



ACT
Government

Environment and Planning

Nature Conservation Bill 2014 Consultation Report



PREPARED BY THE ENVIRONMENT AND PLANNING DIRECTORATE
SEPTEMBER 2014



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Director-General, Environment and Planning Directorate, ACT Government, GPO Box 158, Canberra, ACT 2601

Telephone: 02 6207 1923

Website: www.environment.act.gov.au

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Background

The *Nature Conservation Act 1980* (the 1980 Act) has been the ACT’s primary legislation for nature conservation policy and management. The Act created the statutory position of the Conservator of Flora and Fauna (the Conservator), the Flora and Fauna Committee (FFC) and the ACT Parks and Conservation Service (the Parks and Conservation Service). The 1980 Act also provided for the development of a range of strategies and plans that guide management actions. Other provisions relate to licensing and compliance, penalties and enforcement.

The Nature Conservation Bill 2014 will replace the 1980 Act with consequential amendments to the Planning and Development Act 2007 (Planning Act).

The draft Bill builds on the strong nature conservation framework created by the 1980 Act by facilitating flexible approaches to management of species and ecosystems. These new provisions aim to update nature conservation processes and procedures and, importantly, to make processes more accountable and transparent. New provisions aim to rationalise regulatory approaches while maintaining appropriate and efficient environmental standards.

The Bill complements the recently finalised Nature Conservation Strategy which outlines the principal strategies and actions for nature conservation in the ACT over the next decade.

How this report is organised.

A response has been prepared for each of the major consultation approaches outlined. Each section of the consultation report is colour coded to enable readers to differentiate which responses have arisen from which consultation process.

Consultation process	Section of report	Colour of Section
Roundtable Report on the Nature Conservation Bill 2014	Part A	Blue
Conservation Council and Environmental Defenders Office provided a submission on the Bill to the Commissioner for Sustainability and the Environment.	Part B	Purple
Exposure Draft of the Nature Conservation Bill	Part C	Pink
Discussion Paper – Review of the Nature Conservation Act 1980.	Part D	Green



History of formal consultation

Roundtable Report on the Nature Conservation Bill 2014 including Conservation Council Submission to Commissioner for Sustainability and the Environment

On Thursday, 27 February 2014 the Assembly passed a motion that the Government:

- a. Establish a roundtable to explore the issues relating to the draft Nature Conservation Bill. This roundtable is to:
 - i. be chaired by the Commissioner for Sustainability and the Environment;
 - ii. include all relevant stakeholders, including:
 - Territory and Municipal Services (TAMS) Parks and Conservation Service;
 - Conservation Planning and Research and legislative drafters from the Environment and Sustainable Development Directorate (now Environment and Planning Directorate);
 - Key conservation and rural lessee groups; and
 - Representatives from each of the three political parties;
 - iii. allow sufficient time for full discussion of the issues; and
 - iv. provide a detailed report to the Assembly by May 2014 on the range and extent of issues raised by stakeholders on the draft Nature Conservation Bill.

The Roundtable was held on 14 April 2014, 1:30-4:30 pm at the Legislative Assembly Reception Room. The Roundtable was chaired by the Commissioner for Sustainability and the Environment and included all key stakeholders:

- Minister Simon Corbell MLA, Minister Shane Rattenbury MLA and Ms Nicole Lawder MLA attended the Roundtable with their advisers.
- Community representatives included representatives from the Conservation Council of the ACT and South East Region, the Rural Landholders Association, the Canberra Ornithologists Group, National Parks Association and Friends of Grasslands.
- The Chairs of the Flora and Fauna Committee, the Natural Resource Management Advisory Committee and ACT Natural Resource Management Council attended.
- Staff from the Office of the Commissioner for Sustainability and the Environment and from the then Environment and Sustainable Development and TAMS Directorates also attended.

A report on the outcomes of the Roundtable, written by the Commissioner for Sustainability and the Environment, was tabled on 15 May 2014 and is available on the Environment and Planning Directorate's website¹. The Response to the Roundtable recommendation is included in this Consultation Report (■ Blue Section).

Following the Roundtable, the Conservation Council and Environmental Defenders Office provided a submission on the Bill to the Commissioner for Sustainability and the Environment. Although not formally received as a submission on the Bill, the recommendations have been considered and changes made to the Bill where appropriate. The response to the Conservation Council's and Environmental Defenders' Submission is included in this Consultation Report (■ Purple Section).

¹ http://www.environment.act.gov.au/environment/review_of_the_nature_conservation_act/files/report-to-legislative-assembly



Exposure Draft of the Nature Conservation Bill

The Nature Conservation Bill 2013 was tabled as an exposure draft on 31 October 2013.

- Public submissions were invited on this document for six weeks until 13 December 2013.
- Key conservation stakeholders were advised about the consultation process by letter on 31 October 2013.
- Extensions to provide submissions were granted until 31 December 2013.
- Late submissions received by 8 January 2014 were taken into account. Eight submissions were received.
- The submissions are publicly available on the Environment and Planning Directorate's website.

Submissions were received from:

- Richard Sharp;
- Geoffrey Dabb;
- ACT Equestrian Association Inc.;
- Canberra Ornithologists Group;
- Friends of Grasslands;
- National Parks Association of the ACT;
- Commissioner for Sustainability and the Environment; and
- ACT Environmental Defenders Office.

Some informal comments were also received and changes made in response to those comments.

The Submissions are available on the Environment and Planning Directorate's website.² The summary of responses to the issues raised is included in this consultation report (Pink Section).

A copy of the Exposure Draft Bill is available on the legislation register.³

Discussion Paper – Review of the Nature Conservation Act 1980.

Conservation stakeholders and the general public were consulted on a broad range of proposed amendments through the Discussion paper on the "Review of the Nature Conservation Act 1980"⁴ in late 2010. Submissions were accepted until April 2011 and are available on the Environment and Planning Directorate website⁵.

The Discussion Paper included 43 'have your say' questions. In developing the Nature Conservation Bill following on from the review of the Act, the responses to the 'have your say' were analysed as were more general comments. Many of the suggestions also helped inform development of the *Nature Conservation Strategy 2013-2023*⁶.

The summary of responses to the issues raised as a result of consultation on the discussion paper is included in this consultation report (■Green Section).

2 http://www.environment.act.gov.au/environment/review_of_the_nature_conservation_act

3 www.legislation.act.gov.au

4 http://www.environment.act.gov.au/__data/assets/pdf_file/0020/575201/Review_of_the_Nature_Conservation_Act_Discussion_Paper_WEB.pdf

5 http://www.environment.act.gov.au/environment/review_of_the_nature_conservation_act

6 http://www.environment.act.gov.au/cpr/nature_conservation_strategy



Community Forum

A community forum was held on Tuesday, 1 February 2011. A report from this forum is available on the Environment and Planning Directorate's website⁷. The outcomes of this forum also helped inform development of the Exposure Draft Nature Conservation Bill 2013.

Price Waterhouse Coopers Review of the Review of the Roles and Functions of the Conservator of Flora and Fauna

PriceWaterhouseCoopers (PwC) undertook a *Review of the Roles and Functions of the Conservator of Flora and Fauna* in 2011, on behalf of the former Department of Environment, Climate Change, Energy and Water (now Environment and Planning Directorate). Key stakeholders within and outside Government were consulted in the preparation of the report. The review's recommendations, including a more strategic role for the Conservator of Flora and Fauna, have informed the exposure draft of the Nature Conservation Bill 2013. The Report is report is available to download from the Environment and Planning Directorate's website⁸.

Marsden and Jacob Associates Consultancy

The first step of the *Nature Conservation Act 1980* review was the appointment of Marsden and Jacob Associates (MJA) to provide advice on the form, scope, function, policy, principles and objectives of contemporary best practice nature conservation legislation. The MJA report is available to download from the Environment and Planning Directorate's website.⁹

Other relevant consultations that have informed the Nature Conservation Bill

Alignment of species lists with those of the Commonwealth reflects a decision of the Council of Australia Governments and public consultation on this occurred through the Hawke review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The ACT Pest Animal Management Strategy 2011-2021 included discussion of controlled native species plans.

Classification of reserves according to International Union for Conservation of Nature categories was identified in the Commissioner for Sustainability and the Environment's Report on Canberra Nature Park (nature reserves); Molonglo River Corridor (nature reserves) and Googong Foreshores Investigation.

Provisions for monitoring of biodiversity, migratory species action plans and species conservation programs (which would be underpinned by species conservation plans) were identified during consultation and incorporated into the final *ACT Nature Conservation Strategy 2013-23*.

⁷ http://www.environment.act.gov.au/__data/assets/pdf_file/0007/575206/Mark_Butz_NC_Act_community_forum_report.pdf

⁸ http://www.environment.act.gov.au/__data/assets/pdf_file/0008/575207/PWC_report_on_Conservator_roles.pdf

⁹ http://www.environment.act.gov.au/__data/assets/pdf_file/0004/575203/MARSDEN_JACOBS_REPORT.pdf



	Recommendations	Response
	Ecosystems approach	
1a.	Ecosystem-based biodiversity conservation is an issue for stakeholders, especially whether and how the Nature Conservation Bill (the Bill) addresses best practice biodiversity conservation at a broad level. An issue for Stakeholders was whether the Bill addresses best practice in this regard.	<p>Agreed</p> <p>Marsden Jacobs Associates prepared a report “<i>Enhancing nature conservation policy in the ACT: outcomes from the review of the Nature Conservation Act 1980</i>”.¹⁰ The report found: “While the NCA has been largely unchanged since 1980, the basic structure and content is not radically different from what might be considered contemporary best practice legislation”.</p> <p>A strategic/funding approach to ecosystem based conservation is preferred. This is outlined in the statutory Nature Conservation Strategy as well as a range of other plans as outlined below. The Conservator/Custodians are required to implement the Strategies and Plans and to monitor and report on progress.</p> <ul style="list-style-type: none"> • The Nature Conservation Strategy is the framework for biodiversity management in the ACT, and this document takes a landscape or ecosystems approach to conservation management. • Action Plans for individual species are included in broader strategies, for example the woodlands strategy, in an effort to address species management within ecosystems. <p>To ensure landscape scale conservation is considered, an additional head of consideration has been added that in developing the Nature Conservation Strategy the Conservator must consider:</p> <ul style="list-style-type: none"> • Landscape scale approaches across tenures; • Restoration of habitat; • Landscape connectivity; • threats to biodiversity across the landscape; • Impacts of climate change. <p>The following has been included as a mandatory consideration for the development of Action Plans:</p> <ul style="list-style-type: none"> • Impacts of climate change; • Threats to the species; • Connectivity requirements for the species or ecological community; • Critical habitat.

¹⁰ http://www.environment.act.gov.au/__data/assets/pdf_file/0004/575203/MARSDEN_JACOBS_REPORT.pdf



	Recommendations	Response
1b.	<p>There is concern that current mechanisms for biodiversity conservation are not delivering protection and enhancement of biodiversity values. It was suggested that mechanisms be put in place to shift thinking to focus on all biodiversity values on a landscape approach, not just the management of threatened species.</p>	<p>Noted</p> <p>Through arrangements for the planning and management of reserves, the Bill provides for management of habitat on 61% of lands in the ACT:</p> <ul style="list-style-type: none"> • Wilderness; • National Parks; • Nature Reserves; • Catchment Areas; • Special Purpose Reserves. <p>New requirements are that the custodian has a responsibility to implement management plans and to report on progress at five years with a review at 10 years.</p> <p>A Ramsar Wetland Management Plan proposed under the Bill also takes a landscape planning approach for these significant wetlands.</p> <p>A Migratory Species Action Plan will take an ecosystem based approach to identifying and managing habitat for listed migratory species.</p> <p>Additional requirements for landscape approaches will need to be taken into account in developing the Nature Conservation Strategy and in Action Plans (See 1 a above).</p>



	Recommendations	Response
1c.	Biodiversity management to take place across the landscape not just for threatened species and not on a case by case basis.	<p>Agreed</p> <p>The ACT’s network of reserves provides for the management of habitat of all species across the landscape – not just threatened species. The provisions in the Bill about reserve management aim to ensure that management is consistent with the purpose for which it was established.</p> <p>The Nature Conservation Strategy is the key statutory strategic document for biodiversity conservation which outlines the landscape scale approach that is proposed to be taken in the ACT. The strategy focuses on undertaking actions to manage threats to all biodiversity, such as weeds and pests, climate change etc. The Strategy also focuses on cross tenure approaches to conservation, adaptation to climate change, connectivity, restoration of habitat. There is a requirement for the Conservator to implement the Strategy, to report on progress and to review the Strategy.</p> <p>The bill also protects:</p> <ul style="list-style-type: none"> • all native mammals, birds, reptiles, amphibians; • protected and threatened fish and invertebrates; • nests of native mammals, birds, reptiles, amphibians; • all plants and trees on public land; • protected and threatened plants across all tenures. <p>New measures allow for the Conservator to develop Native Species Conservation Plans for any species that requires management (but must do so for conservation dependent species).</p> <p>Additional requirements for landscape approaches will need to be taken into account in developing the Nature Conservation Strategy and in Action Plans (see 1 a above).</p>



	Recommendations	Response
1d.	Delivery of biodiversity outcomes to be proactive not reactive.	<p>Noted</p> <p>A balance between proactive and reactive approaches to biodiversity conservation is required.</p> <p>Proactive approaches to nature conservation include the establishment and management of conservation reserves. This includes provision of the Parks and Conservation Service which aims to manage the system of reserves. Other approaches that are proactive include anticipating the impacts of climate change and improving the resilience of the landscape so that biodiversity has improved opportunities to adapt.</p> <p>Most other approaches are, at least in part, reactive because they respond to issues that have arisen from past actions. These reactive actions can be identified and therefore lend themselves to a strategic approach as outlined in the Nature Conservation Strategy and include:</p> <ul style="list-style-type: none"> • responding to threats to biodiversity through, for example, managing weeds and pests; • improving connectivity across the landscape in response to past fragmentation; • undertaking restoration actions where habitats have degraded. <p>Other reactive elements are needed to allow responses to unknown threats. These responsive elements that need to be embedded in legislation include:</p> <ul style="list-style-type: none"> • the range of offences and penalties for inappropriate actions in reserves and across the landscape; • directions and restorative actions; • management agreements for utilities; and • arrangements to respond quickly to new threats such as for biosecurity arrangements. <p><u>No additional legislative changes required.</u></p>
1e.	Views were expressed that the process for the protection of threatened species is (today) not delivering the required outputs because of the lack of resources allocated for monitoring, the continuing loss of habitat and the lack of a landscape approach within legislation. This was not a comment on the legislation itself.	<p>Noted</p> <p>There are a range of new provisions in the Bill that aim to improve management and make a firm commitment to monitoring.</p> <p>The issue of adequate resourcing is not a matter for the Act.</p> <p><u>No additional legislative changes required.</u></p>



	Recommendations	Response
1f.	The Nature Conservation Strategy be given statutory recognition in the Act.	<p>Agreed</p> <p>The Nature Conservation Strategy is given statutory effect under Chapter 3 of Nature Conservation Bill 2014. This includes requirements to prepare, implement, report and review.</p> <p><u>No additional legislative changes required.</u></p>
2.	The role and functions of the Conservator	
2a.	Section (s) 17(1) of the Bill requires the appointment of a public servant as the Conservator. The wording of this legislation implies that the role of Conservator must be filled by someone already within the Public Service. Does this exclude looking outside the public service to fill the role which may in turn exclude worthy candidates?	<p>Noted</p> <p>The Director-General can undertake recruitment processes to identify people with appropriate qualification, skills and experience to be the Conservator. On appointment, if the person is not already employed in the ACT public service they would be so appointed.</p> <p><u>No additional legislative changes required.</u></p>
2b.	In the Bill (s. 21) the Conservator is given responsibility for making, monitoring and carrying out guidelines. The role, if any, of Scientific Committee in this process to provide a level of external scrutiny is an issue that was raised as one needing clarification and consideration.	<p>Agreed</p> <p>Consultation with the Scientific Committee about guidelines is appropriate.</p> <p>A requirement has been included for the Conservator to consult with the Scientific Committee in the preparation of Conservator Guidelines.</p>
2c.	The required expertise of the Conservator is an issue, in particular whether the Conservator should be required to have expertise in nature conservation and ecologically sustainable development.	<p>Agreed</p> <p>A provision has been added to the Bill at s. 17 that in appointing a Conservator, the Director-General take reasonable steps to ensure that the Conservator has relevant qualifications and/or experience for the position.</p> <p>In making this decision the Director-General can take into account the expected time the person is likely to be appointed for.</p>



