Parks Act 2004

Clause 44 provides that part 6 amends the *Marine Parks Act 2004* (Marine Parks Act).

Clause 45 amends section 36 of the Marine Parks Act to remove subsections (5)(c) and (7). This section currently requires a notice about a draft amendment to a management plan to be published on the department’s website. The section also outlines the matters to be included in the notice, including for example, an invitation for members of the public to make written submissions about the draft amendment. However, subsection (5)(c) provides an exemption so that these consultation requirements do not apply if the amendment is to make a change to

ensure the plan is consistent with State government policy. Instead, subsection (7) requires details of the amendments and reasons for the amendments to be published on the department's website. The section is being amended to remove subsection (5)(c) and (7) so that the exemption from the consultation requirements do not apply if an amendment to a management plan is being made due to a change in State government policy.

Part 7 Amendment of Recreation Areas Management Act 2006

Clause 46 provides that part 7 amends the *Recreation Areas Management Act 2006* (RAM Act).

Clause 47 amends section 27 of the RAM Act. This section outlines a number of exemptions that apply to preparing a draft amendment of a management plan and publishing a notice about the draft on the department's website. In effect, subsection (1)(c) currently allows amendments to be made to management plans without consultation if the amendment is being made to provide consistency with State government policy. Instead, subsection (3) simply requires details of the amendments and reasons for the amendments to be published on the department's website. Subsection (1)(c) is being removed so that this exemption no longer applies. As a consequence, subsection (3) becomes redundant and is also being removed.

Part 8 Minor and consequential amendments

Clause 48 makes minor and consequential amendments the Acts mentioned in Schedule 1.

Schedule 1 Minor and consequential amendments

Consequential amendments are being made to the following Acts to reflect the reinstatement of the national parks (scientific), conservation parks and resources reserves classes of protected area through clause 6. All of these amendments will commence on 1 July 2016.

1. *Aboriginal Land Act 1991*
2. *Biodiscovery Act 2004*
3. *Environmental Protection Act 1994*
4. *Forestry Act 1959*
5. *Fossicking Act 1994*
6. *Geothermal Energy Act 2010*
7. *Greenhouse Gas Storage Act 2009*
8. *Land Act 1994*
9. *Land Protection (Pest and Stock Route Management) Act 2002*
10. *Liquor Act 1992*
11. *Mineral and Energy Resources (Common Provisions) Act 2014*
12. *Mineral Resources Act 1989*
13. *Petroleum Act 1923*
14. *Petroleum and Gas (Production and Safety) Act 2004*
15. *Vegetation Management Act 1999*