



# Nature Conservation Act 2014

## Introduction

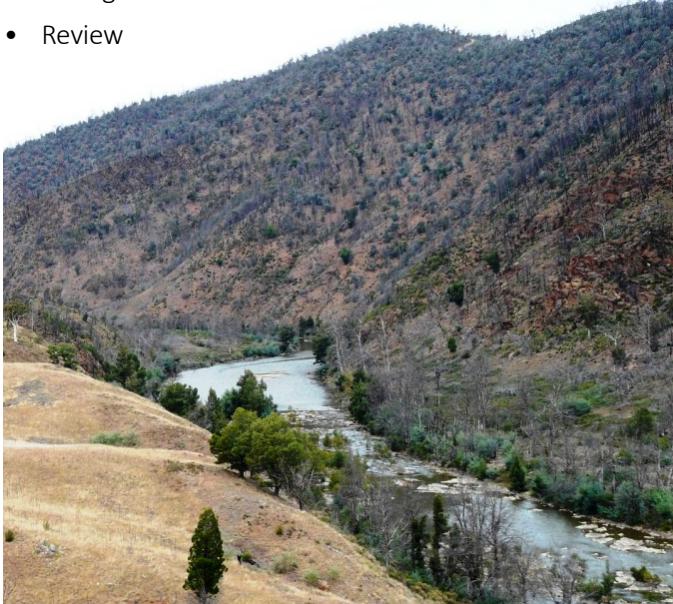
The *Nature Conservation Act 2014* commenced on 11 June 2015. The Act replaces the *Nature Conservation Act 1980*.

The Act is available to the public on the legislation register [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

Factsheets and other information will be published progressively on the internet.

The Following Questions and Answers provide an overview of the Act under the following headings.

- Conservator's roles and functions
- Research and Monitoring
- Conservation officers
- The Scientific Committee
- ACT Nature Conservation Strategy
- Listing threatened species, ecological communities and threatening processes
- Listing processes
- Action Plans
- Protected Native Species
- Controlled Native Species Management Plans
- Offences and penalties
- Reserve Management
- Emergencies Act
- Review



## Conservator's roles and functions

### Question 1. Who appoints the Conservator of Flora and Fauna?

The Director-General appoints a public servant as the Conservator of Flora and Fauna.

### Question 2. What are the roles and functions of the Conservator of Flora and Fauna?

The following arrangements now apply:

- The Conservator is responsible for monitoring biodiversity.
- There are a number of things that the Conservator must have regard to in exercising their functions. This includes the objects of this Act, the Nature Conservation Strategy and any Conservator Guidelines. The Conservator would also have regard to any relevant findings of monitoring programs, threatened species and ecological communities Action Plans and Reserve Management Plans.
- The Conservator can develop and publish guidelines that articulate the biodiversity priorities that the Conservator will pursue through the development and planning process;





## Research and Monitoring

### Question 3. What are the Conservator's responsibilities in monitoring nature conservation under the Act?

The Conservator has a responsibility to monitor the state of nature conservation in the ACT, to monitor the management of nature conservation and to make these reports publicly available.

The Conservator must:

- prepare and publish a two-year biodiversity research and monitoring program;
- publish a biennial report on this program and its implementation;
- consult with the Scientific Committee on priorities for the program;
- consult with the Scientific Committee on appropriate methods and approaches to monitoring; and
- consider the role of citizen science as appropriate in the approach to monitoring and arrangements for data sharing and transfer; and

The first Biodiversity Research and Monitoring Program is currently being prepared and will be finalised by the Conservator following consultation with the Scientific Committee.

## Conservation officers

### Question 4. Who appoints a conservation officer and what are their powers?

The Director-General appoints a conservation officer. Rangers in the Parks and Conservation Service (TAMSD), ecologists in the Environment and Planning Directorate and the Conservator are conservation officers.

Conservation Officers have a significant role in assisting the management of threatened species and ecological communities through undertaking research and monitoring. Conservation officers also have roles in issuing permits and nature conservation licences (through Conservator delegations). Conservation officers are largely responsible for the enforcement of the Act.

Conservation Officers are given similar powers to officers managing the *Fisheries Act 2000* and the *Environment Protection Act 1997*.

Conservation Officers are receiving training on the new Act, in particular focusing on changes to penalties and enforcement.

## The Scientific Committee

### Question 5. Who appoints the Scientific Committee?

The Minister appoints members to the Scientific Committee. In doing so the Minister must appoint a person to the Committee who has appropriate scientific expertise in biodiversity or ecology and conservation science or management. The majority of the Committee must not be public servants and the Chair and Deputy Chair must not be public servants.

