

CONSERVATION AND LAND MANAGEMENT AMENDMENT BILL 2021

EXPLANATORY MEMORANDUM

Overview of Bill

The purpose of the *Conservation and Land Management Amendment Bill 2021* is to amend the *Conservation and Land Management Act 1984* (CALM Act)¹ to implement Government policy commitments including the joint vesting of marine parks with traditional owners. The amendments to the CALM Act provide for:

- a. joint vesting of marine reserves with the Conservation and Parks Commission and an Aboriginal body corporate;
- b. greater recognition of the rights of Aboriginal people by broadening the purpose of marine parks to include the protection and conservation of the value of marine parks to the culture and heritage of Aboriginal people;
- c. clarification of the extent to which offence and enforcement provisions of the CALM Act may be applied to unallocated Crown land and unmanaged reserves that have been placed with the CEO for management under section 8C;
- d. correction of designation errors assigned to certain provisions;
- e. removal of the requirement for permit and licence forms to be prescribed, consistent with regulatory reform principles; and
- f. replacement of references to ‘chairman’ of the Conservation and Parks Commission with ‘chairperson’.

The following is an explanation of the contents of the Bill on a clause by clause basis (Clause Notes).

CLAUSE NOTES

Clause 1. Short title

Clause 1 will provide that the title of the Amendment Act is the *Conservation and Land Management Amendment Act 2021*.

Clause 2. Commencement

Clause 2 sets out the commencement provisions.

Clause 2(a) provides that sections 1 and 2 of the Amendment Act come into operation on the day on which it receives Royal Assent.

Clause 2(b) provides that the remainder of the Amendment Act will come into operation on the day after it receives Royal Assent.

¹ Note that references to the ‘CALM Act’ are to the principal Act, being the *Conservation and Land Management Act 1984* and references to ‘the Amendment Act’ are references to the proposed *Conservation and Land Management Amendment Act 2021*.

Clause 3. Act amended

Clause 3 provides that the Amendment Act will amend the *Conservation and Land Management Act 1984*.

Clause 4. Section 3: 'Terms used'; amended

Clause 4 will amend section 3, which provides definitions for certain terms used in the CALM Act. The amendment is to the defined term **joint responsible body** to include reference to 'waters' because under amendments provided in the Bill, a marine reserve may be jointly vested with the Conservation and Parks Commission (the Commission) and an Aboriginal body corporate

Clause 5. Section 7: Lands vested in Commission; amended

Clause 5 will amend section 7(1B) by inserting a new subparagraph (aa) which will specify that this section will not apply to waters, land, or land and waters that are vested under new subsections 8AA(4A) or (5A) (see clause 6). The intention of the amendment is to recognise that this section does not apply to waters, lands or land and waters that become jointly vested between the Commission and an Aboriginal body corporate, pursuant to section 8AA.

The term **Aboriginal body corporate** is defined in section 3 of the CALM Act.

Clause 6. Section 8AA: Land and waters may be vested jointly in Commission and Aboriginal body corporate; amended

Clause 6 will amend section 8AA to enable the joint vesting of waters, lands, or land and waters jointly with a specified Aboriginal body corporate and the Commission.

Clause 6(1) will insert a new subsection (2A) after subsection (2) that will enable the Minister, after consultation with the Commission, to make a written determination approving the joint vesting of all or part of the waters, lands, or land and waters in, or proposed to be in, a marine reserve with the Commission and an Aboriginal body corporate.

Subsection (2A)(a) will enable waters, lands or waters or part thereof that is or is proposed to be a marine reserve to become jointly vested when it is reserved under section 13 of the CALM Act, Part 4 of the *Land Administration Act 1997* (LAA) or any other Act.

Subsection (2A)(b) will enable marine reserves or part thereof that are already reserved and vested with the Commission, to become jointly vested.

Clause 6(2) will amend section 8AA(3) to include reference to new subsection (2A). This will ensure that the Minister cannot make a determination in respect of the joint vesting of a marine reserve without the consent of the relevant Aboriginal body corporate.

Clause 6(3) will insert a new subsection (4A) which will formally establish the joint vesting of a marine reserve by giving effect to a determination made by the Minister under subsection (2A)(a).

