

2017

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR TOURISM AND CULTURE

Parks and Wildlife Commission Amendment Bill 2017

SERIAL NO. 32

EXPLANATORY STATEMENT

GENERAL OUTLINE

The Parks and Wildlife Commission Amendment Bill 2017 makes legislative amendments to:

- permit the Minister to establish an advisory council for the Commission, rather than mandating that the Minister must establish an advisory council;
- replace the offence at section 36 of the *Parks and Wildlife Commission Act* with a new offence for the unauthorised disclosure of confidential information;
- replace the offence at section 37 of the *Parks and Wildlife Commission Act* with a requirement for members of the Conservation Land Corporation to disclose personal interests in matters being considered, or about to be considered by that Corporation, and to prescribe the effect of a member disclosing a personal interest;
- apply the principles of criminal responsibility in Part IIAA of the Criminal Code to offences in the Act; and
- modernise the language and terminology used in the Act.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. The Bill when passed may be cited as the *Parks and Wildlife Commission Amendment Act 2017*.

Clause 2. Commencement

This is a formal clause which provides when the Act will commence. The Act will commence on a day fixed by the Administrator by Gazette notice.

Clause 3. Act amended

This clause identifies the Act that is amended by the Bill, namely the *Parks and Wildlife Commission Act*.

Clause 4. Section 3A inserted

Clause 4 ensures that the criminal responsibility provisions in Part IIAA of the Criminal Code apply to offences in the *Parks and Wildlife Commission Act*.

Clause 5. Section 32 amended

Clause 5 makes minor amendments to section 32 of the *Parks and Wildlife Commission Act* so that the Act reflects modern drafting practices and uses contemporary language.

Clause 6. Sections 36 and 37 replaced

Clause 6 replaces sections 36 and 37 of the *Parks and Wildlife Commission Act* with new sections 36, 37, and 37A.

New section 36 replaces an offence provision for the unauthorised disclosure of information obtained by a member of the Conservation Land Corporation in the course of their duties as a member, with a new offence for the unauthorised disclosure of confidential information. The new offence is consistent with the principles of criminal responsibility in Part IIAA of the Criminal Code.

The new offence applies where a member of the Conservation Land Corporation obtains information in the course of performing their duties, and intentionally engages in conduct that results in the disclosure of that information, and the member is reckless in relation to the result. Strict liability applies to the circumstance of the member obtaining information in the course of their duties as a member of the Conservation Land Corporation.

The new offence is a standard offence. The structure of the new offence is consistent with other offences involving the disclosure of confidential information in the Northern Territory. The penalty for the new offence is 200 penalty units or 2 years imprisonment, which is also consistent with penalties for similar offences in other Northern Territory laws.

New section 37 imposes a requirement on members of the Conservation Land Corporation to disclose a personal interest in a matter being considered or about to be considered by the Conservation Land Corporation, as soon as practicable after the relevant facts come to the member's knowledge. A member must disclose the nature and extent of the personal interest and how the interest relates to the matter being considered, or about to be considered, by the Conservation Land Corporation. The disclosure must be recorded in the minutes of the meeting. New section 37 also prescribes the circumstances where a member will have a personal interest in a matter. Under new section 37, a member does not commit an offence if they fail to disclose an interest. Where a member has a personal interest in a matter that is required to be disclosed, new section 37A is triggered.

Under new section 37A, a member with a personal interest that is required to be disclosed under new section 37 must not take part in any deliberation or decision of the Corporation about the matter, the member must be disregarded for the purpose of constituting the quorum of the Corporation for the deliberation or decision, and the quorum for the deliberation or decision is a majority of the persons entitled to participate in the deliberation or decision. However, subsection (2) of new section 37A provides that a failure by the member to disclose the interest in the matter does not, on its own, invalidate any decision of the Corporation about the matter.

New sections 37 and 37A bring the *Parks and Wildlife Commission Act* into line with other Northern Territory laws that impose a requirement on

members of boards and authorities to declare a personal interest in matters being considered by such boards and authorities of which they are a member, without making it an offence if a member fails to comply with those requirements.

