

2022



Daniel James Racovolis

FLANDRENSIAN ECOLOGICAL COUNTY OF URABBA BILL 2022

EXPLANATORY MEMORANDUM

(Circulated by authority of Mr Racovolis)

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Outline

FLANDRENSIAN ECOLOGICAL COUNTY OF URABBA BILL 2022

Outline

This Bill will implement in Urabba Parks the bilateral Treaty on Corporation and Establishment of the Ecological County (Sanctuary) of Urabba (the *Treaty*) with the Grand Duchy of Flandrensis, which Urabba Parks had signed on 18 August 2022. The Treaty provides for the formation of an ecological sanctuary of the Grand Duchy of Flandrensis (the *County*) at Urabba Street Reserve. This Bill establishes the Flandrensiian Ecological County of Urabba as a territory of Urabba Parks, and provides for the making of legislative Ordinances for the County.

Once established upon the commencement of this Bill as an Act, the County will become Urabba Parks's first jurisdictional division and territory. Being a separate jurisdictional division will allow for the differentiation between matters associated with Urabba Street Reserve and Urabba Parks as a whole. With an ultimate intention to expand operations into other physical spaces as well as online, it is expedient to provide specifically for the government of the County.

Under this Bill, laws for the County are made by an Ordinance, which can be made by the Manager-General in Council, or (subject to delegation) by the Manager of the County with the approval of the responsible Minister. This Bill provides that Ordinances are subject to disallowance by the Corporate Parliament, in addition to being disallowable under the *Legislation Act 2022*. There is also provision for the disallowance of Ordinances by the Grand Duchy of Flandrensis under the terms of the Treaty.

In addition to preliminary provisions in Part 1, the provisions relating to the establishment of the County in Part 2 and the legislative power to make Ordinances in Part 3, this Bill deals with other matters relating to the government of the jurisdictional division. These matters include the exercise of the executive power in Part 4, the exercise of the judicial

power in Part 5 and matters such as the grant of pardons and remissions and the appointment of the Manager of the County in Part 6.

Authorities

CONSTITUTIONAL PROVISIONS

Constitution, paragraph 122(1)(b) of the Constitution 64

STATUTES

Ashmore and Cartier Islands Acceptance Act 1933 69
Human Rights (Parliamentary Scrutiny) Act 2011, section 3 64
Legislation Act 2003..... 64
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STATEMENT OF REASONABLENESS

Flandrensiian Ecological County of Urabba Bill 2022

This Bill, as read on 29 August 2022, is reasonable having regard to the legal and ethical obligations of Urabba Parks

Overview of the Bill

1. This Bill provides for the establishment of the Flandrensiian Ecological County of Urabba as a territory of Urabba Parks and provides for the legislative, executive and judicial functions in relation to the territory. There is also provision for the appointment of the Manager of the Flandrensiian Ecological County of Urabba by the Manager-General. Divisional laws take the form of Ordinances, which are made by the Manager-General or the Manager of the Flandrensiian Ecological County of Urabba on the advice or the approval of the Minister. Executive and judicial functions are carried out by Corporate authorities and courts or by agencies and courts of other jurisdictional divisions appointed by agreement made by the Minister.

Power to enact Bill

2. Paragraph 122(1)(b) of the Constitution provides Parliament with the power to enact laws “the government of a jurisdictional division where the legislature of the jurisdictional division does not have power to make laws.” This allows the Parliament to establish a territory, as a territory legislature could not create itself.

Promotion of rights under the Urabba Parks Bill of Rights

3. Urabba Parks respect in its governance, management and operations human rights within the meaning of section 134 of the Constitution. That constitutional provision defines human rights as being those recognised under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* of the Commonwealth (the ‘nationally-recognised human rights’).

4. The law proposed by this Bill will allow for the making of Ordinances for the government of the Flandrensiian Ecological County of

Statement of Reasonableness

Urabba, with provision for the publication in the *Gazette* of a notice of the making of an Ordinance. As legislative instruments under the *Legislation Act 2022*, Ordinances are also published on the Corporate Register of Legislation. The Register is subject to technical standards for the publication of legislation, to improve its usability and ensure that it is accessible to the people who rely on older or assistive technology.

5. As such, the Bill is compatible with nationally-recognised human rights such as:

(A) fair trial and fair hearing rights under Article 14 of the International Covenant on Civil And Political Rights (the ICCPR); and

(B) rights of access to information under Article 9 and access to justice under Article 13 of the Convention on the Rights of Persons with Disabilities (the CRPD).