Clause 6(4) will insert a new subsection (5A) which will formally establish the date that a joint vesting determination made under subsection (2A)(b) will come into effect.

Clause 6(5) will delete sections 8AA(7) to (9), insert a new subsection (6A) and replace subsections (7), (8) and (9).

Subsection (6A) will provide that the Minister's determination that an existing reserve or part of a reserve is jointly vested under a section 8AA(5A) does not change the purpose which the waters are reserved under the section 13 of the CALM Act, the LAA or any other Act.

Subsection (7) replaces the existing subsection (7) to provide that where waters, land or land and waters are jointly vested in the Commission and an Aboriginal body corporate under subsections (4), (4A), (5) or (5A), the specific functions of the Aboriginal body corporate under the CALM Act are limited to those conferred on a **joint responsible body** (as defined in section 3 of the CALM Act). Such an Aboriginal body corporate may also have specific functions and responsibilities as a registered native title body corporate under the *Native Title Act 1993* (Cth).

Subsection (8) replaces existing subsection (8) to provide that where an Aboriginal body corporate (in which waters, land or land and waters are vested jointly in the Commission and that Aboriginal body corporate) is deregistered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Commonwealth), the waters, land or land and waters cease to be vested in that Aboriginal body corporate and become solely vested in the Commission. Any Aboriginal body corporate which is deregistered that is also a registered native title body corporate under the *Native Title Act 1993* (Cth), will need to comply with the processes under the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

Subsection (9) replaces existing subsection (9) to provide that where a Ministerial determination has been made under subsection (2) or (2A) to jointly vest a reserve, the Minister may revoke that determination at any time before the vesting is made under subsection (4), (4A), (5) or (5A).

Clause 7. Section 8C: Certain land may be put under CEO's management; amended

Clause 7 will amend section 8C to clarify that an order made under section 8C may specify whether a provision in Part IX (Offences and enforcement) of the CALM Act or regulations made for the purposes of Part IX will apply to eligible land specified in the section 8C order.

Clause 7(1) will amend section 8C(1) to insert a definition for the term **relevant provision**. The new term defines a **relevant provision** as a provision in Part IX (Offences and Enforcement) or a regulation made for the purpose of Part IX.

Clause 7(2) will amend section 8C(1) to insert a semicolon after the word 'section' in the definition of **eligible land** because the defined term **relevant provision** will be inserted after **eligible land** by clause 7(1).

Clause 7(3) will delete section 8C(2) and insert an amended subsection 8C(2) and new subsections (2A) and (2B).

Subsection (2) will carry forward the provision that enables the Governor, on the recommendation of the Minister and the Land Administration Minister, to (i) place eligible land under the management of the CEO and (ii) specify the CEO's functions in relation to managing the land. These provisions currently exist as paragraphs (a) and (b). In the new subsection (2), existing paragraphs (a) and (b) become new subparagraphs (i) and (ii) of new paragraph (a). A new subparagraph (b) provides that if new paragraph (a) applies, the order must specify any **relevant provision** that is to apply to the land (see clause 7(1)).

Subsection (2A) will enable the CEO's functions prescribed in sections 33(1)(ca) and (cc) of the CALM Act to be included in a section 8C order as functions that may be applied to the management of section 8C land (some section 33 functions are already applicable to section 8C land but they are also subject to the requirement that they are specified in the relevant order). Other functions can be prescribed in regulations for the purpose of their inclusion in a section 8C order.

Subsection (2B) will provide that a relevant provision will not apply to eligible land if the order has not specified the relevant provision in accordance with subsection (2)(b), that is, failure to specify a relevant provision in a section 8C order will prevent management of section 8C land from including the application of Part IX (Offences and enforcement) of the CALM Act or any regulations made for the purposes of Part IX. This is subject to section 102(1A)(a) which maintains the application of the provisions of Part IX relevant to activities carried out for Aboriginal customary purposes (see clause 17(2)).

Clause 8. Section 13AA: Minister's powers to change Class A marine reserve; amended

Clause 8 will amend section 13AA to introduce a new subsection (2A) to provide that if a Class A marine reserve is proposed to be the subject of an amendment order under subsection (2) and it is vested jointly with the Commission and an Aboriginal body corporate under section 8AA(4A) or (5A), then the consultation required with the Commission under subsection (2) must include consultation with the Aboriginal body corporate.