Note: The Flora and Fauna Committee has been renamed the Scientific Committee.

### Question 6. What are the roles of functions of the Scientific Committee?

The Scientific Committee has the following functions:

1. to advise the Minister about nature conservation;
2. to advise the Conservator about nature conservation;
3. to exercise any other function given to the committee under this Act or another territory law.

The Act provides for significant roles for the Committee in making recommendations to the Minister on the listing of threatened species.

## ACT Nature Conservation Strategy

### Question 7. Who prepares a draft ACT Nature Conservation Strategy?

The Conservator prepares a draft Nature Conservation Strategy for the ACT, that includes strategies relating to:

- Landscape scale approaches across tenures;
- Restoration of habitats;
- Threats to biodiversity; and
- The impacts of climate change and biodiversity research and monitoring program reports.

### Question 8. Who approves a new ACT Nature Conservation Strategy?

The Minister can either approve or reject the draft strategy, or return the draft strategy to the Conservator to undertake further consultation or consider a relevant report or revise the draft strategy.

### Question 9. How often is an ACT Nature Conservation Strategy reviewed?

The Conservator is responsible for monitoring the effectiveness of the Nature Conservation Strategy for the ACT. The Conservator is also responsible for reviewing the Nature Conservation Strategy 10 years after the plan commences.



## Listing threatened species, ecological communities and threatening processes

### Question 10. What is a threatened native species and what categories of threatened species are recognised under the Act?

A threatened native species means a native species listed on the threatened native species list. The list is divided into the following categories:

- i. Extinct
- ii. Extinct in the wild
- iii. Critically endangered
- iv. Endangered
- v. Vulnerable
- vi. Conservation dependant
- vii. Provisional

The Minister develops criteria to be used in deciding whether a species is eligible to be included in a category on the threatened native species list. The criteria may only include scientific matters. The Minister consults the Scientific Committee on the criteria.

### Question 11. What is a threatened ecological community and what categories of threatened ecological communities are recognised under the Act?

An ecological community means the extent in nature in the ACT of an assemblage of native species that inhabits a particular area in nature; and satisfies the criteria prescribed by regulation (if any). A threatened ecological community means an ecological community listed in the threatened ecological community list. The list is divided into the following categories:

- i. Critically endangered
- ii. Endangered
- iii. Vulnerable
- iv. Provisional

The Minister develops criteria to be used in deciding whether an ecological community is eligible to be included in a category on the threatened native species list. The criteria may only include scientific matters. The Minister must consult with the Scientific Community about the Criteria and the Scientific Committee can seek a review of the Criteria.

### Question 12. How is a threatening process defined?

A threatening process means a process that threatens, or may threaten, the survival, abundance or evolutionary development of a native species or ecological community. The Minister develops criteria to be used in deciding whether a threatening process is eligible to be included in a category on the threatened native species list. The criteria may only include scientific matters.

## Listing processes

### Question 13. Who may nominate a native species, ecological community or threatening process for inclusion, transfer or omission from a list?

Any person may make a nomination to the Scientific Committee to include, transfer or omit an item from a list. A nomination must comply with any requirements prescribed by regulation for the nomination. The Scientific Committee may nominate items itself.

### Question 14. What is a listing assessment?

A listing assessment is carried out by the Scientific Committee.

The assessment involves:

- i. Assessing whether the item is eligible for inclusion in, or transfer within a list; and
- ii. If eligible for inclusion or transfer, the category (if any) of the list the item is eligible to be included in or transferred to.

The Scientific Committee may undertake public consultation to inform a listing assessment.

### Question 15. What is listing advice and who prepares it?

A listing advice statement is a notifiable instrument that sets out the grounds on which the item (species, community or process) is eligible to be included in, transferred within, or omitted from a list, and the main factors that make it eligible. The listing advice outlines the Scientific Committee's rigorous assessment of the item against specified criteria, illustrating to the public its conservation status and eligibility for listing.

The Scientific Committee must prepare a listing advice statement to the Minister not later than 1 year after a public consultation period or within 13 months from receipt of the nomination, if consultation is not undertaken.



#### Question 16. Who decides whether to include, transfer or omit a native species, ecological community or threatening process on/ from a list?

The Minister, with advice from the Scientific Committee decides whether to include, transfer or omit a native species, ecological community or threatening process on/from a list.

#### Question 17. Who declares of a native species or ecological community as threatened, or the listing of a threatening process?