	Recommendations	Response
2d.	<p>The statutory relationship between the Conservator and the Commissioner for Sustainability and the Environment to ensure dialogue on significant decisions was identified as an issue.</p>	<p>Part Agreed</p> <p>The roles of both the Commissioner and the Conservator are clearly defined in legislation.</p> <p>Provisions in the Bill require the Conservator to contribute data to the State of Environment Reporting (SOE); and to implement any government response to the SOE or a special report.</p> <p>It is appropriate for the Conservator to consult with the Commissioner regarding preparation of the Nature Conservation Strategy in relation to Government responses to SOE reports and special investigations. A requirement has been added requiring the Conservator to consult with the Commissioner for Sustainability and the Environment on the development of the Nature Conservation Strategy.</p> <p>It is not appropriate for the Conservator to be required to consult with the Commissioner in making decisions. The Commissioner is empowered to address complaints if there are concerns about government decisions (<i>Commissioner for Sustainability and the Environment Act 1993</i> s 13). Requiring consultation with the Commissioner in taking decisions could cause conflicts if, for example, the Conservator acted on the advice of the Commissioner, and a complaint was subsequently made about the decision.</p>
2e.	<p>Stakeholders asked how should the role of the Conservator as delegated under planning legislation (for example the Conservator’s role in Environmental Impact Assessment) be specified and supported in the Bill?</p>	<p>Noted</p> <p>The Bill allows for the Conservator to have powers under other legislation.</p> <p>What powers the Conservator is given under legislation is a matter for those other Acts, including the Planning Act which specifies the role of the Conservator in Environmental Impact Statement matters and land management agreements.</p> <p><u>No additional legislative changes required.</u></p>
2f.	<p>At present the Conservator is a Public Servant with other functions as part of a senior management role. It was suggested that the role of the Conservator could be strengthened further if it was a dedicated role (without other management responsibilities), if required qualifications were specified in the Bill and if resourcing was increased.</p>	<p>Noted</p> <p>The issue of a dedicated role and resourcing is an administrative issue and not a legislative function.</p> <p><u>No additional legislative changes required.</u></p>



	Recommendations	Response
2g.	Concern was expressed that the Conservator's decisions may be overruled by the Chief Planning Executive.	<p>Noted</p> <p>The Chief Planning Executive has no statutory role in the Nature Conservation Bill 2014. The Conservator cannot be overruled by the Chief Planning Executive on matters that are the subject of this Bill.</p> <p><u>No additional legislative changes required.</u></p>
2h.	The Conservator's independence from the Environment and Sustainable Development Directorate and from planning processes is an issue for stakeholders.	<p>Noted</p> <p>The Bill empowers the Conservator to act independently in accordance with the wide-ranging powers and functions conferred by the Bill.</p> <p>As a statutory officer, the Conservator has specific responsibilities under the Act, including for decision-making functions, which are separate from other roles in the Directorate. Appointment provides a discrete and clearly defined role and associated responsibilities that require the Conservator to exercise their functions, including decision-making, at arm's length from the Directorate in which they are located. This requires the Conservator to make decisions independently of other responsibilities as a senior executive of the Directorate.</p> <p>Where the Conservator is located is an Administrative Arrangements issue.</p> <p><u>No additional legislative changes required.</u></p>
3	Off reserve management of biodiversity	
3a.	The planning process should encourage threatened species management within developments. Developers can reintegrate biodiversity into the urban landscape.	<p>Noted</p> <p>Strategy 4 of the Nature Conservation Strategy includes a range of strategies to address these concerns as outlined below.</p> <p>Strategy 4.2. Manage urban open space- The ACT Government will develop policies to improve biodiversity outcomes from landscaping;</p> <p>Strategy 4.3. Enhance connectivity through urban areas -connectivity of native habitat can be improved by enhancing street plantings and increasing 'nativeness' and heterogeneity.</p> <p>Strategy 4.4. Manage the urban edge-The government will continue to support Programs in new residential development areas, to minimise impact of urbanisation on species.</p> <p>Strategy 4.5 Support urban landcare and ParkCare activities.</p> <p>Strategy 4.6 Manage and enhance 'green' assets and infrastructure- The Strategy recognises the importance of natural features ... in urban areas for biodiversity.</p> <p>The Bill requires the Conservator to implement the Strategy and to report on progress.</p> <p><u>No additional legislative changes required.</u></p>



	Recommendations	Response
3b.	Threatened species and habitat species could be planted on public land and used within residential gardens.	<p>Noted</p> <p>Strategy 4 of the Nature Conservation Strategy includes a range of strategies (refer 3b above) to address these concerns.</p> <p><u>No additional legislative changes required.</u></p>
3c.	<p>How can the legislation better support private landholders to contribute to conservation management?</p> <p>(i) There is currently no mechanism for the recognition of off reserve management of native grasslands (including on rural leases, roadside verges and within urban open space). In the current language conservation directions are “imposed” on landholders, this was considered negative. There is no formal recognition for landholders conserving biodiversity on their land and it was suggested that this could be addressed in the Bill.</p>	<p>Agreed</p> <p>S.6 Objects 2 (c) of the Nature Conservation Bill promotes the involvement of, and cooperation between, Aboriginal and Torres Strait Islander people, landholders, other community members and governments in conserving, protecting, enhancing, restoring and improving biodiversity.</p> <p>A new object has been added to the Bill to recognise the significant stewardship role that landholders have in managing the natural assets on land that they manage.</p> <p>The Environment and Planning Directorate will further explore options for promoting conservation on private land.</p>
3.d.	Volunteer conservation agreements could be used as a mechanism for off reserve management.	<p>Not agreed</p> <p>Voluntary conservation agreements are a mechanism that is used in other states and territories for freehold land and perpetual leases to make a perpetual change in management for the purposes of conservation.</p> <p>The primary purpose of these arrangements is to bind future landholders to the outcomes that the current owner has agreed.</p> <p>In some jurisdictions, rate rebates apply and there are some federal taxation incentives where it can be demonstrated that there has been a loss in land value as a result of making a permanent land use change towards conservation. This generally only applies where there are no productive uses.</p> <p>There are currently powers and mechanisms to allow for conservation in the ACT’s leasehold system. The leaseholder can apply to have the lease varied for conservation purposes which would have the same effect as entering a conservation covenant. Details of required management such as an environmental management plan can be included in the lease.</p> <p><u>No additional changes to the Nature Conservation Bill are required as there are current legislative mechanisms that could be used to support a voluntary stewardship schemes.</u></p>



	Recommendations	Response
3.e.	A “head of power” could be placed in the legislation so that a stewardship program could occur in the future in agreement with rural leases.	<p>Not agreed</p> <p>There are current legislative mechanisms that could be used to support a voluntary stewardship scheme. Refer to 3.d.</p> <p><u>No additional legislative changes required.</u></p>
3.f.	At present the major impediments to landholders managing conservation on rural land are that there is no assistance to manage threatened species and that lease holders still have to pay rent and rates and manage weeds and pests on their land as well as undertake conservation activity.	<p>Noted</p> <p>Weed and pest management is considered part of a landholder’s duty of care. Where weeds and pests impact significantly on conservation assets assistance may be available.</p> <p>Assistance programs to restore or manage threatened species habitat are available and are outlined in the Nature Conservation Strategy. These include the ACT Government’s Woodland Restoration Program (\$1m from 2011-2014), and the Commonwealth funded Restore ACT Goorooyarroo (\$2.155 million from 2012-2018) are two examples.</p> <p>Landholders are also eligible to apply for Environment Grants (\$180,000 in 2014-15) and the new ACT Rural Grants project (\$450,000 2013-14 2015-16) to support ACT graziers to implement innovative sustainable farming practices.</p> <p>Further assistance will be explored as opportunities arise.</p> <p><u>No additional legislative changes required.</u></p>



	Recommendations	Response
3.g.	Rates could be removed on designated conservation areas on rural leases to provide recognition and incentive for lessees managing conservation.	<p>Noted</p> <p>The <i>Rates Act 2004</i> s. 41 Exemption from rates provides that (1) The Minister may exempt the owner of a parcel of land from payment of rates owing for any period in relation to the parcel of land, or from payment of a stated part of the rates. (3) The Minister may make guidelines for the exercise of a function under this section.</p> <p>The Rates Act, s. 42, Remission of rates provides that the Minister may remit the rates, or a part of the rates, payable for a parcel of land if the Minister is satisfied that it is fair and reasonable in the circumstances. S. 42 (2) indicates that the Minister may make guidelines for the exercise of a function under this section.</p> <p>It should be noted that use of rates as a tool for conservation are limited. They generally only apply to land set aside and are not tied to additional conservation management or actions onground. While they may provide a form of recognition, it is unlikely to be a motivating incentive (rate based incentives are generally capped depending upon the size of the area set aside and can range from as little as \$6 per hectare per annum to \$500-\$1,500 per property for very large properties with large areas set aside).</p> <p>Any case for rate relief because of conservation efforts would need to be considered on a case by case basis dependent upon the scale of the conservation effort, how the outcomes have been secured and the length of the arrangement.</p> <p><u>No addition legislation is needed.</u></p>



	Recommendations	Response
3.h	Biodiversity off reserve is very important and a legislative mechanism is needed to maintain and enhance this habitat such as a “head of power” requiring the Conservator to deal with biodiversity on rural land.	<p>Noted</p> <p>The Conservator already has powers to direct conservation on leasehold land. Conservation directions under the Bill can be used to direct landholders to manage habitat. They could also provide compliance to underpin significant grants or other agreements on leasehold land (if this was needed). An additional legislative mechanism for enforcement would not add any value.</p> <p>Also land management agreements specify some requirements, as do Pest Animal and Pest Plant Management Plans (once developed).</p> <p>An unspecified “head of power” is not suitable as would constitute an unfettered power which could result in unreasonable requirements being placed on landholders.</p> <p><u>No additional legislative changes required.</u></p>
3.i	The current legislative framework including the Nature Conservation Act may already hold sufficient powers and mechanisms for actions (as above) to occur – it was suggested that it was in the areas of policy and implementation and that work needs to occur and there could be improvements.	<p>Agreed</p> <p>The Government will explore with rural landholders arrangements for improved management for conservation. Incentive based measures such as providing extension services and/or financial support are preferred over regulatory measures.</p> <p><u>No additional legislative changes required.</u></p>
3.j	Long term conservation agreements (as are possible under the EPBC Act) may assist with compliance and achieving outcomes.	<p>Noted</p> <p>A landholder can enter a conservation agreement with the Commonwealth to embed arrangements for EPBC Act listed matters if they choose to. The Bill does not preclude the use of conservation agreements under the EPBC Act.</p> <p>The Bill includes provisions for Conservation Directions which could be used for compliance if necessary.</p> <p><u>No additional legislative changes required.</u></p>



	Recommendations	Response
4	Other issues raised	
a.	Mays and Musts	
4.a. i & ii.	<p>i. Move s18 (4)b, c and e to s18(3) so that in exercising a function, the Conservator must ensure that it is exercised in a way that is consistent with:</p> <ul style="list-style-type: none"> • an action plan for a species, ecological community or process; • a reserve management plan; • any other government policy or plan relating to nature conservation; or <p>ii. In s18 (4) change “may” to “must” so that the Conservator is obliged to have regard to the matters listed including the findings of monitoring programs under s21 and reports by the Commissioner for Sustainability and the Environment.</p>	<p>Part agreed</p> <p>The term “must” indicates that the decision maker must be able to demonstrate clearly that they turned their mind to each of the matters before exercising a power, performing a function or making a decision. For this requirement, the Conservator would need to undertake an assessment of each of the relevant strategies, every time a decision was made. The requirement would focus the Conservator’s attention on documenting each decision to a level that would be unwarranted.</p> <p>Most Conservator decision making under the Bill is constrained by clauses in the Bill. For example, the Conservator makes decisions to approve some plans- the Bill specifies mandatory considerations for these plans. As such there would be little to be gained from a mandatory consideration at s18 (4) and the requirement would be circular in some situations (i.e. the Conservator in agreeing to a new plan would be required to be consistent with the old plan.</p> <p>Activities Declarations would normally be informed by management plans. To make this clear, a clause has been added to Part 10.2 that the Conservator must consider the statutory Management Plan for the reserve in making an Activities Declaration.</p> <p>An additional clause has been added to require the Conservator to consider a relevant action plan or species conservation plan for a species or community in deciding whether an activity is a suitable activity for a licence.</p> <p>It is not appropriate that the Conservator is obliged to have regard to reports by the Commissioner for Sustainability and the Environment. The obligation for the Conservator to take action to a recommendation within that report arises from the Government response.</p>
4.a.iii.	Amend s21(2) to ensure that the Conservator must either carry out a nature conservation monitoring program or commission another entity to carry out a nature conservation program.	<p>Agreed</p> <p>The Bill has been amended to ensure that the Conservator must either carry out a nature conservation monitoring program or commission another entity to carry out a nature conservation program.</p>



	Recommendations	Response
4.a.iv.	All decision makers should be required to give effect to the objects of the Act. Where the objects conflict, the primary object (s 6(a)) should take precedence.	<p>Not agreed</p> <p>The Conservator and Minister are required to have regard to the objects of the Act.</p> <p>Most powers in the Act are delegated from the Conservator. Delegated officers must consider the same issues as the Conservator is required to.</p> <p>Other decision makers e.g. Scientific Committee have clearly defined roles in the Act that are consistent with the objects and they do not have discretionary functions.</p> <p><u>No additional legislative changes required.</u></p>
4.a.v.	All decision makers should be required to act consistently with any Conservator guideline, the nature conservation strategy and any relevant list, plan, or agreement.	<p>Not agreed</p> <p>Conservator guidelines are proposed to make Conservator decisions more transparent. Guidelines will be informed by information that may be subject to change, is administrative in nature, or is too detailed to be practical to include in the Act, such as survey and assessment guidelines, templates for Plans and Strategies, etc.</p> <p>Legally requiring all decision makers to follow Conservator guidelines would be inappropriate and, for decisions by the Minister, could be construed as an “unreasonable constraint on Executive Power”.</p>
4.a.vi.	All decision makers should be required to have regard to the findings of monitoring programs.	<p>Not agreed</p> <p>The purpose of monitoring is for the development of the various plans and strategies or to inform the Scientific Committee about the appropriate listing of threatened species or ecological communities.</p> <p>It would be an onerous requirement for all decision makers (which would include all delegated decision makers) to have regard to the findings of monitoring programs. For example, if this was imposed, a field officer in issuing a permit or an infringement notice would need to have regard to the findings of monitoring programs.</p>



	Recommendations	Response
4.a.vii.	<p>Amend s21 to require that the Conservator must: Prepare and publish a biodiversity research and monitoring program based on Guidelines developed and reviewed at least every 5 years by the Scientific Committee; and publish an annual report on this program and its implementation.</p>	<p>Part agreed</p> <p>It is not clear what role guidelines would have on developing a research and monitoring program. Guidelines are more appropriately targeted at lower level decisions.</p> <p>The program needs to be developed by the Conservator as this will impact on operational requirements and resources. A two year program is preferred as this can take into account known budgets.</p> <p>The Scientific Committee is, however, well placed to assist the Conservator to develop priorities for the monitoring program and also to advise on the appropriate methods and approaches to monitoring.</p> <p>The Bill has been amended to require the Conservator to:</p> <ul style="list-style-type: none"> • prepare and publish a 2 year biodiversity research and monitoring program and publish a biennial report on this program and its implementation. <p>In developing the Program the Conservator must:</p> <ul style="list-style-type: none"> • consult with the Scientific Committee on priorities for the program; • consult with the Scientific Committee appropriate methods and approaches to monitoring; • consider the role of citizen science in the approach to monitoring; and • consider arrangements for data transfer and data sharing. <p>and may</p> <ul style="list-style-type: none"> • commission other entities to deliver all or part of the program.