Conclusion

The Bill as read on 29 August 2022 is reasonable, having regard to the legal and ethical obligations of Urabba Parks.

L.S.

Daniel James Racovolis

The Enactor of Urabba Parks Proprietary Limited

29 August 2022

Notes on clauses

Preamble

Clause 1

Notes on clauses

Notes on clauses

Preamble

The Bill begins with a preamble, which outlines the background to the Bill and its intentions in establishing the Flandrenian Ecological County of Urabba, and reads as follows:

WHEREAS the Enactor purchased the Rankins Springs campus of Urabba Parks also known as Urabba Street Reserve on the tenth day of August two thousand eleven and on the ninth day of July two thousand twelve transferred the land to Urabba Parks:

AND WHEREAS since the aforementioned transfer to Urabba Parks of the Rankins Springs campus, Urabba Parks has been seeking ways to further its charitable purposes by seeking to connect with like-minded organisations:

AND WHEREAS in furtherance of its charitable purposes, Urabba Parks and another environmental charity, the Grand Duchy of Flandrenian, had on 18 August 2022 signed an agreement known as the Treaty on Corporation and Establishment of the Ecological County (Sanctuary) of Urabba which permits Urabba Parks to establish Urabba Street Reserve as an ecological sanctuary under the Constitution of the Grand Duchy of Flandrenian:

AND WHEREAS the Parliament of Urabba Parks is willing to establish a jurisdictional division for Urabba Street Reserve known as the Flandrenian Ecological County of Urabba:

AND WHEREAS by the Constitution it is provided that the Parliament may make laws for the government of a jurisdictional division where the legislature of the jurisdictional division does not have power to legislate:

Part 1—Preliminary

Clause 1: Short title

6. This clause is a formal provision and specifies that the short title of the Act resulting from the enactment of this Bill is the Flandrenian Ecological County of Urabba Act 2022.

Clause 2: Commencement

Clause 3
Notes on clauses

7. This clause provides for the commencement of the Act on a day or days to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Enactorial Assent, they commence on the day after the end of that period. It is expected the Manager-General will issue a Proclamation fixing the commencement of the provisions on a single day.

Clause 3: Definitions

8. This clause defines terms related to the Bill, including:

(A) County—the Flandrenian Ecological County of Urabba to be established by this Bill; and

(B) Manager—this term includes:

(i) the Manager of the County for the time being; and

(ii) the Acting Manager appointed by the Manager-General; and

(C) Ordinance—an Ordinance made under the Act.

Notes on clauses

Part 2—The Flandrenian Ecological County of Urabba

Division 1—Establishment

Clause 4

Notes on clauses

Part 2—The Flandrenian Ecological County of Urabba

Division 1—Establishment

Clause 4: Proclamation by Manager—General fixing date on which Treaty shall come into operation [see Note 2]

9. This clause provides that the Manager-General may by proclamation fix a date for the coming into force for Urabba Parks of the document known as the *Treaty on Corporation and Establishment of the Ecological County (Sanctuary) of Urabba* (the **Treaty**), agreed to by Urabba Parks and the Grand Duchy of Flandrensis on 18 August 2022.

Clause 5: Establishment of the Flandrenian Ecological County of Urabba

10. This clause intends to bring into force article 5 of the Treaty. Subclause (1) declares Urabba Street Reserve is by this Act declared to be an ecological sanctuary under article 1.4 of the Constitution of Grand Duchy of Flandrensis as a territory under the authority of Urabba Parks, under the name of the “Flandrenian Ecological County of Urabba”.

11. Subclause (2) declares that the County is set aside for environmental charity purposes only, no person has the right of abode in the County.

Division 2—Application of laws

Clause 6: Application of existing law

12. This clause provides that subject to this Act, a principle or rule of common law or equity of Urabba Parks as in force in Urabba Street Reserve made before the commencement of this section is, so far as applicable, in force in the County. Under clause 5 of Part II of Schedule I of the Treaty, Urabba Parks may legislate for the application of laws effective in Urabba Street Reserve at the time of the making of this Treaty in the County.

Clause 7: Ordinance may amend or repeal adopted laws

13. This clause provides a law in force in the County by virtue of section 6 may be amended or repealed by an Ordinance or by a law made under an Ordinance. Under clause 6 of Part II of Schedule I of the Treaty, Urabba Parks may legislate for the application of non-statute laws of Urabba Parks or another jurisdictional division of Urabba Parks subject to legislation.