The Minister makes lists containing the species, ecological communities or threatening processes eligible to be included.

#### Question 18. What is conservation advice and who prepares it?

Conservation advice is a notifiable instrument that sets out what (if anything) may be done to stop the decline of, or support the recovery of, a species or community listed as threatened. The advice is based off existing information to be used as a guide for identifying priority conservation actions, including proposals for the identification, protection and survival of a threatened species or ecological communities, or, in the case of a threatening process, proposals to minimise its effect. The Scientific Committee must prepare a conservation advice.

## Action Plans

#### Question 19. For what items must an Action Plan be prepared? What is the scope of an Action Plan?

The Conservator must prepare a draft Action Plan for each relevant species, ecological community and key threatening process, if they occur in the ACT. This includes preparation of an Action Plan for regular migratory species meaning a listed migratory species that regularly occurs in the ACT.

#### Question 20. What is the scope of an Action Plan?

Action Plans are required to consider:

- the impact of climate change on the species or ecological community;
- threats to the species or ecological community;
- connectivity requirements of the species or ecological community;
- critical habitat of the species or ecological community.

#### Question 21. Why is there a requirement for a Migratory Species Action Plan?

Listed migratory species are those that are protected under Commonwealth law and international arrangements. These have been provided with special protection status under ACT law for a number of years. A consequence of the special protection status is that they have been required to be assessed for environmental impact assessments.

The new provisions require the development of an Action Plan for migratory species which will cover those listed species likely to occur in the ACT, as regular or opportunistic migrants. This Action Plan will help inform environmental impact assessment processes, but also identify strategies to improve management of the habitat of migratory species.

#### Question 22. Who is responsible for implementing and monitoring Action Plans?

The Conservator must take reasonable steps to implement an Action Plan in force for a relevant species, ecological community or key threatening process. The Conservator must take reasonable steps to monitor the effectiveness of an Action Plan.

A progress report is required on each Action Plan after five years and mandatory review by the Scientific Committee is to occur at 10 years. Reviews can occur earlier than this if needed. Minor amendments can also be made to Action Plans in the absence of a full review. The Minister may extend the time for conducting a review.

## Protected Native Species

#### Question 23. What is a Protected Native Species?

A Protected Native Species is a native species declared by the Minister on a Protected Native Species list. The protected native species list is divided into three categories:

- restricted trade;
- rare; or
- data deficient.

A native species is eligible to be included in the restricted trade category in the protected native species list if unrestricted trade in the species is likely to have a negative impact on populations of the species in the wild.

A native species is eligible to be included in the rare category in the protected native species list if it is not a threatened native species and it does not have special protection status and it is rare in the ACT.



A native species is eligible to be included in the data deficient category in the protected native species list if there is insufficient information about the species in the ACT for the species to be eligible to be a threatened native species or included in any other category in the protected native species list.

## Controlled Native Species Management Plans

### Question 24. What is a declared Controlled Native Species and what is a Controlled Native Species Management Plan?

A Controlled Native Species means a native species declared to be a Controlled Native Species. Controlled Native Species may be a plant or an animal, or another organism.

The Minister may declare a native species to be a Controlled Native Species if satisfied that the species is having an unacceptable impact on an environmental, social or economic asset.

A draft Controlled Native Species Management Plan means a plan detailing how the controlled native species may be appropriately managed and how the plan may apply, adopt or incorporate an instrument as in force from time to time. A Controlled Native Species Management Plan may incorporate requirements agreed to in a conservation agreement under the EPBC Act, for example.

A Controlled Native Species Management Plan for a native animal must be consistent with each approved code of practice and mandatory code of practice under the *Animal Welfare Act 1992* that applies to the animal.

Plans for species do not have to cover the entire ACT. They may only apply to specific areas or a specific tenure. The Conservator must consult with the lessee and/or the Custodian of the land in preparing a draft Controlled Native Species Management Plan for a controlled native species on stated land.

The Conservator and Custodian can authorise people to implement the Plan.

## Offences and penalties

### Question 25. What has changed regarding offences (prohibited and restricted activities) and penalties under the Act?

The majority of the offences within the Act are continued from the 1980 Act. They have been reviewed and are consistent with comparable offences in other ACT legislation or with similar offences in other jurisdictions.

Some offences under the Criminal Code 2002 are also applicable. Penalties have been revised to ensure compliance with the *Human Rights Act 2004*.