	Recommendations	Response
4b	Disallowable and notifiable instruments	
4.b.i 4.b.ii 4.b.iii. 4.b.iv.	<p>i. It was noted that Action Plans have been changed from a disallowable instrument to a notifiable instrument in this Bill.</p> <p>ii. The issue was raised that action plans for threatened communities/species should retain their current status as disallowable instruments, because these are primary, overarching documents which relate to fundamental objectives/outcomes of the legislation. Because of this they should have the highest level of scrutiny and accountability, especially at the political level.</p> <p>Retaining action plans as a disallowable instrument may also assist in terms of focusing the important matter of resourcing implementation.</p> <p>The fact that no action plan document has been disallowed is not sufficient reason to downgrade the status of these important Plans. There are only a handful of documents arising from the Bill now on the list which would have disallowable status, potential Action Plans are very low in number, and this should still be manageable in terms of process.</p>	<p>Agreed</p> <p>A change has been made to make Action Plans disallowable.</p>



	Recommendations	Response
5.	Key threatening processes	
5.a.	<p>Climate change to be considered as a key threatening process. It was suggested that the legislation be “future proofed” to deal with changing issues such as climate change.</p>	<p>Noted</p> <p>The current provisions allow for climate change to be listed as a key threatening process if the Minister decides to list it as such based on a recommendation of the Scientific Committee. Anyone can nominate a key threatening process to the Scientific Committee for consideration, at any time.</p> <p>Making reference to climate change as a key threatening process in the Act would pre-empt the Scientific Committee’s consideration and Minister’s decision on key threatening processes.</p> <p>It should be noted that the Bill recognises the importance of climate change through requiring climate change to be a key consideration in developing the Nature Conservation Strategy and Action Plans.</p> <p><u>See changes proposed in response at 1.a.</u></p>
5.b.	<p>It was suggested that there is no clear process within the legislation for community members to nominate key threatening processes to the Scientific Committee and that this process should be made clear within the Act.</p>	<p>Noted</p> <p>Key threatening processes are nominated in the same way as threatened species and threatened ecological communities. An instrument is being developed that will identify the criteria for assessment, informed by national standards.</p> <p>Instructions on how to make a nomination are an administrative detail which would be found on the Directorate’s website once the Bill is passed. A form will be developed that would also facilitate nomination. Approved forms are notified under the Bill. There is no need to include additional clauses in the Bill itself.</p> <p>A regulation making power has been included in the Bill to allow for additional requirements for nominations. A regulation would not indicate administrative matters such as where to send the nomination, but could identify minimum information that needs to be supplied or particular data requirements.</p> <p>The process outlined in the Bill at is far less restrictive than processes in other states and at the Commonwealth level which include restrictive processes about when people can nominate. These restrictions on nominations are used to prioritise nominations in situations where not all nominations can be assessed because of resource constraints. Those constraints do not currently exist in the ACT and therefore it is not proposed to put clauses in the Bill that would restrict the ability for people to nominate a species, ecological community or a key threatening process.</p> <p><u>No additional legislative changes required.</u></p>



	Recommendations	Response
5.c.	It was suggested that the Bill should cross reference invasive species legislation in order to address invasive species as a key threatening process.	<p>Noted</p> <p>It is not clear what value this would add. It is up to the Scientific Committee to make recommendations to list key threatening processes. If invasive species were listed as key threatening processes, then an Action Plan would be required to be prepared. The Action Plan would likely reference the invasive species legislation and the range of plans and strategies that apply to invasive species management.</p> <p>However, in order to address the Community's concern, the Explanatory Memorandum will note that there is a range of other legislation that deal with processes that could be considered key threatening processes.</p> <p><u>No additional legislative changes required.</u></p>
6.	Connectivity	
6.a	It was suggested that developers should be required to address connectivity when planning residential developments.	<p>Noted</p> <p>Connectivity is a key theme of the <i>Nature Conservation Strategy 2013-2023</i>.</p> <p>Connectivity of existing vegetation is routinely considered at the structure planning and estate development phases of planning for urban development. It is also considered through Environmental Impact Assessment processes and Strategic Environmental Assessment processes. Action Plans are used to inform Environmental Impact Assessment processes. It is proposed that Action Plans consider the connectivity needs of particular species.</p> <p><u>No additional legislative changes required.</u></p>
b.	It was suggested that a requirement could be placed on crown leases to consider connectivity in development.	<p>Noted</p> <p>Refer to 6.1. <u>No additional legislative changes required.</u></p>
c.	Provision is made in the Act to ensure that the Planning Authority and other decision makers have regard to ecological connectivity.	<p>Noted</p> <p>Refer to 6.1. <u>No additional legislative changes required.</u></p>



	Recommendations	Response
d.	The Act should provide for a connectivity map and appropriate connectivity action plans.	<p>Part agreed</p> <p>Action Plans are triggered when species, ecological communities and key threatening processes are listed. If fragmentation was listed as a key threatening process then an Action Plan would be required.</p> <p>It is not necessary, or practical, to specify that a map of connectivity should be provided. The ACT already includes a connectivity map on ACTMAPi which then informs planning and development. The current map on ACTMAPi represents modelled data for a small range of species, predominantly woodland birds and some mammals. While there is a high level of confidence in the modelling, it may change as more research is undertaken or as species adapt to changing climatic conditions. The map on ACTMAPi should not be considered a surrogate for connectivity requirements for all species.</p> <p>Species requirements for connectivity are complex, variable and context dependent. For example, altitudinal bird migrants have different connectivity requirements to continental or regional migrants. Arboreal mammals have different requirements to woodland birds which have different requirements to raptors etc. An added difficulty is that connectivity requirements of many species are unknown. Because of this complexity and variability it is preferable to leave consideration of connectivity needs to the Nature Conservation Strategy, Action Plans and programs which can properly consider connectivity within the specific context which would be more informative than a generic action plan.</p> <p>Some changes have been made in response to recommendations at 1.a.</p>
7	The Parks and Conservation Service	
7.a	It was suggested that the regulatory functions of the Parks and Conservation (P&C) Service should be strengthened to allow P&C Officers to issue infringement notices.	<p>Noted</p> <p>Infringement notices are facilitated through the <i>Magistrates Court Act 1930</i> through regulation making powers.</p> <p>The current scheme is given effect through the Magistrates Court (Nature Conservation Infringement Notices) Regulation 2005.</p> <p>A new scheme will be developed but cannot progress until the Bill has passed.</p> <p><u>No additional legislative changes required.</u></p>
7.b	It was suggested that the Bill provide for a unified service comprising both environmental monitoring and operational arms by creating a provision within the Bill for an integrated Conservation agency with defined functions.	<p>Noted</p> <p>This is a matter for Administrative Arrangements. It is not a matter for the Bill.</p> <p><u>No additional legislative changes required.</u></p>



	Recommendations	Response
7.c	Partnership arrangements between the P&C Service and volunteer groups such as ParkCare and Landcare are not addressed in the Bill. The recognition of the contribution of such volunteer groups within the legislation would allow the funding of these groups to be considered within budget arrangements. This could take the form of a co-management arrangement within legislation.	<p>Noted</p> <p>The importance of partnerships are reflected in the objects of the Bill (s.6 (2) c) which indicates states that an object is to “promoting the involvement of, and cooperation between, Aboriginal and Torres Strait Islander people, landholders, other community members and governments in conserving, protecting, enhancing, restoring and improving biodiversity.”</p> <p>The Nature Conservation Strategy outlines the approach and commitment to these partnerships. The strategy is the appropriate place to outline these commitments to co-management.</p> <p>Strategy 5.1 Support greater community involvement through volunteering commits the Government to “Continued support to increase the involvement and effectiveness of volunteers in conservation in the ACT will be provided through coordinators and facilitators and community partnerships. ... ParkCare groups will continue to be supported with training, protective clothing and access to equipment. The provision of Parks and Conservation Service resources will be important to ensure ParkCare groups receive the staff support and coordination required for their land management activities.”</p> <p>The Bill provides that the Conservator must take reasonable steps to implement the Strategy, and the Strategy will be subject to monitoring, reporting and review.</p> <p>Funding of the assistance to landcare and ParkCare groups is best facilitated through the budget context.</p> <p><u>No additional legislative changes required.</u></p>
8	The Scientific Committee	
8.a	The Bill includes a provision that at least two members of the Scientific Committee must not be members of the public service. In order for the Committee to be autonomous of the government it was suggested that the majority of members should come from outside the public service.	<p>Part Agreed</p> <p>The autonomy of the Committee arises from their roles identified in the Bill.</p> <p>The current make up of allowing up to five public servants on the Committee provides some flexibility in ensuring that the Committee has sufficient expertise to be able to pursue its tasks.</p> <p>With new responsibilities for reviewing the Nature Conservation Strategy, Action Plans and Species Conservation Plans it will be important that members have skills in management and review as well as taxonomy so it would be useful to retain flexibility in appointments: to appoint based on skills and experience, regardless of current employment.</p> <p>However to address concerns that the Committee could be made up of a majority of public servants, the bill has been changed to allow a maximum of 3 members as public servants.</p> <p>This would retain the some flexibility to ensure the Committee has adequate skills while ensuring the Committee has a majority of non-public servants.</p>



	Recommendations	Response
8.b.	The Bill requires members of the Scientific Committee to have expertise in biology and ecology. Is this wording too restrictive in that it may preclude valuable candidates?	<p>Agreed</p> <p>The primary purpose of the Committee is to bring a scientific focus to the consideration of species, ecological communities and threats and apply this knowledge to their management.</p> <p>The wording has been changed to reflect that the Minister must not appoint a person to the committee unless satisfied that the person has appropriate scientific expertise in biology, ecology, conservation science or conservation management.</p>
	Other	
9.	Amendments to the Bill are based on submissions received on the exposure draft. Many stakeholders did not make detailed submissions on the exposure draft for a number of reasons. Detailed submissions were considered in the discussion paper in 2010 and concerns were expressed over how only a few of the ideas from these earlier submissions made it into the Bill.	<p>Noted</p> <p>The Exposure Draft process is expressly designed to seek submissions on the Government's proposed legislation. While other processes can inform what goes into the legislation, the exposure draft is the formal process for seeking feedback on legislation.</p> <p>A range of ideas were canvassed in the Discussion Paper, and many ideas were incorporated, refer Part D of this Report. However, the process of developing a bill requires consideration of whether the ideas that were suggested were appropriate for this Bill or for other legislation, whether they are more appropriate for consideration for strategies, or whether they need further investigation. In many cases alternative approaches were considered more effective.</p> <p><u>No additional legislative changes required.</u></p>



	Recommendations	Response
10.	<p>A recent Productivity Commission draft report recommends alternative dispute resolution mechanisms within legislation. A view was expressed that the Bill should contain a statutory provision for mediated dispute resolution where there is a grievance with a decision made by the Minister. It was suggested that this would serve as a means to obtain genuine consensus with stakeholder groups rather than having a dispute determined by a tribunal.</p>	<p>Part agreed</p> <p>The Bill provides a limited decision making role for the Minister. These decisions are:</p> <ul style="list-style-type: none"> • appointing the Scientific Committee; • listing of threatened species, ecological communities and threatening processes; • declaring resource protection areas and a species to be a controlled native species; • approving plans and strategies; • matters relating to fees and charges, and financial assurances. <p>These are not decisions where mediated dispute resolution would be appropriate. The Bill provides for adequate consultation on the range of plans and strategies. The criteria for listing of threatened species, ecological communities, key threatening processes and protected species listings are informed by experts, who can undertake consultation if they wish to.</p> <p>These are not matters that are subject to review by a Tribunal, nor are they appropriate for review by a tribunal.</p> <p>Dispute resolution generally applies to decisions that have a personal impact, rather than to policy or administrative decisions such as those made by the Minister.</p> <p>To address concerns, criteria for listing threatened species and ecological communities, and protected species have been made disallowable. Reserve Management Plans, Land Management Plans, Ramsar Management Plans and Controlled Native Species Management Plans are also disallowable.</p>



	Recommendations	Response
11	<p>Monitoring and review should be required for lists themselves (items and criteria), reserve management plans, licences (compliance, number of licences, criteria) and management agreements.</p>	<p>Part agreed</p> <p><u>Threatened lists</u></p> <p>Action Plan reviews would indicate that a change to a list may be needed. The same processes that apply to making lists apply to changes to the lists. If, based on the findings of an Action Plan, there were concerns that a species is in the wrong category then nominations can be made to change the list. This allows resources to be allocated to reviewing the Action Plans rather than the list itself. The outcomes of monitoring would also inform the Scientific Committee and the public that a particular species may need to be reviewed. Adding a specific requirement to review lists would be unnecessarily duplicative.</p> <p>Also anyone can nominate a new listing category, or delisting of a species, ecological community or key threatening processes, at any time.</p> <p><u>Criteria for threatened lists</u></p> <p>The criteria are based on the criteria used in the EPBC Act and in the IUCN. They do not need regular review. However a clause has been added so that the Scientific Committee and/ or Conservator can request the Minister to review the Criteria if it is demonstrated that there has been some change in either international or national standards that would warrant a review or if, for example, the criteria are not identifying species at risk of extinction appropriately.</p> <p><u>Reserve Management Plans</u></p> <p>Reserve management plans are already required to be reviewed, implicit in this is a requirement to monitor. Monitoring of plans is not required under the legislation because different reserves will require different monitoring. In some reserves, it will be the impacts of recreation, in others impacts of weed and feral animals.</p> <p>It is preferable that each management plan identify the appropriate monitoring for that reserve. Overall monitoring of biodiversity is the responsibility of the Conservator and may include monitoring in reserves, but would not be specific to the Reserve Management Plan even though it would inform it.</p> <p><u>Licences</u></p> <p>Licences are issued for up to five years. The reissuing of a licence is sufficient for review. The Conservator is required to maintain a register of licences which provides data on the number of licences etc.</p> <p><u>Management agreements</u></p> <p>Management agreements can be reviewed at any time, if the Conservator is concerned that the agreement is not sufficient.</p>



	Recommendations	Response
12.	Reports of the findings of monitoring and review should be made publicly available online.	<p>Agreed</p> <p>S.21 of the bill provides for the findings of monitoring reports to be made publically accessible.</p> <p><u>No additional legislative changes required.</u></p>
13.	Decision making process	
13.a	Stakeholders wanted to compare the decision making responsibilities in the <i>Nature Conservation Act 1980</i> with those in the Nature Conservation Bill. Some expressed that this was not easy and asked that a diagrammatic comparison be prepared.	<p>Agreed.</p> <p>A comparison to decision making between the Act and the Bill will be made available on the Directorate’s website when the Bill is presented.</p> <p><u>No additional legislative changes required.</u></p>
13.b	It was suggested that there is a lack of clarity in the Bill about who has responsibility for what components, for example, in making a decision on species listing, what are the responsibilities of the Minister, the Scientific Committee and the Conservator in the decision making process?	<p>Noted</p> <p>The Bill is clear about who is responsible for what elements of listing.</p> <p>Anyone can make a nomination</p> <p>The Scientific Committee assesses the nomination and makes recommendations</p> <p>The Minister decides to list or not.</p> <p>The Conservator does not have a formal role in listing. However the Conservator and Conservation Officers may be able to provide data and information to the Scientific Committee to assist the Scientific Committee in their deliberations.</p> <p>A summary diagram / table will be provided on the Directorate’s website.</p> <p><u>No additional legislative changes required.</u></p>
13.c	Stakeholders were unsure about how much input the Scientific Committee will have in making decisions on the criteria for listing threatened species and communities and on their listing in those categories.	<p>Part Agreed</p> <p>In regard to the criteria the Minister is required to consult the Scientific Committee in development of the criteria. As new provision will make the criteria disallowable. This should address any concerns, if the Assembly is of the view that the views of the Scientific Committee or the conservator have not been adequately incorporated.</p>
14.	Timeframes	



	Recommendations	Response
14.a	a. It was proposed that the Bill attach statutory timeframes to all statutory plans that it mandates.	<p>Part Agreed</p> <p>All plans have mandatory reporting and review timeframes except for Native Species Conservation Plans. Because Native Species Conservation Plans are intended to be flexible instruments, they may be short-term or long-term. If a plan is only short-term then they may not need to be reviewed. It is expected that the Plan itself would indicate the monitoring and review requirements within the plan itself.</p> <p>It is proposed that the Minister be required to approve/return/reject a final reserve management plan, land management plan or Ramsar management plan within 45 working days of receipt.</p>
14.b	b. The length of the review periods for threatened species Action Plans as outlined in the Bill are an issue, it being suggested that the time between reviews is too long, and should be less than ten years.	<p>Noted</p> <p>The ten year review period is consistent with other plans and is a maximum period for review (unless the Minister extends the period). The five year reporting requirement would indicate whether a plan needed to be reviewed before 10 years, as would the monitoring reports, and state of the environment reporting.</p> <p><u>No additional legislative changes required.</u></p>
15	Offsets	
15.a	It was suggested that the Bill should contain governance arrangements for environmental offsets.	<p>Not Agreed</p> <p>Offsets have been considered separately to the Nature Conservation Bill 2014. The inclusion of environmental offsets in the Nature Conservation Bill is not appropriate because requirements for:</p> <ul style="list-style-type: none"> • offset assessment for EPBC Act matters may be required to be assessed under the existing Bilateral Assessment arrangements (or any revised agreement). The Bilateral arrangements are given effect through the Planning Act. • assessment of the need for offsets is closely linked to the assessment of biodiversity impacts through Environmental Impact Assessments; • agreements about implementation of an offset package would be secured through conditions for Development Approvals. <p>Any additional requirements for the consideration of offsets (such as methodologies) are best placed under the Planning Act or in the Planning and Development Regulation 2008, where other procedural matters for Environmental Assessments are located (Strategic Environmental Assessment and Environment Impact Assessment and Inquiries).</p> <p><u>No additional legislative changes required.</u></p>