Clause 9. Section 13B: Marine parks, purpose of and prohibited acts in; amended

Clause 9 will amend section 13B(1) to include the protection and conservation of the value of a marine park to the culture and heritage of Aboriginal persons as a purpose that is consistent with the reservation of a marine park.

In the context of this revision, references to conservation purpose in sections 13B(3B), (5), (8) and (9) will require the additional reserve purpose applicable to the conservation of Aboriginal culture and heritage to be considered in respect of any Ministerial declaration of incompatibility of an activity with a specified conservation purpose made under the subsections cited.

Clause 10. Section 19: Functions; amended

Clause 10 replaces section 19(1)(a)(i) of the functions of the Commission in relation to the vesting of marine reserves. Subparagraph (i) is amended to delete reference to marine reserves, and a new subparagraph (ia) is inserted to provide that marine reserves are either solely vested in the Commission or jointly with the Commission and an Aboriginal body corporate.

Clause 11. Section 21: Membership; amended

Clause 11 will amend section 21 to replace each occurrence of the word 'chairman' with the gender neutral word 'chairperson'.

Clause 12. Section 23: Other persons not entitled to attend meetings of Commission; amended

Clause 12 will amend section 23 to replace each occurrence of the word 'chairman' with the gender neutral word 'chairperson'.

Clause 13. Section 33: CEO, functions of; amended

Clause 13 will amend section 33(1)(ha) to delete incorrect references to subparagraphs (ea) and (gb) and replace them with references to subparagraphs (fa) and (gb). The incorrect references

were inadvertently introduced by consequential amendment provisions of the *Biodiversity Conservation Act 2016* (BC Act). In this respect section 292(1)(f) of the BC Act inserted paragraph (ha) into section 33(1) of the CALM Act.

Clause 14. Section 89: Permits, form and effect of; amended

Clause 14 will amend section 89(1) to remove the requirement for the form of permits to be prescribed in regulations and replace it with a provision allowing for permit forms to be forms approved by the CEO.

Clause 15. Section 90: Licences, form and effect of; amended

Clause 15 will amend section 90 to remove the requirement for the form of licences to be prescribed in regulations and replace it with a provision allowing for licence forms to be forms approved by the CEO.

Clause 16. Section 99: Restriction on CEO exercising powers under this Division; amended

Clause 16 will amend section 99(2) to delete two incorrect references to paragraph (ab) in subsection (1). Paragraph (ab) was deleted by section 51 of the *Conservation and Land Management Amendment Act 2015*.

Clause 17. Section 102: Terms used; amended

Clause 17 will amend section 102 for consistency with the amendments proposed to be made to section 8C, i.e. so that the section 8C can specify those provisions in Part IX that apply to land managed under a section 8C order.

Subsection (1) will amend the definition of ***land to which this Part applies*** in subsection (1) to replace paragraph (b) with a new paragraph (b). The new paragraph (b) will provide that the term ***land to which this Part applies*** will apply to section 8C land subject to new subsection (1A). New subsection (1A) will be inserted by clause 17(2).

Subsection (2) will insert new subsection (1A). New subsection (1A)(a) will have the effect of maintaining the defences in section 103A applicable to activities carried out for Aboriginal customary purposes or regulations applicable to those activities on section 8C land; and new subsection (1A)(b) will provide that if an order made under section 8C(2)(b) specifies that any other provision in Part IX applies to the section 8C land then a reference to that provision or to regulations made for the purposes of Part IX, is ***land to which this Part applies***, i.e. inclusive of that section 8C land.

Clause 18. Schedule 1: Provisions as to constitution and proceedings of the Commission; clause 3 amended

Clause 18 will amend clauses 3(1) and 3(5) of Schedule 1 to replace each occurrence of the word 'chairman' with the gender neutral word 'chairperson'.

Clause 19. Schedule 1 Provisions as to constitution and proceedings of the Commission; clause 4 amended

Clause 19 will amend clauses 4(1), 4(2)(a) and 4(3) of Schedule 1 to replace each occurrence of the word 'chairman' with the gender neutral word 'chairperson'.