The most serious offences within the Act relate to either clearing vegetation or damaging land in reserves without approval through a licence, or a development approval. Penalties for these offences are on a sliding scale, depending on whether or not the offending action was intentional, reckless or negligent.

The penalties also reflect the seriousness of the damage with a higher level offence for clearing or damage that impacts on significant biodiversity assets.

### Question 26. What does the application of IUCN categories to ACT reserves mean?

The application of International Union for Conservation of Nature (IUCN) categories to ACT reserves assists management of ACT reserves by ensuring protected areas set aside for conservation purposes are managed according to IUCN management objectives where appropriate. IUCN categories are also used to report on protected areas to the International Convention on Biological Diversity. This provision provides an obligation to manage a reserve consistent with an IUCN category, if one has been assigned, in the absence of a management plan. Reserves in the ACT generally fall into the IUCN categories of Wilderness Area, National Park or Habitat/Species Management Area. Further information is available on the Collaborative Australian Protected Area Database (CAPAD) at [www.environment.gov.au/land/nrs/science/capad](http://www.environment.gov.au/land/nrs/science/capad)

## Reserve Management

### Question 27. Reserve Management Plans (previously Plans of Management) are now prepared under the Nature Conservation Act (previously the Planning and Development Act) – How does this work now?

This Act brings requirements for management planning for conservation reserves into the *Nature Conservation Act 2014*. Processes have been streamlined and are a similar to process for other plans and strategies.

Provisions for the allocation of an IUCN category can assist management through ensuring protected areas set aside for conservation purposes are managed according to IUCN management objectives, where appropriate (responding to a recommendation by the Commissioner for Sustainability and the Environment). Management planning remains the responsibility of the land custodian (such as the Parks and Conservation Service) and is to reflect the purpose and objectives of the reserve according to Schedule 3 of the *Planning and Development Act 2007*.



### Question 28. What are Activities Declarations?

An Activities Declaration is made by the Conservator of Flora and Fauna on a reserve by reserve basis and improves public information of what activities are allowed in individual reserves. An Activities Declaration will indicate what activities are prohibited and what are restricted (ie. can be undertaken in the reserve under certain circumstances). Examples of restricted activities are dogs on leash, mountain bike riding on management trails only, equestrian activities on equestrian trails only, and environmental volunteer activities that are to be conducted in accordance with volunteer works programs approved by the Parks and Conservation Service.

Examples of prohibited activities include no camping, no dogs, and no equestrian activities. The prohibited and restricted activities differ between reserves. A map of the reserve showing trails related to restricted activities is provided for each Activities Declaration. The Parks and Conservation Services will place new signs reflecting the Activities Declarations in prominent locations in reserves.

### Question 29. Are any Special Purpose Reserves included in the Act?

The Act improves management of areas for conservation by identifying additional areas, predominately Special Purpose Reserves managed by the Parks and Conservation Service, to be included as reserves for the purposes of planning and management. This allows areas of public land that are closely associated with the management of nature reserves to be managed consistently and sympathetically with the adjoining nature reserve or national park. The Special Purpose Reserves to be brought into the Act are largely occur in the Murrumbidgee and Molonglo River Corridors and managed for both conservation and recreation.

### Question 30. What is a Resource Protection Area?

A new provision for Resource Protection Areas means that parts of reserves can be closed off for an extended period to, for example, protect sensitive breeding habitat, or to allow restoration following bushfires or flood. If an area is declared a Resource Protection Area then use and access would be restricted. The current Act allows reserve closure for operational reasons but is not clear about closures over the longer term. This may include closures that prohibit or restrict particular actions for some time or permanently. Resource Protection Areas would be managed by the Parks and Conservation Service.

### Question 31. Why do we need to prepare a Ramsar Wetland Management Plan?

A Ramsar Wetland Management Plan will underpin Ramsar site management at a more detailed level than a Reserve Management Plan covering a much larger area.

## Emergencies Act

### Question 32. Are emergency activities under the Nature Conservation Act coordinated with bushfire management?

The Act recognises the importance of bushfire emergencies. The *Emergencies Act 2004* has precedence over this Act where a person is exercising a function of the *Emergencies Act 2004* for the purpose of protecting life or property and controlling, extinguishing or preventing the spread of a fire.

## Review

### Question 33. When will the Act be reviewed?

The Minister must review the operation of the Act and present a report of the review to the Legislative Assembly as soon as practicable after the end of the Act's 10th year of operation.

The implementation of the Act will be monitored to ensure that the new provisions are effective and being implemented as intended. Minor policy changes would be proposed as needed to address emerging policy issues.