	Recommendations	Response
15.b	An offsets register that will include offset sites and reporting on outcomes could be provided for.	<p>Noted</p> <p>An offset register is proposed as part of offsets delivery framework. Agreed offsets are already identified on ACTMAPi which provides a link to additional information about the offset.</p> <p><u>No additional changes to the Nature Conservation Bill are proposed.</u></p>
15.c	The appropriate role of the Commissioner for Sustainability and the Environment, if any, in the review of offsets was raised.	<p>Noted</p> <p>Offsets have been considered separately to the Nature Conservation Bill 2014.</p> <p><u>No additional changes to the Nature Conservation Bill are proposed.</u></p>
15.d	It was argued that provisions relating to offsets should sit in the Nature Conservation Act because that Act relates to biodiversity management.	<p>Not agreed</p> <p>Offsets have been considered separately to the Nature Conservation Bill 2014. The inclusion of environmental offsets in the Nature Conservation Bill is not appropriate because requirements for:</p> <ul style="list-style-type: none"> • offset assessment for EPBC Act matters may be required to be assessed under the existing Bilateral Assessment arrangements (or any revised agreement). The Bilateral arrangements are given effect through the Planning Act. • assessment of the need for offsets is closely linked to the assessment of biodiversity impacts through Environmental Impact Assessments; • agreements about implementation of an offset package would be secured through conditions for Development Approvals; • any additional requirements for the consideration of offsets (such as methodologies) are best placed in the Planning and Development Regulation 2008, where other procedural matters for Environmental Assessments are located (Strategic Environmental Assessment and Environment Impact Assessment and Inquiries). <p>The Nature Conservation Bill 2014 allows for the Conservator to have functions under another Territory law. If the Government considers it appropriate for the Conservator to have additional roles in environmental offsets (other than those that already apply to environmental impact assessment) then these can be included in the Planning Act.</p> <p><u>No additional changes to the Nature Conservation Bill are proposed.</u></p>



Conservation Council/EDO recommendation	Comment
<p>1. The purpose of the Act should be to conserve, protect and enhance the biodiversity of the ACT and region and this should be reflected in the preamble.</p>	<p>Agreed with minor changes</p> <p>The term ‘biodiversity’ has a technical meaning to reflect the diversity of biological features of the landscape. While it is used generically to encapsulate all aspects of the natural world it is not the preferred term. For these reasons the term ‘nature’ is preferred. The term ‘nature’ also includes the non-biological features of the landscape, soils, rocks, water etc and thus is a broader term.</p> <p>While the Nature Conservation Strategy provides for, and promotes, cross border collaboration, the Bill itself cannot provide for the protection, of biodiversity in the region.</p> <p>A change has been made to indicate that the purpose of the Act is an Act to make provision for the protection, conservation, enhancement and management of nature in the ACT, for the management of reserves and for other purposes.</p>
<p>2. The definition of biodiversity be included in “important concepts” in Part 1.3 of the Act</p>	<p>Agreed</p> <p>The definition of biodiversity has been brought in from the definitions into the important concepts chapter.</p>
<p>3. A mandatory requirement be included in the Act allowing for an ecosystem framework to inform the Nature Conservation Strategy, Action Plans and the proposed biodiversity research and monitoring program.</p>	<p>Part agreed</p> <p>The Nature Conservation Strategy commits the Government to monitor five priority ecosystems most vulnerable to threats. These are native temperate grasslands, grassy box-gum woodlands, alpine bogs, montane forests, and the Murrumbidgee-Cotter River system.</p> <p>In order to ensure that appropriate and timely management responses are developed and implemented, the ACT will continue to monitor the five priority ecosystems based on a common set of indicators. In terms of the Upper Cotter/Murrumbidgee, monitoring will focus on fish species only (water quality monitoring is already routinely undertaken in the ACT). Where unexpected negative changes are observed, appropriate management responses will be implemented. These ecosystem monitoring requirements would be included in the Biodiversity Research and Monitoring program.</p> <p>Action Plans already include a strategic focus for the woodlands, grasslands, and riverine areas.</p> <p>A clause has been inserted requiring that, in reviewing the nature Conservation Strategy, the Conservator must take account of the Biodiversity Research and Monitoring Program.</p>
<p>4. The Nature Conservation Strategy be given statutory recognition in the Act.</p>	<p>Noted.</p> <p>Refer to Recommendation 1f of the Roundtable. <u>No additional legislative changes required.</u></p>



Conservation Council/EDO recommendation	Comment
<p>5. The Act should require the Scientific Committee to develop and regularly review principles of ecological connectivity. Draft principles and review of principles should be subject to public consultation.</p>	<p>Noted</p> <p>The Scientific Committee needs to be able to focus on its core business of assessing and making recommendations about listings. They also have significant new roles in reviewing Action Plans.</p> <p>Consultation on the documents where connectivity is required to be considered (the Nature Conservation Strategy and Action Plans) are subject to public consultation.</p> <p>In addition, the Bill provides for the Conservator to develop guidelines that could include principles of connectivity. A new requirement for the Conservator to consult with the Scientific Committee in the preparation of Conservator Guidelines will ensure additional transparency about the Conservator guidelines.</p> <p>See roundtable response 1a. <u>No additional legislative changes required.</u></p>
<p>6. Provision is made in the Act to ensure that the Planning Authority and other decision makers have regard to ecological connectivity.</p>	<p>Noted</p> <p>Refer to Recommendation 6.c. of the Roundtable <u>No additional legislative changes required.</u></p>



Conservation Council/EDO recommendation	Comment
<p>7. Amend Section 21 to require that the Conservator must:</p> <ul style="list-style-type: none"> • Prepare and publish a biodiversity research and monitoring program based on Guidelines developed and reviewed at least every 5 years by the Scientific Committee; and • Publish an annual report on this program and its implementation. <p>The Commissioner for Sustainability and the Environment to review effectiveness of the monitoring program and its outcomes at least every five years.</p>	<p>Part agreed</p> <p>Refer to Recommendation 4.a.vii of the Roundtable in relation to the Biodiversity Research and Monitoring Program.</p> <p><u>Commissioner for Sustainability the Environment</u></p> <p>The Commissioner for Sustainability and the Environment has a statutory role in preparing the State of the Environment Report. <i>The Commissioner for Sustainability and the Environment Act 1993</i> s 19 ‘State of the environment report’ requires the Commissioner to undertake:</p> <p>(a) an assessment of the condition of the environment, including an assessment of any of the following matters that the commissioner considers necessary:</p> <p>(i) the components of the earth, including soil, the atmosphere and water;</p> <p>(ii) any organic or inorganic matter and any living organism;</p> <p>...</p> <p>(iv) ecosystems and their constituent parts, including people and communities;</p> <p>(v) the qualities and characteristics of places and areas that contribute to their biological diversity and ecological integrity, scientific value and amenity; and</p> <p>(b) an evaluation of the adequacy and effectiveness of environmental management</p> <p>Through the Bill s.18, the Conservator is required to provide information for inclusion in the State of the Environment Report.</p> <p>These two provisions provide the review mechanism. Additional clauses would be unnecessarily duplicative.</p> <p><u>No additional legislative requirements necessary.</u></p>



Conservation Council/EDO recommendation	Comment
<p>8. The biodiversity research and monitoring program referred to in Recommendation 7 includes an overall assessment of the condition of the biodiversity and ecosystems of the ACT and region as well as matters of NES or listed ACT threatened species and ecological communities.</p>	<p>Noted</p> <p>Refer to Recommendation 4.a.vii of the Roundtable.</p> <p>In addition, provisions in the Bill already require Action Plans to be monitored.</p> <p>Regarding matters on National Environmental Significance, there are only 3 key species known to occur, or have recently occurred, in the ACT that are listed nationally, but not in the ACT. These are the Grey-headed Flying-fox, the Murray Cod and the Koala.</p> <p>The Grey-headed Flying-fox and Murray Cod will have species conservation plans prepared. Should wild Koalas be rediscovered in the ACT either an Action Plan or Species Conservation Plan would be prepared which would outline any required monitoring.</p> <p>The Alpine Sphagnum Bogs and Associated Fens Ecological Community is not listed within the ACT, but is managed within Namadgi National Park and is identified as a key area for monitoring.</p> <p><u>No additional legislative changes required.</u></p>
<p>9. The Nature Conservation Strategy must require an Adaptive Management Strategy which is regularly reviewed based on the reporting from the biodiversity research and monitoring program.</p>	<p>Noted</p> <p>See response at recommendation 3 and 8 above.</p> <p>Item 3 above, will require the Monitoring and Research Program to inform the review and development of the Nature Conservation Strategy to provide for adaptive management. The provision of a separate adaptive management strategy would be unnecessarily duplicative.</p>
<p>10. A provision requiring the Conservator to work with rural landholders and conservation groups to develop principles, guidelines and strategies to facilitate biodiversity conservation on rural lands and other off-reserve areas. Off-reserve management to include incentive schemes.</p>	<p>Noted</p> <p>See roundtable response 3.c.</p> <p>The provision of incentive schemes needs to be considered within a budget context and is not appropriate to include in the Bill.</p> <p>The Environment and Planning Directorate will work with landholders to explore options for supporting biodiversity conservation on rural lands as identified in the Nature Conservation Strategy.</p> <p>Landholders have identified that they do not want stewardship requirements to be embedded in the Act.</p> <p>A new objective will, however, be added to recognise the important contribution landholders make to nature conservation and natural resource management.</p>
<p>11. The Conservator be suitably qualified, the role be a dedicated position and independent of potential for conflict of interests with other decision-making responsibilities or other management tasks.</p>	<p>Noted</p> <p>Refer to Recommendation 2.c and 2.h of the Roundtable.</p> <p><u>No additional legislative changes required.</u></p>



Conservation Council/EDO recommendation	Comment
<p>12. Expand the Conservator’s functions under section 18 to direct that land management actions be undertaken on sites of threatened ecosystems or threatened species habitat when the condition of such sites has deteriorated and the conservation status of the site is at risk.</p>	<p>Noted</p> <p>No action required. The Bill already provides this power.</p> <p><u>No additional legislative changes required.</u></p>
<p>13. Transfer section 18(4)(b), (c) and (e) to section 19(3) so that the Conservator must ensure that functions are exercised in a way that is consistent with implementation of those plans; or in section 18(4) change “may” to “must” so that the Conservator is obliged to have regard to the matters listed including reports by the Commissioner for Sustainability and the Environment.</p>	<p>Noted</p> <p>See response at Roundtable Response 4.a.i & ii. <u>No additional legislative changes required.</u></p>
<p>14. Strengthen section 53 to require the Conservator to report on implementation of the Nature Conservation Strategy to the OCSE annually. Include in section 53 or elsewhere in the Act a requirement for the Commissioner for Sustainability and the Environment to review, at least every 5 years, the implementation of the Nature Conservation Strategy and biodiversity outcomes.</p>	<p>Not agreed</p> <p>The bill provides for reporting on the implementation of the Strategy to the Minister every five years. As the Minister is responsible for agreeing to the Strategy on behalf of the Government it is appropriate that the Conservator report to the Minister about progress.</p> <p>The Commissioner will have a role in monitoring progress against the Strategy through the State of the Environment Report. <i>The Commissioner for Sustainability and the Environment Act 1993 s. 19</i> ‘State of the environment report’, requires the Commissioner to undertake:</p> <p>(b) an evaluation of the adequacy and effectiveness of environmental management.</p> <p>Through the Bill s.18, the Conservator is required to provide information for inclusion in the State of the Environment Report.</p> <p>A new clause identified at Roundtable Response 2d will require the Conservator to consult with the Commissioner for Sustainability and the Environment on the development of the Nature Conservation Strategy.</p> <p>These three provisions outlined above provide adequate oversight by the Commissioner. Additional clauses would be unnecessarily duplicative and confuse lines of responsibility.</p> <p><u>No additional legislative changes required.</u></p>



Conservation Council/EDO recommendation	Comment
<p>15. The Conservator must be able to provide advice unfettered by considerations of cultural, social and economic values. Delete section 6(2)(f) and amend section 6(3) to add “and may take into account cultural, social and economic values once the best available knowledge is to hand about the conservation, protection, enhancement, restoration and improvement of biodiversity”.</p>	<p>Agreed</p> <p>This provision recognises the principles of Ecologically Sustainable Development as articulated in the EPBC Act 1999 s 3.a <i>Principles of ecologically sustainable development</i> including (a) decisionmaking processes should effectively integrate both longterm and shortterm economic, environmental, social and equitable considerations;</p> <p>This concept is covered by an object relating to the principles of ecologically sustainable development so the other object was deleted.</p>
<p>16. The Delegate under the <i>Planning and Development Act</i> should provide greater transparency of the Planning Authority decisions in relation to advice provided by the Conservator, by providing more comprehensive reasons as to why a decision has been made which is inconsistent with the Conservator’s advice when approving development applications and related decisions. These decisions should also be reviewable.</p>	<p>Noted.</p> <p>This is a matter for the Planning Act and not this Bill.</p> <p>The Chief Planning Executive (CPE) may act inconsistently with the conservator’s advice in some circumstances. The CPE considers a range of issues, including advice from the Conservator and has discretion regarding agreeing with some or all aspects of the Conservator’s advice but must provide reasons for a decision that is inconsistent with the conservator’s advice in the development application. This document is publically available.</p> <p><u>No additional legislative changes required.</u></p>



Conservation Council/EDO recommendation	Comment
<p>17. Consequential amendments are made to the <i>Planning and Development Act 2007</i> to provide for the Conservator's input into the strategic environmental assessments, land management agreements and environmental impact statements.</p>	<p>Noted</p> <p>These matters relating to the Planning Act are already addressed in that Act and regulation.</p> <p>Planning Act s. 283 <i>Land management agreements</i> requires Conservator agreement to any land management agreement.</p> <p>The Planning and Development Regulation 2008 requires impact track developments to be referred to the Conservator (Planning and Development Regulation, s. 26, Referral of certain development applications). The Conservator is also a mandatory referral for EIS scoping documents.</p> <p>The Planning and Development Regulation also provides for the processes involved in developing a strategic environmental assessment. The main purpose of a strategic environmental assessment is to inform Territory Plan variations or a review of the Territory plans, although they can be used for other purposes. The Planning Act provides (s.69 Draft plan variations to be given to Minister etc) that (2) The planning and land authority must give the draft plan variation to the Minister for approval, together with— (a) the background papers relating to the variation [which might include the SEA]; and (c) a written report about the authority's consultation with (iii) the conservator of flora and fauna.</p> <p><u>No additional legislative changes required.</u></p>
<p>18. Amend section 30(2) so that at least five members of the Scientific Committee are not ACT public servants, retain the provisions for the development of criteria for listings to sit with the Scientific Committee and require all reports of the Scientific Committee to be publicly available.</p>	<p>Part agreed</p> <p>Refer to recommendation 8.a and 13.c of the Roundtable. Listing advice and conservation advice will be publicly available.</p> <p><u>No additional legislative changes required.</u></p>
<p>19. That an integrated Conservation Agency be established.</p>	<p>Noted</p> <p>Refer to recommendation 7.b. of the Roundtable.</p> <p><u>No additional legislative changes required.</u></p>
<p>20. Amend section 21 so as to allow the Conservator to liaise with appropriately trained volunteer/community groups to identify monitoring and data transfer responsibilities and consequential cooperative arrangements for sharing data.</p>	<p>Noted</p> <p>The Conservator can liaise with any group without the need for this to be embedded in legislation.</p> <p>Refer to recommendation 4.a.vii. of the Roundtable.</p> <p><u>No additional legislative changes required.</u></p>



Conservation Council/EDO recommendation	Comment
<p>21. Include in section 178 provision for a full public consultation process, or at the very least, consultation with known stakeholder groups.</p>	<p>Not agreed</p> <p>This provision relates to a review of a Reserve Management Plan.</p> <p>The Bill does not specify the process of review. If a plan is reviewed and requires significant change then a draft plan is prepared. There is significant opportunity for public consultation on the new plan.</p> <p>Requiring consultation on the review as well as on the new plan is unnecessarily duplicative and reduces flexibility in the way a plan is reviewed which will often depend on the size of the reserve and its purpose.</p> <p><u>No additional legislative changes required.</u></p>
<p>22. The Act be amended to include provision for alternative dispute resolution.</p>	<p>Not agreed</p> <p>Refer to recommendation 10 of the Roundtable.</p> <p>The Commissioner is empowered to address complaints if there are concerns about government decisions (<i>Commissioner for Sustainability and the Environment Act 1993</i> s. 13).</p>
<p>23.A) Biodiversity offsets principles and governance mechanisms as described should be incorporated into the Nature Conservation Act.</p> <p>B) Include in Conservator's functions the obligation to (i.e. the Conservator 'must') review proposed offsets and their implementation, report on them and recommend changes to meet stated outcomes.</p>	<p>Not agreed</p> <p>Offsets have been considered separately to the Nature Conservation Bill 2014. The Nature Conservation Bill 2014 allows for the Conservator to have functions under another Territory law. If the Government considers it appropriate for the Conservator to have additional roles in environmental offsets (other than those that already apply to environmental impact assessment) then these can be included in the Planning Act.</p> <p>Also Refer to recommendation 15 of the Roundtable. No additional legislative changes required.</p>
<p>24. The Objects of the Act provide for the consideration of climate change as a threat to biodiversity and a matter to be taken into account in decision-making.</p>	<p>Noted</p> <p>The purpose of the Bill is to provide for the conservation and management of nature. Climate change is one issue for consideration.</p> <p>Processes to identify threats to biodiversity are outlined in Chapter 4 of the Bill. Providing an object relating to climate change as a threat is not necessary.</p> <p>Climate change will also be a mandatory consideration of the Nature Conservation Strategy and Action Plans.</p> <p>Also Refer to recommendation 1.a. of the Roundtable. No additional legislative changes required.</p>
<p>25. That the Scientific Committee be directed by the Minister to consider listing climate change as a key threatening process.</p>	<p>Noted</p> <p>This is not a matter for legislation. The Act provides for the Minister to make directions if so desired.</p> <p>No additional legislative changes required.</p>



