

## Lord Howe Island Amendment Bill 2003

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to amend the *Lord Howe Island Act 1953* (***the Principal Act***) so as:

- (a) to increase the membership of the Lord Howe Island Board (***the Board***) from 5 to 7, and
- (b) to establish the Board's charter, along the lines of a local government council's charter under the *Local Government Act 1993*, and
- (c) to remove the Board's current monopoly on the gathering, collection and sale of *Kentia* palms, seeds and seedlings, and
- (d) to make provision with respect to the payment of compensation to the holder of a special lease under section 22 of the Principal Act for loss suffered by the holder when lands are withdrawn from the lease or the lease is not renewed, and
- (e) to transfer, from the Principal Act to the regulations under that Act, certain constraints on the Board's powers to determine annual rentals, and
- (f) to increase certain penalties for offences under the Principal Act and the regulations under that Act, and
- (g) to allow offences under the Principal Act and the regulations under that Act to be dealt with by way of penalty notice, and
- (h) to provide that the Board's staff are to be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*, and
- (i) to ensure that the Board's members and staff are not personally liable for anything done or omitted to be done by them in good faith for the purpose of executing the Principal Act, and
- (j) to provide for the future review of the Principal Act, and
- (k) to make other minor, consequential or ancillary amendments to the Principal Act, and
- (l) to enact consequential savings and transitional provisions.

#### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Lord Howe Island Act 1953* set out in Schedule 1.

**Clause 4** makes a consequential amendment to the *Land and Environment Court Act 1979* in relation to appeals against valuations.

**Clause 5** makes a consequential amendment to the *Fines Act 1996* in relation to penalty notices.

#### **Schedule 1 Amendment of Lord Howe Island Act 1953**

##### **Constitution of the Board**

Sections 4 and 5 of the Principal Act deal with the constitution of the Board.

**Schedule 1 [1] and [26]** replace those sections with a new section 4 and a new Schedule 1A.

Proposed section 4 provides for the Board to have 7 (previously 5) members, of whom 4 (previously 3) are to be Islanders, 1 (previously 0) is to represent the interests of business and tourism, 1 (previously 1) is to represent the interests of conservation and 1 (previously 1) is to represent the interests of Government. As is currently the case, the Islander members are to be elected by Islanders.

Part 1 of Schedule 1A contains a definitions clause.

Part 2 of Schedule 1A makes provision with respect to the constitution of the Board, including the appointment of a Chairperson and Deputy Chairperson, term of office (up to 3 years), remuneration, vacation of office, filling of vacancies and disclosure of interests.

Part 3 of Schedule 1A makes provision with respect to the procedure of the Board, including the quorum for meetings, voting at meetings and transaction of business outside meetings.

**Schedule 1 [2] and [21]** make consequential amendments to sections 9A and 38.

#### **The Board's charter**

**Schedule 1 [1]** also inserts a new section 5 which sets out the Board's charter.

The charter, adapted from a similar provision in the *Local Government Act 1993*, includes a particular reference to the Board's obligation to manage, protect, restore, enhance and conserve parts of Lord Howe Island in a manner that recognises the World Heritage values in respect of which the Island is inscribed on the World Heritage List referred to in the United Nations *Convention Concerning the Protection of the World Cultural and Natural Heritage*.

#### **Gathering, collection and sale of Kentia palms**

Proposed clause 3 of Schedule 2, to be inserted by **Schedule 1 [28]**, facilitates the revocation of existing lease conditions that result in the Board having a monopoly with respect to the gathering, collection and sale of Kentia palms, seeds and seedlings.

**Schedule 1 [3], [18], [19] and [23]** make consequential amendments to sections 11, 34 and 38.

#### **Payment of compensation**

**Schedule 1 [11]** amends section 22 so as to require the Board to pay compensation to the holder of a special lease if land is withdrawn from the lease, or the lease is not renewed, because the land concerned is required for home sites or public purposes. The amount of compensation payable will be determined by the Valuer-General, in accordance with regulations under the Principal Act and (in the case of the non-renewal of a lease) subject to the qualification that the lease that would otherwise have been renewed is to be taken to have been a lease for 18 months. The Valuer-General's determination as to compensation will be appealable to the Land and Environment Court.

#### **Determination of annual rentals**

**Schedule 1 [8]** amends section 21 so as to omit provisions that impose minimum limits on the annual rent that can be determined by the Board in relation to a lease in perpetuity under the Principal Act. **Schedule 1 [15]** makes a consequential amendment to section 25.

**Schedule 1 [8], [9], [10] and [11]** amend sections 21 and 22, and repeal section 21A, so as to omit provisions that allow the Board to determine annual rent for leases under the Principal Act. Those provisions are replaced by a new section 22B, inserted by **Schedule 1 [12]**, generally in the same terms as the provisions that have been omitted, except that the minimum period between successive rent determinations is to be reduced from 10 years to 3 years. **Schedule 1 [13] and [14]** make consequential amendments to sections 24 and 25.

#### **Maximum penalties**

**Schedule 1 [7], [16], [17] and [24]** amend sections 19B, 32, 33 and 38 so as to increase, to 50 penalty units (currently \$5,500), the maximum fines that can be imposed for offences against the Principal Act and the regulations under that Act. This will bring those penalties into line with the penalties available for similar offences under the *National Parks and Wildlife Act 1974*.

#### **Penalty notices**

**Schedule 1 [20]** inserts a new section 37B that permits an authorised officer (that

is, a member of the Board's staff specifically authorised in that regard or a police officer) to issue penalty notices for offences under the Principal Act, or the regulations under that Act, that are declared by the regulations to be penalty notice offences.

#### **Conditions of employment of Board's staff**

**Schedule 1 [1]** also substitutes section 6. The new section 6 makes it clear that the Board's staff are to be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.

#### **Personal liability of Board members and staff**

**Schedule 1 [6]** inserts a new section 14A that excludes Board members, staff members and other persons from any personal liability for things done, or omitted to be done, by them in good faith for the purpose of executing the Principal Act.

#### **Review of Principal Act**

**Schedule 1 [25]** inserts a new section 40 that requires the Principal Act to be reviewed, and a report on the review to be tabled in Parliament, as soon as possible after the period of 5 years from the date of assent to the proposed Act.

#### **Minor amendments**

**Schedule 1 [5] and [22]** amend sections 13 and 38 to replace references to "public accommodation" with references to "tourist accommodation". **Schedule 1 [4]** makes a consequential amendment to section 13.

#### **Savings and transitional provisions**

**Schedule 1 [27]** amends Schedule 2 so as to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act (**clause 1A**).

**Schedule 1 [28]** further amends Schedule 2 so as to insert specific savings and transitional provisions, including a definition (**clause 2**), a provision enabling the Minister to revoke any conditions of a lease under the Principal Act that reserves palm trees or palm tree products to the Crown (**clause 3**), a provision enabling the existing Board members to serve out their terms of office as members of the reconstituted Board (**clause 4**) and a provision preserving the effect of current determinations of annual rent (**clause 5**).