Clause 7. Section 41 amended

Clause 7 amends section 41 of the *Parks and Wildlife Commission Act* so that the requirement for the Minister to establish a council to advise the Commission on matters concerning the management of parks and wildlife becomes discretionary instead of mandatory.

Clause 8. Part VI inserted

Clause 8 inserts new Part VI into the *Parks and Wildlife Commission Act*.

New Part VI is a transitional provision. It applies so that the offence provisions, as amended by the *Parks and Wildlife Commission Amendment Act 2017*, apply only in relation to offences committed after the commencement of that Act. The offence provisions in force before the commencement of the *Parks and Wildlife Commission Amendment Act 2017*, will continue to apply in relation to offences committed before the commencement of the *Parks and Wildlife Commission Amendment Act 2017*, including where any of the conduct constituting an offence occurred before the commencement of that Act.

Clause 9. Act further amended

This clause gives effect to the Schedule of the Bill which provides for a number of minor amendments. Those amendments modernise the language in the *Parks and Wildlife Commission Act*.

Clause 10. Repeal of Act

This is a standard clause which provides that this Act is repealed on the day after it commences. As this is an amending Act, there is no need to retain the Act on the statute book, once all the amendments to the *Parks and Wildlife Commission Act* have been effected.

Statement of Compatibility with Human Rights

Parks and Wildlife Commission Amendment Bill 2017

This Bill is compatible with the human rights as defined in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Bill

The *Parks and Wildlife Commission Act* (the Act) establishes a Commission to 'establish and manage, or assist in the management of, parks, reserves, sanctuaries and other land, to encourage the protection, conservation and sustainable use of wildlife, to a establish land-holding corporation (the Conservation Land Corporation) (the Corporation) in connection with those purposes, and for related purposes.

The purpose of the Parks and Wildlife Commission Amendment Bill 2017 (the Bill) is to make the requirement for the Minister to establish an advisory council for the Commission discretionary, to replace the offence at section 36 of the Act with a new offence for the unauthorised disclosure of confidential information, to replace the offence at section 37 of the Act with a requirement for members of the Corporation to disclose personal interests in matters being considered, or about to be considered by the Corporation and to prescribe the effect of a member disclosing a personal interest, to apply the principles of criminal responsibility in Part IIAA of the Criminal Code to offences in the Act, and to modernise the language and terminology used in the Act.

Human rights implications

The Bill engages the right conferred under Article 14(2) of the International Covenant on Civil and Political Rights that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

Strict liability

Clause 6 of the Bill replaces the offence at section 36 of the Act with a new offence. The new offence prescribes strict liability for one of its physical elements.

Section 43AN of the Criminal Code states that where strict liability is prescribed for an offence or an element of an offence, there are no fault elements for the offence or the physical element, and the defence of mistake of fact under section 43AX is available.

Strict liability offences engage the presumption of innocence because a person can be found guilty of an offence without the need to prove fault or 'a guilty mind' for the offence or for an element of the offence.

New section 36(2) states that strict liability applies to the physical element in new section 36(1)(a). That physical element is that the member of the Conservation Land Corporation obtains information in the course of performing duties as a member.

Strict liability is used in these circumstances because it can be reasonably expected that a member of the Conservation Land Corporation is aware of the fact that they are obtaining information in the course of performing their duties as a member. The objective of the offence is to ensure that members of the Conservation Land Corporation do not disclose confidential information without authorisation.

The offence at new section 36 is not wholly strict liability, as strict liability applies to only one physical element of the offence. Additionally, subsection 36(3) provides that subsection (1) does not apply where the person discloses the information for the administration of the Act, or with the consent of the person to whom the information relates, or for legal proceedings arising out of the operation of the Act, or if the information is otherwise available to the public. Section 43BE of the Criminal Code also provides that a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law.

Conclusion

This Bill does interfere with the presumption of innocence but in a reasonable and proportionate manner to achieve a legitimate outcome.

The Bill is, therefore, compatible with human rights.