Conservation Council/EDO recommendation	Comment
<p>26. Create a provision for actions which trigger ‘mini-SEAs’ pursuant to the Nature Conservation Act.</p>	<p>Noted</p> <p>Strategic Environmental Assessments are a mechanism within the Planning Act to inform certain decisions. The inclusion of a duplicative mechanism in the Nature Conservation Bill is not warranted and would increase red tape, for no particular gain.</p> <p>SEAs under the Planning Act can inform Reserve Management Plans, and informally the process could be used to inform other decisions.</p> <p><u>No additional legislative changes required.</u></p>
<p>27. The Act should require certain components as above [identified below] to be included in Action Plans.</p> <p>The following amendments should be made to the Bill in relation to Action Plans:</p> <ol style="list-style-type: none"> 1. A requirement that decision-making should not be inconsistent with Action Plans; 2. Requirement to monitor and evaluate initiatives included in Action Plans as well as an update and review of Action Plans within statutory time limits or within time limits noted in the plan. For example, under the Threatened Species Conservation Act 1995 (NSW), the Director-General is to review the Priorities Action Statement every three years and may make changes to the Priorities Action Statement pursuant to any such review by adopting amendments to the Statement; 3. Action Plans should be prepared in consultation with ecological experts to ensure that management actions will be effective in conserving a species or community or managing a threatening process. For example, under the Threatened Species Conservation Act 1995 (NSW) the Director-General is to seek advice from the Natural Resources Commissions, the Scientific Committee, Biological Diversity Advisory Council, Social and Economic Advisory Council and such other State government agencies as the Director-General considers appropriate in preparing or reviewing a Priorities Action Statement;²¹ 	<p>Noted</p> <p><u>In response to point 1</u>, the roundtable response 4.a.i & 4.a.ii. agrees to a new provision at that requires the Conservator to consider a relevant action plan for a species or community or a relevant native species conservation plan in deciding whether an activity is a suitable activity for a licence. This is the major decision process in the Nature Conservation Bill which would warrant consideration of the range of plans and strategies.</p> <p><u>In response to point 2</u>, provisions in the Bill require Action Plans to be implemented, reported against and reviewed. This includes an assessment of the effectiveness of Action Plans.</p> <p><u>In response to point 3</u>, the bill requires the Conservator to consult with the Scientific Committee in the development of the Action Plan, and the Scientific Committee is responsible for undertaking the review.</p> <p><u>In regard to point 4</u>, the Bill sets out some mandatory considerations for Action Plans with some additional requirements identified at Roundtable Response 1.a. These requirements include (i) for a relevant species—</p> <p>(A) sets out proposals to ensure, as far as practicable, the identification, protection and survival of the species; and</p> <p>(B) if there is a known critical habitat for the species— identifies the critical habitat; and</p> <p>(D) may propose management strategies to ensure the persistence of the species; and</p> <p>(E) may state requirements for monitoring the species and its habitats. Additional requirements are able to be set out in Conservator guidelines.</p> <p><u>In regard to point 5</u>, the setting of priorities is inherent in the requirement to develop an Action Plan. This does not need to be included as a separate requirement in the Bill.</p> <p><u>No additional legislative changes required.</u></p>



Conservation Council/EDO recommendation	Comment
<p>4. A mandatory requirement that Action Plans include information on what needs to be done to protect and conserve species and communities or manage threatening processes. We are of the opinion that for Action Plans to be effective they should set out clearly what needs to be done, where it is to be done and how the species or community will benefit from the action including the identification of other government agencies that might facilitate the achievement of the strategies; and</p> <p>5. The identification of priority actions.</p>	
<p>28. The Scientific Committee is to assess for listing, areas of habitat that is critical to the ongoing evolution and development of a species/community in the wild,</p> <ul style="list-style-type: none"> • The public and the Conservator in consultation with the Scientific Committee be able to nominate an area to be critical habitat, and • The Scientific Committee to develop criteria for determining eligibility of areas to be declared critical habitat. 	<p>Noted</p> <p>A requirement to consider critical habitat has been included in the requirements for Action Plans.</p> <p>This approach is preferred over the listing of critical habitat in separate registers. In his review of the EPBC Act¹¹, Dr Allan Hake indicated, “The Australian Government should utilise the critical habitat provisions more effectively but maintaining a separate register of critical habitat is unnecessary. Identification of critical habitat during the development of recovery plans, threat abatement plans, conservation advice and regional plans would result in critical habitat being factored into decisionmaking under the Act and also raise community awareness of areas requiring protection. Greater use of regional and multispecies’ recovery plans would also facilitate identification of critical habitat of value to multiple species. The Register of Critical Habitat should be discontinued and the transition period prior to abandoning the Register appropriately managed.”</p> <p>Refer to roundtable response 1. <u>No additional legislative changes required.</u></p>

11 Refer recommendation 5.20 <http://www.environment.gov.au/system/files/resources/5f3fdad6-30ba-48f7-ab17-c99e8bcc8d78/files/final-report.pdf> page 124



Conservation Council/EDO recommendation	Comment
<p>29. Include greater accountability for management of reserves by a custodian, opportunity for public input and publicly accessible reporting.</p>	<p>Noted</p> <p>Reserve management plans are already required to be reviewed: implicit in this is a requirement to monitor. Monitoring of plans is not required under the legislation because different reserves will require different monitoring. In some reserves, it will be the impacts of recreation, in others impacts of weed and feral animals, or both. It is preferable that each management plan identify the appropriate monitoring for that reserve.</p> <p>Overall monitoring of biodiversity is the responsibility of the Conservator and may include monitoring in reserves, but would not be specific to the Reserve Management Plan even though it would inform it.</p> <p>The Commissioner would have a role in monitoring effectiveness of reserve management through the State of the Environment Report. <i>The Commissioner for Sustainability and the Environment Act 1993</i> s 19 ‘State of the environment report’ requires the Commissioner to undertake an evaluation of the adequacy and effectiveness of environmental management</p> <p>A range of other government reporting processes provide for accountability including annual reports, assembly processes such as annual report hearings, budget estimates etc.</p> <p>Public participation in the development of new reserve management plans is required through the Bill. There are also a range of programs such as ParkCare forums that provide for community engagement.</p>



Recommendations	Response
<p><u>Objects of the Act</u></p> <p>Some minor wording changes to the objects and a new object of accountability were proposed.</p>	<p>Agreed</p> <p>Minor wording changes have been accepted and a new accountability object included.</p> <p>A change has been made to also strengthen the accountability of the Conservator by requiring the Conservator to not act inconsistently with the objects of the Act.</p>
<p>One submitter sought a change to indicate that the first object of the Act is the primary object and requested that the Minister has regard to the objects in making decisions under the Act.</p>	<p>Agreed</p> <p>This was intended and has been made clear in the Bill. A further clarification has been made to ensure that the Minister, in addition to the Conservator, has regard to the objects in making decisions under the Act.</p>
<p>A range of comments related to increased indigenous consultation and engagement in matters covered by the Bill as well as in the objects.</p>	<p>Part agreed</p> <p>A change was made to the objects to recognise and promote indigenous peoples' role in and knowledge of the conservation and ecologically sustainable use of biodiversity.</p> <p>This area of work is currently undertaken through non-regulatory measures. It is not proposed to include any regulatory measures in the Bill at present but work will continue through the Parks and Conservation Service and natural resource management programs, and could be the subject of amendments in future years, if considered appropriate.</p>
<p><u>Functions of the Conservator</u></p> <p>Two additional functions of the Conservator were proposed:</p> <p>To contribute to the ACT State of the Environment Report; and</p> <p>To have regard to any relevant Government responses to the Commissioner for Sustainability and the Environment's Investigations.</p>	<p>Agreed</p> <p>These statutory responsibilities reflect what currently occurs in practice and this minor change has been included in the revised Nature Conservation Bill 2014.</p>
<p><u>Strengthen implementation of the Nature Conservation Strategy</u></p> <p>One submission made a recommendation about strengthening implementation of the Nature Conservation Strategy.</p> <p>One submission made a comment that the Conservator 'must' rather than 'may' have regard to the Nature Conservation Strategy in making decisions and providing advice.</p>	<p>Agreed</p> <p>This has been agreed and a clause has been added to make it a requirement that the Conservator prepare a progress report to the Minister on the strategy every five years.</p> <p>This has been agreed and a clause has been amended to require the Conservator to have regard to the Nature Conservation Strategy.</p>



Recommendations	Response
<p><u>Climate change</u></p> <p>One submission made a comment about the need to protect and enhance our biodiversity is made more pressing by its increased vulnerability to climate change.</p>	<p>Agreed</p> <p>This is an important consideration and the Conservator has been required to consider impacts and potential impacts of climate change in developing the Nature Conservation Strategy.</p> <p>The Bill has been amended to add a requirement for the Conservator to expressly consider strategies to address the actual and potential impacts of climate change within the Nature Conservation Strategy.</p>
<p>One submission noted that climate change is not explicitly included as a key threatening process in the Act and it has been left to the Minister’s discretion whether to list it or not.</p>	<p>Not agreed</p> <p>This change is not proposed because recommending the listing of key threatening processes is the responsibility of the Scientific Committee.</p> <p><u>No additional legislative changes required.</u></p>
<p>One submission made comment that specific details of what needs to be included in an Action Plan should be included in the Bill.</p>	<p>Agreed in part</p> <p>We agree that arrangements for the development of Action Plans needs to be standardised and further details will be included in Conservator’s Guidelines for Action Plans. A guideline is preferred to clauses in the Bill because action plans should be flexible instruments that, while meeting minimum standards, also meet the needs of the protected matter they are about.</p>



Recommendations	Response
<p><u>Critical Habitat</u></p> <p>Two submissions suggested a range of measures relating to the creation, publication and use of a Critical Habitat Register.</p>	<p>Agreed in part</p> <p>The Commonwealth’s EPBC Act establishes a Register of Critical Habitat; however, entries to the register are discretionary. The primary purpose of the Register is to identify critical habitat so that requirements for management can be included in conditions of sale when the Commonwealth disposes of land.</p> <p>In his review of the EPBC Act¹², Dr Allan Hake indicated, “The Australian Government should utilise the critical habitat provisions more effectively but maintaining a separate register of critical habitat is unnecessary. Identification of critical habitat during the development of recovery plans, threat abatement plans, conservation advice and regional plans would result in critical habitat being factored into decisionmaking under the Act and also raise community awareness of areas requiring protection. Greater use of regional and multispecies’ recovery plans would also facilitate identification of critical habitat of value to multiple species. The Register of Critical Habitat should be discontinued and the transition period prior to abandoning the Register appropriately managed.”</p> <p>A perverse outcome of having a Register of Critical Habitat is that it can lead to the willful destruction of this habitat, or to illegal collection activities. In NSW this is identified through a Sensitive Species Data Policy. For these reasons a Critical Habitat Register is not proposed.</p> <p>Critical habitat identified by the Environment and Planning Directorate’s Conservation Planning and Research team routinely informs the land release program. A register in the ACT would, therefore, not add value to current processes of land release, which already go through significant environmental assessment processes.</p> <p>However, a new sub-clause has been included in the Bill to specify that known critical habitat should be considered in the development of Action Plans and identified where this would not cause unacceptable risks to the species and ecological communities.</p>

12 Refer recommendation 5.20 <http://www.environment.gov.au/system/files/resources/5f3fdad6-30ba-48f7-ab17-c99e8bcc8d78/files/final-report.pdf> page 124



Recommendations	Response
<p><u>Connectivity</u></p> <p>A number of comments related to the lack of measures to assist with connectivity is unsatisfactory, even though this is one of the objects of the Bill.</p>	<p>Part Agreed</p> <p>Connectivity is the subject of many action plans and these inform Environmental Impact Assessment and Strategic Environmental Assessment processes. A connectivity layer is also provided on ACTMAPi.</p> <p>The current vegetation clearing triggers of the Environmental Impact Assessment process also contribute to the assessment of connectivity.</p> <p>Connectivity is also a key focus in the Nature Conservation Strategy and Government restoration programs.</p> <p>A Conservator guideline on connectivity will be developed once the Act commences. A guideline is preferred over clauses within the Act because the science is still emerging and the appropriateness of connectivity in any areas requires consideration of the ecological requirements of the species or ecological communities and the context within which they exist.</p> <p>A note to the Explanatory Statement about the objects clause has been made to indicate that the objects may be achieved through the clauses in the Act, subsidiary legislation and statutory plans etc.</p>
<p><u>Habitat of birds</u></p> <p>One submission made a comment that the current legislation has failed to protect the habitats of listed threatened birds which continue to decline and there are also deficiencies in the current draft Bill. The deficiencies were not defined so it is not possible to respond to these concerns through additional amendments.</p>	<p>Not agreed</p> <p>The protection of habitat within reserves is a feature of the Nature Conservation Bill 2014. The identification of habitat is also a function of Action Plans. The Migratory Species Action Plan provision and the ability to develop native Species Conservation Plans are both designed to improve management of habitat for particular species.</p> <p>The protection of habitat through retention of areas being developed for urban land uses is a matter for the Planning Act and is undertaken through assessment of environmental impacts of development.</p>
<p><u>Extinct species</u></p> <p>One comment was made about the definition of extinct species.</p>	<p>Agreed</p> <p>These comments have been accepted and a note made in the Explanatory Statement to clarify.</p>
<p>A comment was made requesting that any existing listings of extinct species be reconsidered using this definition.</p>	<p>Agreed</p> <p>As there are no current listings within an extinct category no action is required against this comment.</p>
<p><u>Reserve management and resource protection areas</u></p> <p>A request to change the wording regarding prohibited activities in reserves was made regarding identifying horse riding as a possible prohibited activity and not including ... riding a bicycle appears prejudicial...</p>	<p>Agreed</p> <p>The examples in the Bill have been amended to address this concern.</p>



Recommendations	Response
<p>A request was made for consideration of continued access through an area declared a resource protection area, having in mind that declaration of an area for resource protection might prevent access to other areas still open for horse riding.</p>	<p>Agreed</p> <p>These comments have been accepted. This will be addressed through Activities Declarations.</p>
<p><u>Relationship between management planning for reserves and the Strategic Bushfire Management Plan</u></p> <p>One submission commented that the need for a Strategic Bushfire Management Plan to no longer comply with land management plans (plans of management) ... are unsatisfactory.</p>	<p>Noted</p> <p>The comment relates to a part of the Bill which is being carried over from the <i>Nature Conservation Act 1980</i> (s. 80, regarding lawful clearing). The new provision reflects the current exemption of actions for fuel management plans and strategic bushfire management plans. The exemption is for actions taken lawfully under these plans. No changes are proposed to the Bill to take account of these comments as the exemption from prosecution for clearing for agreed bushfire management is a long-standing and important protection for those undertaking such work.</p>
<p><u>Managing conservation on leasehold land/offsets</u></p> <p>One submission commented on the need for innovative leases, voluntary agreements, biobanking and offsets.</p>	<p>Not agreed</p> <p>The use of voluntary agreements was explored in developing the Nature Conservation Bill 2014, but was far more complex than in other jurisdictions because of the nature of the ACT's leasehold arrangements.</p> <p>The work undertaken to date, does not indicate a strong demand so no legislative change is proposed because any demand can be met through existing mechanisms such as using lease clauses and reserve overlays in the Territory Plan. If there is strong demand for these arrangements in the future then further changes to the Act could be made.</p> <p>Offsets are an important tool and are being considered as part of the proposed Bilateral Arrangements for the EPBC Act. Legislative changes are proposed to be incorporated into the Planning Act.</p>