Clause 8: Application of Corporate Acts

14. This clause provides that an Act or a provision of an Act (whether passed before or after the commencement of this section) is in force as such in the County except as otherwise provided by that Act or by another Act. Under clause 7 of Part II of Schedule I of the Treaty, Urabba Parks may legislate for the non-application of an applied or adopted law.

Part 3—Legislative power

Clause 9: Ordinances

15. Subclause (1) provides the Manager-General may make Ordinances for the peace, order and good government of the County. An Ordinance is primary legislation of the County. The use of the word ‘Ordinance’ is based on its use in the *Ashmore and Cartier Islands Acceptance Act 1933* of the Commonwealth.

16. Subclause (2) provides the Manager may not make Ordinances under a delegation made under section 19 unless the Minister consents to the making of the Ordinance. This provision allows for the Minister to retain power over approval of Ordinances when the Manager-General has delegated to the Manager the power to make Ordinances under section 19.

17. Subsection (3) provides that notice of the making of an Ordinance shall be sent to the Grand Duchy of Flandrensis and published in the *Gazette*. The requirement to publish a notice in the *Gazette* is to ensure the general right to information, and the notice sent to the Grand Duchy of Flandrensis satisfies the requirements for Urabba Parks to exercise its legislative rights under clause 3 of Part II of Schedule I of the Treaty,

Notes on clauses

Part 3—Legislative power

Division 2—Application of laws

Clause 10

Notes on clauses

which provides for the power to make Ordinances provided they are sent to the Grand Duchy of Flandrensis and subject to its disallowance.

18. Subsection (4) an Ordinance shall, unless the contrary intention appears in the Ordinance, come into operation on the date of publication of the notice. It is expected that Ordinances come into operation on the day following registration in the Corporate Register of Legislation established under the *Legislation Act 2022*.

Clause 10: Tabling of Ordinances

19. Subclause (1) provides for the disallowance of Ordinances by the Grand Duchy of Flandrensis within 6 months of sending. This subclause does not apply to an Ordinance made with the approval of the Grand Duchy of Flandrensis, and is intended to bring into effect the restriction on the power of Urabba Parks to legislate for the County under clause 6 and Schedule I of the Treaty. Under clause 9 of Part II of Schedule 1 of the Treaty, Urabba Parks may also legislate for the requirements for tabling of legislation into the Parliament of Urabba Parks, including any limitation on the remaking of legislation while required to be tabled, disallowed or subject to disallowance.

20. Subclause (2) provides the Manager-General may disallow an Ordinance made by the Manager under a delegation made under section 19 within 6 months after the publication of the Ordinance in the *Gazette*, and an Ordinance so disallowed ceases to have effect.

21. Subclause (4) provides that the tabling provisions in subclause (5) apply to an Ordinance unless the Ordinance unless the legislative directors by circular resolution consent to the making of the Ordinance, or the non-application of the tabling provisions in relation to the Ordinance. If the tabling provisions do apply in relation to an Ordinance, it must be laid before each House of the Parliament within 15 sitting days of that House after the notice in the *Gazette*. An Ordinance not tabled in this timeframe ceases to have effect. These requirements are in addition to the requirements for tabling under the *Legislation Act 2022*.

22. Once tabled, an Ordinance may be disallowed a House of the Parliament by a passed resolution passed within 15 sitting days after tabling. Subclause (6) provides that if a motion of disallowance is

introduced within 15 sitting days after tabling, and has not been withdrawn, called on or disposed of, the Ordinance is deemed to have been disallowed. Subclause (7) provides that an Ordinance is re-tabled before a House of the Parliament if the House dissolves, expires or prorogues and a notice of a motion to disallow an Ordinance is in place.

23. Subclause (8) provides that the disallowance of an Ordinance has the same effect as a repeal, while subclause (9) clarifies that if an Ordinance that has been disallowed repeals another law, the repealed law is ‘revived’ as if the repealing Ordinance had not been made. Provisions relating to the disallowance of Ordinances, and the effects thereof, apply equally to parts of Ordinances as they do to entire Ordinances.

Clause 11: Ordinance not to be re-made while required to be tabled

24. This clause voids an Ordinance containing a provision being the same in substance as a provision of an Ordinance that is liable to be tabled or which has been laid before each House of the Parliament in the past 7 days, unless the Ordinance is made with the approval of each House or the legislative directors by circular resolution.

