

Community Rights and the Nature Conservation Act

1. General Overview

The *Nature Conservation Act* 1992 (“**the Act**”) is a Queensland Act that establishes a framework for creation and management of protected areas, for example national parks, and protection and management of native flora and fauna.

Under the Act there are 13 classes of protected area:

- national parks (scientific);
- national parks;
- national parks (Aboriginal land);
- national parks (Torres Strait Islander land);
- national parks (Cape York Peninsula Aboriginal land);
- national parks (recovery);
- conservation parks;
- resources reserves;
- nature refuges;
- coordinated conservation areas;
- wilderness areas;
- World Heritage management areas;
- international agreement areas.

These classes are set out in the Act from areas of highest protection to areas of lowest protection. National Parks offer the highest level of protection with a prohibition on mining or green house gas activities in the National Park. Before the Protected area status can be revoked, the decision must go through State Parliament.

As a general rule, all native fauna is “protected wildlife” and cannot be killed or harmed unless requirements of section 88 of the Act are met. There are three categories of wildlife, namely protected, international and prohibited wildlife. The category of protected wildlife is further divided into 5 classes. Native plants have a more complicated system.

Under the Act, a threatening process is one that is capable of threatening the survival of any protected area or protected wildlife or affecting the capacity of the area of wildlife to sustain natural processes.

Under the Act, the Minister is able to prepare an Interim Conservation Order which can prohibit or control a specified threatening process, if the Minister is of the opinion that threatened, rare or near threatened wildlife, declared critical habitat, declared areas of major interest or protected areas are subject to a threatening process.

2. Community Rights, Main Protected Areas

Section 6 of the Act states that “the 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.

Protected Area	Can public nominate?	Creation/removal	Public say on management plan?	Access to Information
National Park	No, but can send letter	Dedication by regulation by Governor in Council/Removed same way but can be disallowed by State Parliament	Yes on proposal and draft plan.	Try DERM website, asking regional DERM office to see public register, then <i>Right to Information Act 2009</i> and <i>Information Privacy Act 2009</i> .
Conservation Park	No, but can send letter	Dedication by regulation by Governor in Council/Removed same way but can be disallowed by State Parliament	Yes on proposal and draft plan.	Try DERM website, asking regional DERM office to see public register, then <i>Right to Information Act 2009</i> and <i>Information Privacy Act 2009</i> .
Nature Refuge	No, but can send letter	Declaration or by agreement with landholder	If compulsory declaration	Try DERM website, asking regional DERM office to see public register, then <i>Right to Information Act 2009</i> and <i>Information Privacy Act 2009</i> .

3. Community Rights, Protected Fauna

	Public rights to nominate	Listing as threatened	Public say on conservation plan?	Access to information
Protected Fauna (All native animals are protected)	No, but can send letter	By regulation.	Yes on proposal and draft plan but plans not done for all listed fauna	Try DERM website, asking regional DERM office to see public register, then <i>Right to Information Act 2009</i> and <i>Information Privacy Act 2009</i> .



4. Conservation and Development

Planning schemes should reflect the conservation values of land by way of appropriate designations. However due to pressure from property developers, land with conservation values is often developed. For example South East Queensland has had various State Planning Policies to protect koalas and criteria by which development in koala habitat is assessed yet koala habitat has continued to be cleared for residential development. In late 2007 the State of the Environment Report announced that koala numbers had fallen below their ecologically viable population levels for the region of 5000 animals. Conservation Plans can overrule planning schemes but the State government always wants to avoid paying compensation to landholders. For koalas for example the *Nature Conservation (Koala) Conservation Plan and Management Program 2006-2016* has used decision-making criteria that allows the majority of development to proceed.

The Act allows for Conservation Plans to be developed for any native wildlife, class of wildlife, native wildlife habitat or area of interest. Currently there are Conservation Plans for koalas, Dugong, crocodiles, macropods, whales and dolphins and protected plants.

5. Enforcement of the Nature Conservation Act

All protected areas are protected by the Act from unlawful interference with their natural or cultural values. Native species are protected by this Act from unlawful “taking” (which includes killing, injury or harm, but not by habitat loss) or “keeping” or “using”.

The Act contains community enforcement rights. These enable any member of the public to go to the Planning and Environment Court to seek a remedy against breaches of that Act. The general rule is that each side pays his or her own costs regardless of the outcome, unless the Court considers the case is vexatious.

Dr Carol Booth was the first person to use those community enforcement rights. After the State EPA (now the Department of Environment and Resource Management) failed to prosecute lychee farmers, Dr Booth obtained orders in 2 Planning and Environment Court cases¹ that lychee farmers dismantle electric grids used to kill or harm flying foxes. The Court held that the lychee farmers were in breach of s88 of the Act "Taking Protected Animal etc" and the farmers could not prove the defence under that section. A defence to unlawful taking is that it happened in the course of an otherwise lawful activity which was not directed towards the taking and which taking could not have been “reasonably avoided”.

Running a Court case is lots of work and involves a legal team and expert witness. Dr Booth’s evidence included evidence about the harm suffered by flying foxes that came in contact with the grids, pictures of dead flying foxes and admissions of killing by farmers and that there were alternative methods of crop protection available to the farmers.

¹ *Booth v Yardley*, www.edo.org.au/edoqld/edoqld/new/Alert%2030%20Nov%202006.pdf, and *Booth v Frippery Pty Ltd and Thomas*, www.edo.org.au/edoqld/edoqld/new/Alert%20Booth%20v%20Frippery%20Rehearing%20Win.pdf.



6. Useful References

Environmental Defenders Office (Qld) Inc.

Ph: (07) 3211 4466

Email: edoqld@edo.org.au

Website: <http://www.edo.org.au/edoqld/home.html>

Environmental Defenders Office of North Queensland Inc

Ph: (07) 4031 4766

Email: edonq@edo.org.au

Website: <http://www.edo.org.au/edonq/>

Department of Environment and Resource Management

Ph: 13 7468

Website: www.derm.qld.gov.au

DERM Annual Report March 2009-June 2010

<http://www.derm.qld.gov.au/about/corporatedocs/annualreports.html>

State of the Environment Report

http://www.derm.qld.gov.au/environmental_management/state_of_the_environment/state_of_the_environment_queensland_2007/index.html