Recommendations	Response
<p>A range related to potential for incentives for private conservation efforts to implement strategies, use of citizen science and for co management arrangements such as ParkCare to be enshrined in the Bill.</p>	<p>Part agreed</p> <p>Voluntary action for conservation is currently encouraged through a range of programs targeted at rural landholders and community groups including support for parkcare and landcare groups, rural programs, ACT Environment Grants and through providing access to Commonwealth programs such as Caring for our Country.</p> <p>Citizen Science and ParkCare are key strategies and actions in the Nature Conservation Strategy and will be effectively monitored through that process.</p> <p>This area of work is currently undertaken through non-regulatory measures. The objects promote the involvement of Indigenous people, landholders, community members in nature conservation and this is facilitated through the Nature Conservation Strategy and through a range of programs. <u>No additional regulatory measures are warranted.</u></p>
<p><u>Additional Court orders</u></p> <p>One submission commented that consideration should be given to the inclusion of additional court orders as an important compliance tool, similar to those in <i>the Environment Protection Act 1997</i>, section 157.</p>	<p>Agreed</p> <p>This change is agreed and has been included.</p>
<p><u>Additional penalties</u></p> <p>One informal comment identified an additional offence of feeding animals within nature reserves. Visitors to Tidbinbilla Nature Reserve feed native animals which can cause problems with aggressive behaviour of animals as well as contributing to problems such as animal disease and overpopulation.</p>	<p>Agreed</p> <p>It is proposed to make it an offence to feed animals in reserves without a licence. A low level offence is proposed of 10 penalty units.</p>
<p><u>Enforcement</u></p> <p>One submission commented about a lack of enforcement of legislation allows for a lack of compliance from private and public bodies.</p>	<p>Noted</p> <p>This has been noted. The Environment and Planning Directorate has developed a draft Compliance and Enforcement Strategy and will work on developing a training program for conservation officers on the Act.</p>



Recommendations	Response
<p><u>Monitoring and reporting, including for protected areas</u></p> <p>Some comments were made about the need for additional monitoring and reporting for protected areas.</p>	<p>Part agreed</p> <p>These comments have been noted. The ACT Nature Conservation Strategy proposes monitoring within 5 key ecosystems across time as a supplement to monitoring of key priority species.</p> <p>A new requirement in the Bill has been included to ensure the results of monitoring are made public.</p> <p>The TAMS and Environment and Planning Directorates are also working on an approach for monitoring health of ecosystems but the science on this is still emerging. As such it is not appropriate to include in a regulation. These programs would be articulated further in the Nature Conservation Monitoring Program facilitated through existing clauses in the Bill.</p>
<p><u>Timeframe for reviews</u></p> <p>One submitter requested more timely review of key plans and strategies at three yearly intervals rather than five and for a review of the Act every five years.</p>	<p>Not agreed</p> <p>More timely review of key plans and strategies at three yearly intervals is not considered feasible within current resources. <u>No change to the Bill is proposed.</u></p>
<p><u>Consultation</u></p> <p>An informal comment was made requesting a new consultation requirement for the Conservator to consult Scientific Committee in preparation of the Nature Conservation Strategy, and also Action Plans.</p>	<p>Agreed</p> <p>The proposal has been agreed and extended to the development of Native Species Conservation Plans.</p>
<p>An informal comment was made asking that the Scientific Committee also be formally consulted on Reserve Management Plans.</p>	<p>Not agreed</p> <p>Scientific Committee consideration of management plans would be a new responsibility for the Committee and outside of their area of particular expertise which is species listing and species management.</p> <p>Reserve Management Planning is a broader process which includes consideration of management of invasive species, recreation management and the appropriateness of infrastructure which are all outside of the expertise of the Scientific Committee.</p> <p>Other committees such as Reserve Management Committees and the Natural Resource Management Advisory Committee (NRMAC) which are better placed to comment on day to day management. This would not preclude consultation with the Scientific Committee, where appropriate, but would not give them this statutory function.</p>



Recommendations	Response
<p><u>Timeframes</u></p> <p>Minor comments regarding timeframes, publication of monitoring reports and additional suitability information for licences.</p>	<p>Agreed</p> <p>These comments have been accepted and have been included in the revised Nature Conservation Bill 2014. For example a 3 month period has been put in for the provision of Conservation Advice.</p>
<p>A shorter 3 year review period for Resource Protection Areas was requested.</p>	<p>Agreed</p> <p>These comments have been accepted and have been included in the revised Nature Conservation Bill 2014.</p>
<p><u>Adequate resourcing of the implementation of the Act</u></p> <p>A range of comments were made about adequate resourcing for implementation of the Act and administrative arrangements.</p>	<p>Noted</p> <p>These have been noted but do not require legislative change.</p>
<p>Some comments were made about the Bill not addressing previous discussions around the benefits of appointing an independent Conservator with demonstrated expertise in nature conservation.</p>	<p>Noted</p> <p>This is an issue addressed through Administrative Arrangements. The provisions within the Bill do not preclude setting up of an independent Conservator’s office within Government, separate to existing directorates.</p>
<p><u>Matters relating to the Planning and Development Act 2007</u></p> <p>One submission made a range of comments about matters that fall within the <i>Planning and Development Act 2007</i> including a stronger role for the Conservator in environmental assessments.</p>	<p>Noted</p> <p>These matters have been noted and will be considered as part of the proposed Bilateral Arrangements for the EPBC Act.</p> <p>Any legislative changes would be incorporated into the Planning Act.</p>
<p>A range of comments also related to a stronger role for the Conservator in management planning for all areas of public land, not just nature reserves.</p>	<p>Not agreed</p> <p>This is not supported for legislative change, but is a focus of the Nature Conservation Strategy.</p>
<p>Comments were also made about land management agreements.</p>	<p>Noted</p> <p>The Bill does not address Land Management Agreements (LMAs) because their purpose is broader than nature conserve and as such they are a component of the Planning Act.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
1. Objects for the Nature Conservation Act		
<p>The Nature Conservation Act to have an objects section.</p>	<p>19 submissions to Have Your Say (HYS) question 17(a) agreed the Nature Conservation Act should have objects. No submissions disagreed.</p> <p>Suitable objects and several legislative models for objects were suggested e.g. <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth.); <i>National Parks and Wildlife Act 1974</i> (NSW); <i>National Parks Act 1975</i> (Vic); <i>Wildlife Act 1975</i> (Vic).</p> <p>Matters which the objects clause should address include: ecologically sustainable development (ESD), biodiversity, climate change, resilience, connectivity, restoration, monitoring, Indigenous participation, consultation, community awareness, community partnership, research and transparency.</p>	<p>Agreed</p> <p>Objects were included in the Nature Conservation Bill. The objects were informed by the EPBC Act (Cth.) and the <i>National Parks and Wildlife Act 1974</i> (NSW) with some changes as a result of consultation.</p>
2. Strategic role of Conservator of Flora and Fauna (the Conservator)		
<p>2(a). Strategic advice</p> <p>The consultancy by Price Waterhouse Coopers (PWC) investigating the Conservator's roles indicated that the role of the Conservator should be continued and strengthened in legislation and administrative practice, supported by high quality scientific and technical advice.</p>	<p>13 of 16 submissions to HYS question 18 agreed aspects of the Conservator's role should be strengthened. No submissions disagreed.</p> <p>Submissions supported strengthening the Conservator's ability to give strategic and timely advice at key stages in planning and development processes including for environmental impact assessment.</p>	<p>Agreed</p> <p>The Conservator's role has been strengthened by providing additional roles in research, monitoring, reviewing plans and strategies and reporting.</p> <p>Roles have also been strengthened through providing for the Conservator to petition the courts for restoration orders.</p> <p>Roles for the Conservator in the Planning Act have been considered as part of the offsets policy.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
<p>2(b). Commissioning research</p> <p>To better inform planning processes, the PWC consultancy report recommends the Conservator should be able to commission research studies for evaluating the conservation values of development areas.</p>	<p>5 submissions to HYS question 18 supported improving the quality, currency and reliability of data supporting the nature conservation advice provided by the Conservator.</p> <p>Submissions by the Conservation Council of the ACT (CONSACT) and Environment Defender's Office (EDO) acknowledged the Commissioners' recommendation and proposed that the Conservator be given responsibility for preparing an ACT Biodiversity Report.</p>	<p>Agreed</p> <p>Responsibilities for the Conservator to undertake monitoring have been included in the Bill.</p> <p>This includes responsibilities for providing information to the State of the Environment Report, and preparing and reporting on a two year monitoring and research program.</p> <p>This includes the ability to commission research.</p>
<p>2(c) Biodiversity reporting for monitoring purposes</p> <p>The Commissioner for Sustainability and Environment's State of the Environment (SOE) Report (2007) recommended more rigorous biodiversity (i.e. flora and fauna) reporting should be implemented. Reporting to include the status of the ACT's biodiversity, key biodiversity indicators and the conservation status of listed species, communities and processes.</p>	<p>Several submissions have called for monitoring of various aspects of nature conservation policy. The aspects nominated and the number of submissions received include: Licences for compliance, (4); the Nature Conservation Act's objectives (2); Monitoring compliance (2); Land Management Agreements (LMAs), (1); Management Plans (3); Offsets (2).</p>	<p>Agreed</p> <p>Responsibilities for the Conservator to undertake monitoring have been included in the Bill.</p> <p>This includes responsibilities for providing information to the State of the Environment Report, and preparing and reporting on a two year monitoring and research program.</p> <p>The program will include priorities for monitoring. This will include monitoring against the targets and strategies identified in the Nature Conservation Strategy 2013-2023, which included monitoring of five key ecosystems.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
3. Conservator's role in land management		
<p>3(a) Management of reserves and planning</p>	<p>17 of 18 submissions received addressing HYS question 14 supported extending control of public activities in reserves to other unleased land areas.</p> <p>9 of 10 submissions to HYS question 15(a) supported the Nature Conservation Act indicating appropriate uses for reserves and other public land.</p>	<p>Part Agreed</p> <p>The ACT Government did not agree with the Commissioner's Recommendation No 1 in the <i>Report of the Investigation of Lowland Grasslands</i> that all land management matters be covered by the Nature Conservation Act (Govt. response 16 March 2010). For this reason only those areas generally managed by the Parks and Conservation service have, or will be brought into the Nature Conservation Act. A new provision for Activities Declarations will identify the appropriate uses based on the provisions of management plans where these are sufficiently detailed.</p>
<p>3(b) Conservator's directions</p> <p>The Conservator's directions power (Part 7) has been exercised only in limited circumstances see Discussion Paper p 43.</p>	<p>The majority of the 11 responses to HYS question 33(a) supported use of the Conservator's directions power for land or vegetation restoration purposes.</p>	<p>Agreed</p> <p>The Nature Conservation Bill has been reworded to make it clear that the Conservator's directions can apply to a broad range of matters including native species and ecological communities.</p> <p>The Directions also apply to treating native species who are suffering disease. The Nature Conservation Act s. 61 power has been tightened to reflect that the <i>Plant Diseases Act 2002</i> and the <i>Animal Diseases Act 2005</i> are the primary legislation for disease control.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
<p>3(c). Private conservation on leasehold land</p>	<p>All 9 responses to HYS question 5 supported the concept of voluntary dedication of leased land for conservation purposes.</p> <p>Among those who provided a response on this issue, there was support for a mechanism to support the voluntary management of leased land for conservation purposes.</p> <p>The Rural Landholders Association (RLA) submitted that voluntary conservation covenants would be attractive to some landholders, providing they were truly voluntary and not coercive, giving them an option which is available in other jurisdictions e.g. NSW.</p> <p>Submissions mainly favoured assistance and incentives for landholders rather than coercion and compensation, although the right to compensation for use foregone was supported.</p>	<p>Not agreed</p> <p>A stewardship program does not need to be embedded in legislation. There are sufficient legislative measures that already exist.</p> <p>The Environment and Planning Directorate will explore the potential options for stewardship with the aim of funding additional schemes when current programs outlined below are finalised.</p> <p>Assistance programs to restore or manage threatened species habitat are available and are outlined in the Nature Conservation Strategy. These include the ACT Government’s Woodland Restoration Program (\$1m from 2011-2014), and the Commonwealth funded Restore ACT Goorooyarroo (\$2.155 million from 2012-2018) are two examples.</p> <p>Landholders are also eligible to apply for Environment Grants (\$180,000 in 2014-15) and the new ACT Rural Grants project (\$450,000 2013-14 2015-16) to support ACT graziers to implement innovative sustainable farming practices.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
<p>3(d). Native ‘Pest’ Animals</p> <p>Currently pest animals are the subject to the <i>Pest Plants and Animals Act 2005</i> (the PP&A Act). Only one native animal, the dingo, has been declared a pest animal under the PP&A Act. In consultation on the PAMS, the RLA has argued that wombats are native animals which are pests on grazing land. The PAMS acknowledges damage reduction has been necessary for eastern grey kangaroos, wild dogs, possums, magpies and venomous snakes in the ACT. Other jurisdictions manage damage by many native species e.g. 43 species (mainly birds) in Victoria.</p>	<p>The majority of the 9 responses to HYS question 32 supported the Nature Conservation Act retaining provisions for pest organisms; however none of the submissions to this question recommended that provisions for management of native pest animals were necessary.</p> <p>However, the FFC’s submissions to questions 1(a) and 25(a) respectively, submitted that limits to impact on key habitat of native species are needed and that the Nature Conservation Act requires amendment to recognise the potential of native species to become superabundant in the absence of natural predators requiring active population management and species management plans to avoid undesirable impacts (e.g. eastern grey kangaroo).</p>	<p>Agreed</p> <p>A new Chapter, Controlled Native Species Management Plans have been included in the bill. This includes a range of provisions to manage overabundant species.</p>
<p>3.e Single Nature Conservation agency reporting to one Minister</p>	<p>10 submissions to HYS questions 1(a) and 1(b) supported a single nature conservation agency reporting to one Minister.</p>	<p>Not Agreed</p> <p>The Nature Conservation Bill establishes the ACT Parks and Conservation Service. It is the ACT Government’s administrative arrangements that determine how the nature conservation portfolio and the ACT Parks and Conservation Service will be administered.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
4. Conservator's powers for licensing, delegations, authorising		
<p>4(a) Licensing, strategic assessment</p> <p>The Conservator's licensing power protecting native animals and plants from taking (removal), killing or interfering with a nest is central to operation of the current Nature Conservation Act. Legal advice obtained upholds the Conservator's licensing powers as having equivalent status to the application of planning law.</p>	<p>9 submissions to HYS question 4(b) commented on licensing and strategic assessment. Commentary acknowledged modifying this kind of licensing could be appropriate where strategic assessment or biodiversity offsetting principles are being formally applied, but it should not be relaxed in other circumstances.</p> <p>9 submissions to HYS 25(a) supported preserving licensing to control the taking of plants and animals from reserves. There was support for continued licensing of:</p> <ul style="list-style-type: none"> • native timber removal from reserves (not urban open space); • research, education, commerce • affecting animals/plants; • keeping, trade in animals/plants; • vegetation restoration; • commercial collections; and • activities of community groups. <p>The FFC submitted the definition of 'nest' be updated to 'nesting site'.</p>	<p>Agreed</p> <p>The provisions for licencing have been comprehensively reviewed. This includes an additional regulation making power. New provisions allow for risk assessment of licencing, financial assurance conditions, provisions for a regulation to indicate what is not an appropriate activity for a licence and a requirement for the conservator to consider a relevant action plan for a species or community or a relevant native species conservation plan in deciding whether an activity is a suitable activity for a licence.</p> <p>The definition of a nest has been made clearer.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
<p>4(b) Licensing in general</p> <p>Licenses for control of superabundant native species will continue to be necessary on both public and leasehold land (e.g., kangaroos).</p> <p>Apart from offences relating to record keeping and production of records on request, there are currently no offence provisions relating to failure to meet license conditions (Discussion Paper, p 47.)</p>	<p>The need to review the licensing provisions overall was supported.</p> <p>Licenses for shooting were seen to be necessary for control of feral animals on both reserves and for off-reserve lands.</p> <p>Recovery of costs in setting licensing fees was supported.</p> <p>Some self reporting of compliance by licensees was supported, but oversight by government was still seen to be necessary.</p> <p>Invertebrates should be included in the definition of animal for licensing.</p> <p>Aboriginal interests should be consulted.</p> <p>There was only qualified, limited support for licensing to continue for activities which can also be controlled by a statutory Plan of Management (PoM). Activities include:</p> <ul style="list-style-type: none"> • commercial operators; • private or community use (e.g. events, weddings); • hunting (8 submissions supported continuation of the offence of hunting without a licence for reserves, but also that it should be prohibited in reserves e.g. by a PoM); • taking of non-native animals (e.g. horses, dogs) into a reserve (these matters were generally seen to be adequately controlled by a PoM). 	<p>Agreed</p> <p>The provisions for licencing have been comprehensively reviewed.</p> <p>Licences for weapons and traps in reserves have been maintained (unless excepted) and other legislation may also apply.</p> <p>Invertebrates are protected in a number of ways: through threatened and protected species listings, or through the Activities Declaration process. If listed either a licence or permit would be required.</p> <p>A new Chapter, Access to Biological Resources in Reserves creates a benefit sharing scheme with indigenous people where traditional ecological knowledge is used for bio-prospecting.</p> <p>The Nature Conservation Act has been amended to create penalties for not complying with license conditions. Fees for licences are able to be charged.</p> <p>Permits for activities in reserves that require a permit as outlined in a reserve management plan and or Activities Declaration are subject to the permitting scheme under the <i>Public Unleased Land Act 2013</i>. This aims to streamline processes and reduce duplication.</p>
<p>4(c) Conservator’s powers for delegation and authorisation</p>	<p>The Conservator’s delegations and authorisations will require strategic revision once amendments to licensing provisions are made and any related offences and penalties are revised; see 12(a)-(d) below.</p>	<p>Agreed</p> <p>The Bill provides for delegation of the Conservator’s responsibilities.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
5. Off-Reserve Conservation		
<p>5(a) Native vegetation protection</p> <p>Part 8 of the Nature Conservation Act only controlled damaging activities, including the clearing of native vegetation, within reserves (i.e. the national park and nature reserves). Licences were also required to take protected plants, individual native plants and timber on leasehold and unleased land (Part 5).</p>	<p>Submissions supported amending the Nature Conservation Act to address off-reserve nature conservation issues.</p> <p>10 submissions to HYS questions 1 and 2 supported adoption of a 'landscape approach' to nature conservation.</p> <p>The ACT Heritage Council submission to HYS question 18 supported strengthening the Conservator's regulatory and compliance powers.</p>	<p>Agreed</p> <p>The management of areas such as the Lower Cotter Catchment has been brought into the Act to ensure that management planning and day to day management of reserves has been brought into the Nature Conservation Bill. A regulation making power allows for other areas to be included for planning and management purposes. This would include a number of special purpose reserves but could also include offset areas on public land.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
<p>5(b) Connectivity corridors</p> <p>Connectivity has been identified as one of the issues the proposed objects of the Nature Conservation Act will address (see Key Issue 1 above).</p> <p>Connectivity has also been identified as one of the strategic issues about which the Conservator should give strategic planning advice, (see Key Issue 2(a), above).</p>	<p>20 submissions to HYS questions 2 and 21(b) supported taking action to address connectivity. Of these, 14 submissions supported addressing connectivity by both land use planning and management planning means, including EIA.</p> <p>Given that mapping connectivity corridor priorities is essential for planning and management purposes, 5 submissions supported production of a biodiversity map overlay including corridors.</p> <p>4 submissions proposed amending s.38 of the Nature Conservation Act to allow an Action Plan to cover connectivity corridors.</p> <p>6 submissions supported making a map overlay for connectivity corridors either as part of the Nature Conservation Strategy or the Territory Plan.</p> <p>3 of these submissions emphasised the Nature Conservation Strategy should be given the status of a policy document which must be considered when the Territory Plan is varied, see Key Issue 7(b) below.</p>	<p>Part Agreed</p> <p>Connectivity is a key theme of the <i>Nature Conservation Strategy 2013-2023</i>.</p> <p>Connectivity of existing vegetation is routinely considered at the structure planning and estate development phases of planning for urban development. It is also considered through Environmental Impact Assessment processes, particularly where it is identified in Action Plans for particular species or ecological communities, and Strategic Environmental Assessment processes.</p> <p>Most connectivity information is modelled rather than observed and only for a limited range of species. A connectivity map has been prepared based on the modelling is available on ACTMAPI.</p> <p>Decisions about clearing native vegetation are usually based on assessment through Environmental Impact Assessment processes or identified in species specific Action Plans, rather than relying on the modelled data. Assessment is, however, informed by the modelled data and connectivity principles.</p> <p>Connectivity at the species level is more complex. What is good for one species may be bad for another. For this reason it is proposed that Action Plans consider the connectivity needs of particular species.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
		<p>Provisions in the Bill include:</p> <ul style="list-style-type: none"> • that in developing the Nature Conservation Strategy the Conservator must include consideration of: • Landscape scale approaches across tenures; • Landscape connectivity; <p>Mandatory considerations for the development of Action Plans must include:</p> <ul style="list-style-type: none"> • Connectivity requirements for the species or ecological community; • Critical habitat.
<p>5(c) Managing encroachments</p> <p>The term ‘encroachment’ usually applies to residential or rural leaseholders who treat the use of adjacent public or reserved land as if it were their own land e.g. for landscaping, rubbish dumping, illegal structures etc.</p>	<p>12 submissions responded to HYS question No. 7 which asked whether there were sufficient existing powers under legislation to address encroachments and invited suggestions on what amendments to the Nature Conservation Act were necessary.</p> <p>The majority responding (9) thought amendments to the Nature Conservation Act were necessary, however only 2 amendments were suggested.</p> <p>The ACT National Parks Association submitted there should be a staged response. Firstly letters requesting cessation, infringement notices then enforceable undertakings with remediation as the main objective. For more serious cases, prosecution should be pursued for criminal damage or where undertakings have not been met.</p>	<p>Agreed</p> <p>A range of provisions regarding encroachments exist in a number of Acts: Relevant legislation includes the <i>Public Unleased Land Act 2013</i>, <i>Trespass on Territory Lands Act 1932</i>, and the Planning Act, see more detailed summary in the Discussion Paper pp 11-12.</p> <p>New offence provisions about damaging native plants in reserves, taking plants into reserves, repairing damage in reserves etc deal with minor encroachments, and may be included in an infringement scheme.</p> <p>Major encroachments such as unauthorised structures are best dealt with through the Planning Act.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
<p>5(d) Management trusts and private conservation leases.</p> <p>(i) Joint partnership between government, community and business sponsors for land with conservation value.</p> <p>(ii) Community trust administering land with conservation values.</p> <p>(iii) Privately incorporated management trusts.</p>	<p>9 submissions were received addressing HYS questions 6(a) & 6(b) covering management trusts and private conservation leases.</p> <p>Submissions supported establishing management trusts for conservation purposes, but urged caution regarding the expertise and resourcing needed.</p> <p>Birds Australia supported a biodiversity offsetting trust fund to address loss of existing lowland vegetation.</p> <p>4 submissions to HYS question 6(a) supported involvement of community groups (i.e. catchment groups) in administering community trusts for public land.</p> <p>The National Parks Association supported this concept suggesting land adjacent to Namadgi National Park, river corridors or nature parks would be suitable.</p> <p>The ACT Rural Landholder's Association (RLA) submitted it may be appropriate to consider making permanent voluntary commitments to nature conservation leases for land previously managed as rural land. RLA asked to be involved in any future legislative change which affects their interests.</p>	<p>Not agreed</p> <p>The Capital Woodlands and Wetlands Trust to oversee management of Mulligans Flat and Jerrabomberra Wetlands Nature Reserves has been established without the need for changes to the Nature Conservation Act.</p> <p>The TAMS Directorate joint partnership trust initiative provides a suitable model for a community trust which could be established for new areas in a similar way, to 5(d)(i) above.</p> <p>Changes to a lease to support conservation can be made by a landholder if so desired,</p> <p>Offset arrangements are to be considered as part of the Planning Act.</p>
<p>6. Advisory Committees</p>		
<p>6(a) Merger of the FFC and the NRMAC.</p>	<p>9 submissions to HYS question 19(a) addressed this issue. 8 submissions supported keeping the FFC and the NRMAC as distinct expert committees, including the FFC's own submission.</p>	<p>Agreed</p> <p>The Flora and Fauna Committee (FFC) is a statutory expert committee established under s.13 of the Nature Conservation Act with defined roles and functions. The Committee has been renamed the Scientific Committee and arrange of new statutory functions have been included.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
6(b) Establish the NRMAC as a statutory committee	9 submissions to HYS question 19(b) addressed this issue. 3 submissions supported giving the NRMAC statutory status including the FFC submission, 4 were against.	<p>Agreed</p> <p>The Natural Resource Management Advisory Committee (NRMAC) is a nonstatutory expert advisory committee.</p> <p>Given that views were divided, no change to the current arrangements was proposed. However a new clause has been included which allows for additional statutory committees to be established if necessary.</p>
6(c) Expand the role of the FFC (cont.)	<p>10 submissions to HYS question 19(c) addressed this issue. 6 submissions supported no expansion.</p> <p>3 submissions supported expansion of the FFC's role, including the NRM Council's submission that the FFC be given oversight of the preparation, implementation and monitoring of Action Plans. Both the FFC and NRM Council's submissions supported the FFC explicitly giving advice to both the Conservator and the Minister. The FFC submitted the Conservator should become more actively involved in FFC business and the FFC should be kept actively informed of species management issues by government.</p>	<p>Agreed.</p> <p>The Scientific Committee (FFC) has been given statutory roles in developing and reviewing Action Plans and Species Conservation Plans.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
<p>6(d) Indigenous engagement</p> <p>An Interim Agreement for co management of Namadgi National Park was struck between the ACT Government and local Aboriginal groups in the late 1990s. The Interim Namadgi Advisory Board was established with 50/50 Aboriginal and European membership. The Board no longer meets.</p>	<p>9 submissions to HYS question 20(a) addressed this issue.</p> <p>7 submissions supported increased consultation and representation of Aboriginal groups on advisory committees.</p> <p>4 submissions to HYS question 20(a) supported recognition of Indigenous custodianship of land and the establishment of joint management agreements for national parks and nature reserves.</p> <p>Representatives of the Ngunnawal attended the Public Forum on Review of the Nature Conservation Act. The report of the Forum recorded strong support for a Namadgi Indigenous Advisory Committee and for Indigenous participation in managing biodiversity.</p> <p>No written submissions to the Discussion Paper on these matters were received from Aboriginal groups themselves.</p>	<p>Agreed</p> <p>A number of objects acknowledge the role of indigenous people in natural resource management. The main implementation approach to engaging with Indigenous people is outlined in the <i>Nature Conservation Strategy 2013-2023</i>. For example, NRM programs in the Environment and Planning Directorate employs an Indigenous NRM Facilitator.</p> <p>A new clause has been included in the Bill which allows for additional statutory committees to be established if necessary. This could include arrangements for Indigenous participation in reserve management, for example. There is current Indigenous membership of the NRM Council and the Heritage Council.</p> <p>A new Chapter, Access to Biological Resources in Reserves creates a benefit sharing scheme with Indigenous people where traditional ecological knowledge is used for bio-prospecting. Licenses are still required unless excepted by the Act.</p> <p>Local Aborigines are members of the Ngunnawal Elders Council. Aborigines and Torres Strait Islanders resident in the ACT have been elected to the ACT Indigenous Elected Body. Both these bodies are the responsibility of the Minister for Indigenous Affairs and the Chief Minister’s Directorate.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
<p>6(e) Community advisory committee representing conservation interests</p> <p>The Discussion paper sought views on the need for establishment of a community consultation body representing nature conservation interests.</p>	<p>10 submissions to HYS question 20(b) addressed this issue.</p> <p>8 submissions gave support, with 5 submissions directly advocating a consultative committee be established. 2 were against.</p> <p>The Conservation Council ACT Region, the ACT's peak body representing groups with nature conservation interests, gave strong support to establishing a community advisory committee recommending its own membership, plus key affiliates, e.g. National Parks Assoc. (NPA), sporting and user groups, Landcare/Parkcare, Greening Australia and rural leaseholders.</p> <p>The NPA itself did not support a general community advisory committee, but supported a community advisory committee for Namadgi NP and nature reserves.</p> <p>The ACT RLA sought membership of any future consultative committee which may arise from this review.</p>	<p>Noted</p> <p>It has been proposed that community consultation, Indigenous participation, community awareness and community partnership be included as objects in an amended Nature Conservation Act, see Key Issue 1, above.</p> <p>No amendment of the Nature Conservation Act would be required to establish representative committees, however, a new clause has been included in the Bill which allows for additional statutory committees to be established if necessary.</p> <p>TAMS' ACT Parks and Conservation Service has established an informal, nonstatutory Conservation and Wildlife Stakeholder Forum meeting for stakeholders with conservation interests in the management of the ACT's parks and reserves. It does not represent user groups in general or recreational interests. The committee meets bi-monthly.</p> <p>The FFC and the NRMAC are expert advisory groups and do not represent community interests.</p>
<p>7. ACT Nature Conservation Strategy (the Nature Conservation Strategy)</p>		
<p>7(a) Timeframe for review of the Nature Conservation Strategy.</p> <p>There is currently no mandatory timeframe for review of the Nature Conservation Strategy specified in the Nature Conservation Act.</p> <p>Australia's Biodiversity Conservation Strategy 2010-30 is intended to be assessed after 5 years and reviewed after 10 years.</p>	<p>8 of 9 submissions to HYS question 21(a) supported establishing a statutory review period for the Nature Conservation Strategy.</p> <p>2 submissions suggested a 5 year review period. The FFC proposed a 10-15 year review period.</p>	<p>Agreed</p> <p>The Nature Conservation Act has been amended to allow for a progress report of an existing Nature Conservation Strategy after 5 years and for mandatory review after 10 years.</p> <p>This amendment would bring the ACT's nature conservation strategy in alignment with the review intervals envisaged for Australia's Biodiversity Conservation Strategy 2010-30.</p>