Clause 12: Ordinance not to be re-made while subject to disallowance

25. This clause voids an Ordinance containing a provision being the same in substance as a provision of an Ordinance that is subject to a notice of a motion of disallowance under clause 10.

Clause 13: Disallowed Ordinance not to be re-made unless resolution rescinded or House approves

26. This clause voids an Ordinance containing a provision being the same in substance as a provision of an Ordinance that has been disallowed or taken to be disallowed under clause 10, except with the rescinding of the resolution or the approval by the disallowing House or in the case of a disallowance by the Grand Duchy of Flandrensis, its approval.

Clause 14: Regulations, rules and by-laws

27. This clause applies the notice and disallowance provisions for Ordinances to regulations, rules and by-laws made under Ordinances.

Notes on clauses

Part 3—Legislative power

Part 4—Executive power

Clause 15: Powers and functions under adopted laws

28. This clause provides the Minister may exercise powers and functions under laws having force under clause 6, and may delegate such powers and functions and engage persons to perform those functions on the Minister's behalf. Under clause 10 of Part II of Schedule 1 of the Treaty, Urabba Parks has the power to legislate for powers and functions under applied or adopted laws.

Clause 16: Arrangements with Ministers and jurisdictional divisions

29. This clause provides the Minister may enter into arrangements with the appropriate Minister of Urabba Parks or a jurisdictional division for the exercise of powers and functions under laws in force in the County (not just those having force under clause 6). Under clause 11 of Part II of Schedule 1 of the Treaty, Urabba Parks has the power to allow arrangements with Urabba Parks or another jurisdictional division for the provision for the exercise of powers and the performance of functions in and in relation to the County under laws in force in the County by officers and employees of the Government of Urabba Parks or the jurisdictional division and of authorities of the Urabba Parks or the jurisdictional division.

Part 5—Judicial power

Clause 17: Courts and tribunals

30. This clause provides in a particular manner, the courts and tribunals of Urabba Parks or another jurisdictional division appointed by the Minister has jurisdiction in the County, where no court or tribunal of the County has jurisdiction. Under clause 11 of Part II of Schedule 1 of the Treaty, Urabba Parks has the power to legislate for the exercise of the judicial power of the County by persons, courts and tribunals of Urabba Parks or other jurisdictional divisions where no authority established under the law of the County has jurisdiction. A court or tribunal of Urabba Parks or another jurisdictional division exercising powers under this clause:

(A) may sit in the County or elsewhere it may lawfully sit; and

(B) has the same practice and procedure as matters relating to its ordinary jurisdiction.

Part 6—Other matters

Clause 18: Grant of pardon, remission etc.

31. Subclause (1) provides the Manager-General, acting with the advice of the Minister may by signed warrant pardon or remit sanctions of offenders. Under clause 14 of Part II of Schedule 1 of the Treaty, Urabba Parks has the power to legislate for the executive prerogative of Urabba Parks in relation to the County.

32. Subclause (2) provides the power to pardon in relation to accomplices who gives evidence that leads to the condemnation of the principal offender or any of the principal offenders.

Clause 19: Delegation to Manager

33. Subclause (1) allows for the Manager-General to delegate to the Manager any of the powers of the Manager-General under this Act. Under clause 13 of Part II of Schedule 1 of the Treaty, Urabba Parks has the power to legislate for the representative of Urabba Parks in the County, and performing acts on behalf of Urabba Parks or the representative in the County.

34. Subclause (2) provides the Minister must approve acts done by the Manager under a delegation made under subclause (1).

35. Subclause (3) clarifies that a delegation of a power under this section does not prevent the exercise of the power by the Manager-General.

Clause 20: Appointment of Manager

36. This clause provides that an Ordinance may provide for:

(A) a Manager of the County who shall be appointed by the Manager-General on advice of the Minister, and who shall hold office during the Manager-General's pleasure;

Notes on clauses

Part 3—Legislative pow

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(B) the appointment of a person to exercise the powers of the Manager of the County under the definition of *Manager* in clause 3;

(C) the appointment of a deputy of the Manager who may exercise the powers of the Manager subject to directions given by the Manager, provided the appointment of a deputy under this paragraph or the exercise of any of the powers of the Manager by a deputy appointed under this paragraph does not prevent the exercise of a power by the Manager.

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