

Submission for the review of the Nature Conservation Act

Summary

From the perspective of a Parkcare Group, the major deficiency of the current Nature Conservation Act is the impracticability of its enforcement. A substantial part of the Act is the protection of biodiversity, nature reserves and the national park. Yet the mechanisms by which the Conservator and the conservation officers can implement the Act are unclear. The legal background to the implementation of the Act appears to rest between the Magistrates Court and the Conservator, with the roles of neither adequately transparent. A simple, interpretable and enforceable Act is needed which will provide the necessary powers to the Conservator to deal with infringements in a rapid, on-the-spot manner similar to the way parking infringements are handled.

Deficiencies in the Current Act; compliance and enforcement.

A major component of the Act deals with the protection of flora and fauna, and of the ‘Reserved Areas’ of the ACT. Extensive penalty clauses set out the ‘Penalty units’ that apply to contravening the protection clauses. The list of offences is long, and ranges from killing an animal with special protection status (maximum fine \$500) to widespread illegal land clearing in a reserve, where a recent case resulted (subsequently) in an increase of the fine from \$5,500 to \$220,000. In the majority of examples, the fine is \$75. Trivial penalties for actions contravening the Nature Conservation Act imply that the conservation of nature is trivial, including the trapping or killing of endangered and protected birds. In land clearing and tree felling cases, the financial gain to the perpetrator can be in considerable excess of the penalty.

To take any action under the current Act the burden of proof lies with the authorities, in a similar way to criminal cases. Thus unless a ‘conservation officer’ actually sees an infringement in progress and is able to identify the perpetrator, or a member of the public takes a photographic or video record, no action will be taken. The inability of conservation officers to request identity, confiscate chainsaws, bolt-cutters or traps means that they are unable to uphold the Act. In practice the level of enforcement of any of the penalties under the Nature Conservation Act is negligible, with only two prosecutions over five years, and these were the blatant clearing of hectares of Namadgi National Park.

Infringement notices are theoretically possible under a ruling of the Magistrates court, which provides a mechanism by which offences can be handled, provided they classify as ‘strict liability’ offences. These are a small minimum of the total offences specified in the Act. Currently these are inadequately used under the Act, but have been employed, as described below. Having a subset of the offences that can result in infringement notices, while the rest are completely unable to be implemented, leads to confusion.

There are extensive appeal and case review provisions in the Act, which make the legal process of enforcing any penalty a practical deterrent to any action by the Conservator or conservation officers.

Under the Act the only persons who can implement the penalty provisions of the Act are the Conservator of Flora and Fauna (currently the Chief Executive of the Department) and ‘conservation officers’, appointed by the Conservator. While many of the rangers hold positions designated as ‘conservation officers’, in practice the park rangers have no authority to issue on-the-spot infringement notices, nor even confiscate firearms in use for illegal shooting on reserves, nor cutting tools used to

remove park fences to allow entry of 4WD vehicles to reserves. Nor can they even stop off-road cyclists riding through formerly undisturbed bush on reserves. The only compliance with the Nature Conservation Act that does occur is because most citizens recognise the sense of protecting the fauna and flora, and do so. The implementation of the Act by the ‘conservation officers’ is limited to suggesting that offenders change their ways. Parkcarers are more likely to see actual illegal activities in progress than rangers as they are more frequently in the reserves, and often speak to those carrying out illegal activities with some effect. Occasionally such a confrontation is hostile, particularly with off-road cyclists.

The ACT Government ‘Review of the Nature Conservation Act 1980’ states

‘Since 2000, over 1500 potential offences under the NC Act have been reported. Of these, 354 were investigated resulting in 10 infringement notices and two prosecutions.

The lack of prosecutions and fines may indicate general community compliance with the NC Act, and prosecution arguably has been regarded as a last resort. However, it is possible the enforcement provisions are viewed as inadequate and the low level of prosecutions is undermining the ability of the NC Act’s objects to be satisfactorily fulfilled.’

From the perspective of a Parkcare group there is no actual implementation of the Act on reserve land- eg. Canberra Nature Parks, and no-one in practice has any authority to carry out the implementation. The only case known to the writer where any action was taken in a Canberra Nature Park, was when a dog was repeatedly savaging a kangaroo on a reserve, and several members of the public rang the police. It is likely that that action was taken under the Cruelty to Animals legislation, not the Nature Conservation Act.

Off-reserve conservation

The management of rural lease land is subject to management agreements between the leaseholder and the ACT Environment Department (DECCEW) under the Nature Conservation Act. These are confidential, and hence not open to public scrutiny with respect to their implementation. The abundant infestation of rural lease land by declared harmful weed species, for example Patterson’s Curse and St. John’s Wort, implies that the relevant management agreements are not being implemented. The Conservator of Flora and Fauna, who is the only person who knows the content of the management agreement on that area of lease land, should take punitive action.

I am not aware that any such punitive action has been taken over the last decade, despite flagrant breaches of land management agreements (assuming that they include land management!). The purpose of these agreements is to maintain the ecological quality of leased land, which is self-evidently not happening, indeed the ecological quality is continually degrading. This is well recognised, but no action taken, though the Conservator has a clear responsibility under the Nature Conservation Act. It is pointless making enforceable agreements for land conservation if those responsible for the enforcement take no action.

Ian Falconer, on behalf of the Friends of the Aranda Bushland Inc.