Key Issues from Discussion Paper	Summary of Submissions	What has been incorporated
	<p>The Environmental Defender’s Office (EDO) recommended that the review of the <i>Tree Protection Act 2005</i> and the <i>Pest Plant and Animals Act 2005</i> should also be reviewed at the same time as the Nature Conservation Act because they also affect biodiversity. The EDO also recommended review of the Nature Conservation Strategy should occur at the same time as the Nature Conservation Act review.</p>	<p>Not agreed</p> <p>There are limited resources for undertaking reviews. Aligning reviews would make resourcing of the reviews very difficult. However, as far as possible the range of issues raised in a review are taken into account in other areas of policy development.</p>
<p>7(b) Nature Conservation Strategy’s role in integrating landscape-wide assessments with strategic land use planning processes.</p>	<p>7 submissions to HYS question 21(b) addressed this issue.</p> <p>5 submissions proposed that the Nature Conservation Strategy should be recognised by and be taken account of in planning decisions. CONSACT submitted that planners should be required to consider the Strategy at all stages in the development and control process and it should inform the Canberra Spatial Plan.</p> <p>4 submissions proposed that the Nature Conservation Strategy should incorporate a biodiversity overlay which should be referenced in planning decisions.</p> <p>CONSACT submitted that their current Biomapping Project should be made available to the Directorate’s geographic information system (GIS). Biodiversity and connectivity mapping will be input to the review of the Canberra Spatial Plan.</p>	<p>Noted</p> <p>In making variations to the Territory Plan, the planning and land authority must consult with the Conservator of Flora And Fauna. The Conservator is required to have regard to the Nature Conservation Strategy. These two provisions are sufficient to ensure that relevant parts of the Nature Conservation Strategy are taken into account in Territory Plan variations.</p> <p>ACTMAPi is used to inform planning and development decisions. ACTMAPi includes a range of information about vegetation, threatened species and woodland connectivity that is used to inform planning and development decisions.</p>



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<p>7(c) Nature Conservation Act to allow:</p> <p>(i) amendment of the Nature Conservation Strategy and;</p> <p>(ii) amendment of the Strategy to be a transparent process.</p>	<p>6 submissions to HYS question 21(c) addressed this issue. All submissions supported amendment of a Nature Conservation Strategy. 5 submissions agreed amendment should be a transparent process.</p> <p>The CONSACT submission argued that amendment of a Nature Conservation Strategy should be provided for because important parts of strategic policy (e.g. carbon sequestration policy, conservation status of land areas) can change significantly during the expected life of a Strategy without there being a need to revise a Strategy as a whole. Such impetus for change is likely to be more frequent in the foreseeable future as policy settings change under the influence of climate change.</p>	<p>Agreed</p> <p>Division 3.1 of the Nature Conservation Act provides for preparation of Nature Conservation Strategy by the Conservator.</p> <p>A draft Nature Conservation Strategy must be released for public consultation for a statutory consultation period. The Minister approves a draft Nature Conservation Strategy as final or directs the Conservator to conduct further consultation. A final Nature Conservation Strategy is tabled in the Legislative Assembly as a disallowable instrument. A strategy is required to be reviewed at 10 years, but can be reviewed and a new strategy prepared earlier if needed.</p> <p>The Bill provides for minor amendments of the strategy. An amended strategy is also disallowable.</p>



