

7 March 2018

Our ref [VKWD-M&R/P&E]

Committee Secretary
Innovation, Tourism Development and Environment Committee
Parliament House
George Street
Brisbane QLD 4000

By email: [REDACTED]

Dear Committee Secretary

Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2018

Thank you for the opportunity to provide comments on the Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2018 (the **Bill**). Queensland Law Society (**QLS**) appreciates being consulted on the proposed legislation.

This response has been compiled with the assistance of members from QLS' Mining & Resources Law Committee and Planning & Environmental Law Committee, who have substantial expertise in the varied areas of law which are impacted by this Bill.

QLS is the peak professional body for the State's legal practitioners. We represent and promote nearly 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Inadequate timeframes for consultation

QLS notes that the Bill was introduced on 15 February 2018 with submissions due by midday on 7 March 2018.

When an election is called, all bills lapse. It is impossible to know whether previous legislation will be introduced in substantially the same form, even if the previous government is returned by the electorate. Whilst the parliamentary website indicates that the 2017 and the 2018 Bill are "substantially the same", we note that there are in fact some differences. It would be very helpful if, in future, a document (such as a tracked changed version of the previous bill) were to be provided to assist in identifying these differences in the short time frame provided.

A further complication is that the Government has introduced 16 bills in the first week of Parliament, many of which we have previously commented on but which may differ from the earlier versions. The comparison exercise for so many bills, with short submission timeframes for many, has hindered our ability to conduct a comprehensive review of this and other bills.

By omitting to comment on the full scope of provisions in the 2018 Bill, QLS does not express its endorsement of these.

Comments on the Bill

We refer to the August 2017 report of the Agriculture and Environment Committee which was drafted following the conclusion of the inquiry into the 2017 version of the bill. QLS finds it to be particularly instructive that the parliamentary committee could not recommend that the 2017 bill be passed, and suggests that this supposition will be a significant and relevant consideration for the current inquiry to take into account.

Please find **enclosed** the submission made by QLS in relation to the previous bill. QLS repeats and relies on our earlier submission, and requests that the Committee considers the concerns raised therein during the current inquiry.

There are two aspects of the Bill which deviate substantially from the 2017 version. These are in relation to the process by which an area is proposed to be declared as a special wildlife reserve (clause 12, proposed section 43A), and the terms of a conservation agreement entered into by the Minister (clause 12, proposed section 43C(1)(c)).

With respect to the Bill, we provide the following comments.

Proposed section 43A – Proposal for declaration of special wildlife reserve

In the QLS submission dated 10 July 2017, QLS raised concerns with the proposed drafting describing the method by which an area may be declared to be a special wildlife reserve. The 2017 bill described a special wildlife reserve as one which is related to the concept of an area in the "State interest". This term was defined as *"an interest the Minister considers to be an economic, environmental or community interest of the State"*.

The submission went into some detail to demonstrate our concerns that this definition was excessively wide and uncertain, vesting an overly broad determination power in the Minister. We noted that land use planning principles require that land is utilised for its highest and best use, and recommended that the section include a requirement that consideration be given to these principles when a determination is being made.

This recommendation has not been taken up in the Bill. Rather, the amended drafting of proposed section 43A is now even broader. The amended drafting actually expands the matters to be considered when preparing a proposal to declare, effectively allowing the determination to be made based upon either or both of:

- the 'economical, environmental or community interests' (as determined by the Minister) under the definition of 'State interest';
- the second branch of the proposed section which appears may be applied so as to encompass land areas that do not fit easily into the definition of 'State interest'.

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We repeat our comments that this determination methodology again does not conform to the purported intention of the Bill, as set out in the Explanatory Notes. The Explanatory notes state, *"The key objective of amendments to the Nature Conservation Act is to establish a new class of privately owned or managed protected area (special wildlife reserve) that will allow for the protection of lands of outstanding conservation value from incompatible land uses;"*.

By retaining a reference to 'State interest' in proposed section 43A(1), the Bill does not achieve this objective.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Acting Principal Policy Solicitor Wendy Devine on [REDACTED] or by email to [REDACTED], or Senior Policy Solicitor Vanessa Krulin, on [REDACTED] or by email to [REDACTED]

Yours faithfully

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Enclosure