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<p>7(d) Giving existing policy documents statutory force</p> <p>By contrast, existing policy documents such as the NRM Plan and the Kangaroo Management Plan do not have statutory status under legislation.</p> <p>The Nature Conservation Act can be amended to allow the Minister or the Conservator to give statutory status to existing policy documents which have been adopted by ACT Government.</p>	<p>9 submissions for HYS question 21(d) addressed this issue. 6 submissions supported giving particular policy documents statutory status. Policy documents nominated for statutory status included: the Kangaroo Management Plan (KMP), (3); the NRM Plan (NRMP), (2); and the Willow Management Plan (WMP), (1).</p> <p>Several submissions called for integration of the KMP and the NRM Plan with the Nature Conservation Strategy. While this integration may occur as a new Strategy is developed, integration should not be made mandatory because discretion on what should be included in the Nature Conservation Strategy should be preserved.</p> <p>Several submissions did not acknowledge that the Nature Conservation Strategy, Action Plans and Plans of Management already have statutory status under legislation.</p>	<p>Agreed</p> <p>The Nature Conservation Strategy, Action Plans (the Nature Conservation Act) and Plans of Management (the Planning Act) have statutory status under legislation. They acquire the status of government policy documents once they are tabled in the Legislative Assembly as disallowable instruments. Statutory policy documents have the potential to be codified and taken into account in planning decision-making under the Planning Act or subsequently become the subject of compliance provisions in legislation.</p> <p>New provisions require the Conservator and/or land custodian to implement the plans or strategies.</p> <p>New provisions about Controlled Native Species have been included in the bill. This includes a range of provisions to manage overabundant species. This provides a statutory basis for plans such as the Kangaroo Management Plan.</p> <p>Other plans which are developed largely for investment purposes such as the NRMP do not need a statutory basis.</p>



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8. Harmonisation with the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth.), (the EPBC Act).		
<p>The <i>Threatened Species Conservation Act 1995</i> (NSW) has a provision which triggers review of that Act's endangered species listings when amendments to the EPBC Act occur.</p> <p>EPBC Act listings are required to be assessed for EIS purposes as soon as a new EPBC Act listing occurs. This means that the ACT does not need to undertake an assessment as soon as something is listed under EPBC Act (as occurs in NSW), as the Commonwealth listing is already recognised.</p>	<p>11 of 12 submissions to HYS question 13 supported better harmonisation. 8 submissions, however, argued that it was paramount that the ACT retain its own right to declare threatened and endangered species/communities.</p> <p>The Commonwealth Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) saw no obvious legal reforms that were necessary to promote integration of Commonwealth with ACT conservation law. However, the Commonwealth submitted that under the current intergovernmental agreements, increased sharing of data and information could and should occur. In particular, issues identified were: reduced duplication in data collection, greater alignment in condition setting and making monitoring data available.</p>	<p>Agreed</p> <p>Provisions for listing of threatened species and ecological communities have been aligned with those of the EPBC Act. Criteria to be developed as a statutory instrument will further increase alignment, while still retaining the responsibility of listing in the ACT.</p> <p>There are new categories of listing to facilitate alignment. This includes extinct, extinct in the wild, critically endangered and conservation dependent species; and critically endangered and vulnerable ecological communities.</p>



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9. Revision of protected entities (i.e. species, communities, processes).		
<p>9(a) Species given special protection status and exempt species</p> <p>Special protection status is the highest level of species protection possible under the Nature Conservation Act (s.33). Exempt species are native or exotic animals which may be kept without risk of escape threatening wildlife or risk to human safety. Keeping or commercial trade in these species does not require a licence.</p>	<p>Ongoing listing and revision of the protected entities under the Act is supported.</p> <p>10 submissions were received for HYS questions 22 on this issue. 5 responses did not see a need for legislative change, 5 saw review of provisions was necessary. 4 submissions identified listings need to be kept up-to-date. 2 submissions supported protection of ecological communities at this level.</p> <p>Change was recommended by the FFC to give the highest level of protection to ACT endemic species.</p> <p>The Commonwealth Government submitted it was necessary that the Territory continue to declare protected and endangered entities based on local and regional criteria, distinct from declarations at the national scale under the EPBC Act.</p>	<p>Agreed</p> <p>All threatened species whether declared by the ACT or under EPBC are given special protection status.</p> <p>The arrangements for exempt species have not changed.</p>
<p>9(b) Declaration of species, community or process.</p> <p>This existing subdivision of the Nature Conservation Act addresses declaration of species or communities as either endangered or vulnerable, or declares threatening processes, s.38. Thirty-two vulnerable or endangered species and two endangered communities have been declared.</p> <p>The Conservator is required to prepare, with community input, an Action Plan for a declared species, ecological community or threatening process.</p>	<p>15 submissions were received for HYS questions 23(a) and 23(b).</p> <p>3 expert submissions received argued for recognition of a category of declaration recognising regionally extinct species which may be subject to species re-introduction programs. Species reintroduction is currently active (e.g. the Bettong to Mulligans Flat) and research is underway to identify the regionally extinct animal species for the ACT.</p> <p>4 submissions supported increased protection of communities or ecosystems.</p>	<p>Agreed</p> <p>A new provision for Conservation Dependent species allows for the management of species that are dependent upon a conservation program for their persistence. Conservation Dependent species are required to have a Native Species Conservation Plan as a requirement for listing.</p>



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<p>9(c) Declaration of processes and functions</p> <p>No threatening processes have been declared under s. 38 of the Nature Conservation Act.</p>	<p>5 submissions for HYS questions 23(a) and 23(b) called for species habitat/connectivity of habitat to be declared and protected.</p> <p>These submissions support the FFC's submissions to HYS questions 1 and 2 which call for a change in emphasis from primarily species protection to protecting species, communities and ecosystem functions or processes.</p>	<p>Part agreed</p> <p>The Bill provides that Actions Plans for Species and Ecological Communities must identify connectivity needs and or critical habitat.</p> <p>Key threatening processes are also able to be listed.</p> <p>The protection of ecosystem function is more difficult because functions include the complex interactions of abiotic and biotic elements of a landscape. Functions are hard to delineate spatially and temporally in a definitive way. This does not lend to being able to clearly define the boundaries or definition of a function. If a function can be defined this way and is spatially explicit, and the function is critically important then a range of measures within the Planning Act can be used to protect the area where the function occurs. This includes public land reservation, zoning etc.</p>
<p>9(d) Definition of 'animal' and 'native animal'.</p> <p>An animal and native animal under the Nature Conservation Act may also be a species declared as a pest animal under the <i>Pest Plant and Animals Act 2005</i>.</p>	<p>10 submissions were received for HYS question 26 addressing this issue. 6 submissions supported a comprehensive definition of animal to include all taxa (vertebrates and invertebrates) and life stages.</p> <p>Similarly, 4 submissions supported a comprehensive definition of native animal including all taxa (vertebrates and invertebrates) and life stages.</p> <p>No submissions supported restricting the definition of native animal to only those animals which are indigenous to the ACT or the bioregion.</p>	<p>Agreed</p> <p>A number of new definitions have been included in the important concepts part of the Bill. The Bill also includes a regulation making power to include or exclude native animals from the definition, in case where the taxonomy is not clear. For example a species that has become naturalised but is indistinguishable from a native species.</p>



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<p>9(e) Definition of native plant</p> <p>Currently, a native plant under the Nature Conservation Act may also be a species declared as a pest plant under the Pest Plant and Animals Act 2005 (e.g. Cootamundra Wattle <i>A. baileyana</i>). There are 35 Australian plants not indigenous to the ACT which have become environmental weeds here. Protecting plants not native to the ACT or its bioregions is a low priority.</p>	<p>9 submissions were received for HYS question 31 addressing this issue.</p> <p>7 submissions supported defining a native plant to be only those species native to the ACT or the bioregion.</p> <p>This provision highlights the need for up-to-date knowledge of the distribution of species under the influence of climate change.</p>	<p>Agreed</p> <p>A number of new definitions have been included in the important concepts part of the Bill.</p> <p>Also a new Chapter, Controlled Native Species Management Plans have been included in the bill. This includes a range of provisions to manage native species.</p>
<p>9(f) Prohibited and controlled organisms</p> <p>Part 6 of the Nature Conservation Act currently allows the Conservator to declare an organism of a particular kind to be a controlled organism. The possession of a controlled organism without a licence is an offence as are actions in relation to a controlled organism not prescribed by regulations.</p> <p>The purpose of the provision is to protect native plants, animals and ecosystems.</p> <p>These provisions have apparently not been used and there are no regulations made.</p> <p>Presumably the intent of Part 6 may have been to cover pest animals or plants (i.e. weeds) and also viruses or bacteria posing a threat to native plants and animals, but this is not clearly stated in the legislation.</p>	<p>9 submissions were received for HYS question 32 addressing this issue.</p> <p>8 submissions supported retention of these provisions.</p>	<p>Noted</p> <p>The <i>Pest Animals and Plants Act 2007</i> now covers these issues. Control of disease causing organisms such as invasive disease pathogens (e.g. bacteria, viruses) of native plants and animals are now covered by the provisions of the <i>Animal Diseases Act 2005</i> and the <i>Plant Diseases Act 2002</i>.</p> <p>Provisions regarding treating diseased native plants and animals have been retained as a Conservator direction to cover situations where the disease is impacting native animals and plants.</p> <p>Also a new Chapter, Controlled Native Species Management Plans has been included in the bill. This includes a range of provisions to manage native species.</p>



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10. Scope, use, monitoring and review of Action Plans		
<p>The Conservator may prepare an Action Plan (ss. 40-42) for significant species, ecological communities or processes declared under ss 33 and 38 of the Nature Conservation Act.</p> <p>10(a) Scope, use and monitoring of Action Plans</p> <p>Action Plans have been used primarily to review, identify and document the status of declared entities (i.e. flora and fauna) for their protection and for the Conservator providing advice in the face of planning and development proposals, for proposed reserves and in defining restoration priorities. They have been used less to prescribe restoration activity itself or to precisely define species' habitat. In Action Plans mapping of vegetation communities has been used as a surrogate for defining species' habitat more precisely.</p> <p>There is no current requirement that Action Plans be monitored.</p>	<p>Canberra Ornithologists Group submitted that Action Plans for threatened species have not delivered improvements for most species for which plans have been written. One submission called for compliance with Action Plans to be made binding on decision makers.</p> <p>One submission proposed financial penalties for non-compliance with an Action Plan.</p> <p>12 submissions were received for HYS question 24 addressing this issue. All 12 submissions supported new provisions for monitoring and review of Action Plans.</p> <p>The call for monitoring is also met by the proposal to address Key Issue 10(a), above.</p> <p>2 submissions called for collection of scientifically-based monitoring data i.e. evidence-based management based on adaptive management principles.</p> <p>Elements of an Action Plan may require technical amendment before the expected life of an Action Plan is reached.</p> <p>Transparency in amending an Action would be consistent with the transparent way draft Action Plans are prepared.</p>	<p>Agreed</p> <p>New provisions require the Conservator to implement, monitor, report on and review Action Plans.</p> <p>Conservator directions can apply to actions required to be undertaken to deliver action plans and monitoring of action plans will need to be considered in making a decision on the suitability of an activity for a licence.</p> <p>Action Plans can have technical amendments without the need to rewrite the plan.</p> <p>Action Plans are disallowable to increase transparency. This applies to minor amendments.</p>



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11. Biodiscovery		
<p>Australia has ratified and expects to sign the Nagoya biodiscovery protocol by early 2012. Australian jurisdictions will not be obliged to legislate until 50 international signatories sign. Australian law is regarded as ‘best practice’ in this policy area.</p> <p>The <i>Biological Resources Act 2006</i> (NT) and the <i>Biodiscovery Act 2004</i> (QLD) are available legislative models for the ACT’s legislative response.</p> <p>Biodiscovery regulations cover:</p> <ul style="list-style-type: none"> • commercial agents’ rights to benefit from biological discoveries; • protection of Indigenous intellectual property rights to knowledge; and • payment of biodiscovery royalties to the ACT Government or to Aboriginal groups. <p>Given the ACT already licenses researchers’ access to native ecosystems under the Nature Conservation Act, the ACT is likely to face biodiscovery regulatory obligations in the foreseeable future.</p> <p>Under the Nature Conservation Act licenses are required to pay the Territory monies at a prescribed rate in relation to the sale and disposal of native animals, native plants or native timber.</p> <p>The ACT is represented on the inter jurisdictional Biodiscovery Working Group established by the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC).</p>	<p>9 submissions were received for HYS questions 43(a) and 43(b) addressing this issue.</p> <p>All 9 submissions supported amendments to the Nature Conservation Act legislating for the payment of royalties for biodiscovery.</p> <p>The Wilderness Society submitted it was appropriate for the intellectual property rights of Traditional Owners to be given sufficient consideration in granting use of biological resources.</p> <p>The National Parks Association submitted that the most likely payment of royalties would be for material collected for the propagation of plants from seed or plant tissue. However, under the <i>Biological Resources Act 2006</i> (NT) ‘biodiscovery’ means research to discover and exploit genetic or biochemical resources of actual or potential value to humanity; it does not include collection of plant reproductive material for propagation.</p>	<p>Agreed</p> <p>A new Chapter, Access to Biological Resources in Reserves creates a benefit sharing scheme with indigenous people where traditional ecological knowledge is used for bio-prospecting.</p>



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12. Compliance (provisions, penalties, infringement notices, seizure powers).		
<p>12(a). Provisions and penalties</p> <p>There is agreement that a major review of penalties is overdue. This finding is consistent with the Draft Report of the PriceWaterhouseCoopers consultancy: Review of the Roles and Functions of the ACT Conservator of Flora and Fauna.</p>	<p>16 submissions were received for HYS question 8 which asked if provisions and penalties were adequate. 14 responses agreed provisions and penalties under the Nature Conservation Act were inadequate. 4 responses agreed penalties should be sufficient to deter wrongdoing.</p> <p>13 of 14 responses to HYS question 19 agreed penalties under the Nature Conservation Act were generally too low.</p>	<p>Agreed</p> <p>The offences and penalties were reviewed and were made consistent with NSW, the EPBC Act or other ACT statutes, as appropriate.</p> <p>A number of new penalties were provided.</p> <p>New compliance and enforcement provisions were made consistent with the Environment Protection Act and Fisheries Act.</p>
<p>12(b) Civil penalties</p> <p>Increased use of civil penalties was supported, but criminal penalties should also remain for the same offences for cases where criminal intent can be proved.</p>	<p>9 submissions were received for HYS question 9 which addressed the use of civil penalties.</p> <p>All 9 submissions supported use of civil penalties. 5 submissions saw civil remedies as being most appropriate for restoring damage (e.g. vegetation; encroachments).</p> <p>DSEWPaC submitted that it is preferable there be a mix of complementary offence provisions available for particular offences, including civil remedies to ensure there is sufficient deterrence maintained e.g. a jail term. DSEWPaC submitted there is considerable value in negotiated outcomes (enforceable undertakings and restorative remedies), see p 6 of the DSEWPaC submission.</p>	<p>Agreed.</p> <p>A range of new civil penalties have been provided including for restoration and repairing damage in reserves.</p>



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<p>12(c) Strict liability offences,</p> <p>Rigorous review of the application of strict liability offences under the Nature Conservation Act is recommended for operational and legal policy reasons; and by the submissions received.</p> <p>Strict liability offences are usually minor in nature where a person will be presumed to have committed the offence unless they can reasonably demonstrate their innocence (e.g. a parking offence).</p> <p>For such offences, the power to issue an infringement notice is usually applied to authorised persons with capacity for day-to-day monitoring and inspection (e.g. inspectors, park rangers).</p>	<p>11 submissions were received in response to HYS question 11 on this issue. 8 submissions supported expansion of the use of strict liability offences for suitable provisions of the Nature Conservation Act.</p> <p>Submissions proposed that infringement notice powers should apply to a wide range of offences i.e. including:-</p> <ul style="list-style-type: none"> • firewood removal; • clearing vegetation • dumping; • killing a native animal without a licence; • trapping; • disturbance to soil; • damage to gates and fences; • holding unauthorised keys. 	<p>Agreed</p> <p>In its May 2010 response to the Standing Committees report on Strict and Absolute Liability Offences, the ACT Government argued that infringement notice issuing powers are (1) a feature of modern legal systems i.e. they are not inherently wrong; and (2) may be justified if it applies to people who choose to engage in a regulated activity, or are on notice that they are doing so, see p. 27 Discussion Paper.</p> <p>A new infringement scheme under the <i>Magistrates Court Act 1930</i> will be made, taking into account the above guidance, for appropriate infringement penalties once the Bill has progressed through the Assembly.</p> <p>Each offence will need to be reviewed on a case-by-case basis with regard to its suitability for issuing an infringement notice. Evaluation will be in the context of the severity and nature of offences overall.</p>
<p>12(d) Search and seizure powers</p> <p>Submissions and informed opinion supports strengthening the search and seizure powers available to enforcement officers. Search and seizure powers under the Nature Conservation Act are limited. Under the <i>Environment Protection Act 1997</i> authorised officers can require the occupier of a premise to answer questions or to make any record or document kept on the premises available if an offence is reasonably suspected.</p>	<p>7 submissions were received in response to HYS question 12.</p> <p>6 submissions supported expansion of the use of search and seizure powers under the Nature Conservation Act.</p> <p>Submissions also supported the creation of the related offence of the keeping and use of unauthorised keys.</p>	<p>Agreed</p> <p>New compliance and enforcement provisions were made consistent with the Environment Protection Act and Fisheries Act.</p> <p>Once the Bill is passed, the Conservator’s delegations will be revised to ensure the infringement notice issuing powers are given to authorised persons who have the capacity to undertake day-to-day monitoring and inspection activity.</p>