ACT Rural Landholders' Association comments on review of the Nature Conservation Act 1980

Introduction:

Throughout its history, the RLA has been concerned with security of land tenure for landholders, and the ability of landholders to run viable rural enterprises. There are some themes in the "Review of the Nature Conservation Act" document which could develop into serious problems.

Major concern 1 - resumption of rural land for reserves

This is a clear possible outcome from the discussion of expansion of the reserve system.

Major concern 2 - our members compelled to operate as reserves

It would seem that the ACT Government has difficulty funding conservation on the reserve land it already has. Some of the themes in the review document could lead to a future where ACT Rural Landholders are required, by order of the Conservator, to maintain their lands as conservation reserves. This gradual change would be more effective from the ACT Government's point of view than confiscating the land outright. It would act as a confiscation of the Rural Landholders' interests at their own expense.

The possibility of damage to ACT Rural Landholders' interests seems to be admitted in the review document – see page 43 "Review of the Nature Conservation Act", "Section 14 ... Have your say ... should the leaseholder be compensated for any loss of amenity or commercial value that results from the directions?" [the enhanced Conservation Directions being contemplated in the Review document]. The enhanced Conservation Directions being contemplated would indeed have the potential to cause damage to existing leaseholder rights, which it would be only fair to compensate. Further sections seem to envisage these new Conservation Directions being enforced with "a formal monitoring, assessment and auditing process ... established within a strong culture of compliance enforcement." (page 33, section 8.1.2 Land management, [in the context of Land Management Agreements on ACT Rural Leases]). The overall picture that emerges is of farmers being compelled to carry out the ACT Government's environmental agenda on their land at their own expense.

On the positive side, it might be attractive to some RLA members to have the option of creating voluntary conservation covenants on their land, as is allowed in other Australian states – the key word from our point of view is "voluntary".

SPECIFIC COMMENTS ON SECTIONS OF THE REVIEW DOCUMENT

Section 1 Connectivity and landscape functioning

The emphasis on connectivity in this section of the review naturally cuts across land-tenures. That is, existing rural landholders' rights are not considered in the discussion, as figure 3 shows - figure 3 has no allowance for or note regarding rural lease rights at all.

1.2.4 Expansion of the reserve system

It seems likely that much of the "expansion of the reserve system" being contemplated is on land currently held privately by our members as rural leases. Obviously, this would be of great concern to us.

Before any expansion of the Government's reserve system is considered, we believe there needs to be a full assessment of the performance of the existing parts of the reserve system. Has the Government's funding of the existing areas been adequate to deliver the intended environmental values? Would extending the reserve system lead to an increase in invasive weed and animal species in new reserve areas?

1.2.5 NC Act changes

The changes contemplated here could have a major effect on our membership. The discussion paper refers to s38 of the NC Act, which currently protects threatened species and communities and defines threatening processes. The discussion paper suggests s38 be expanded in scope, so as to "declare key areas for connectivity and sustainability" and "require an action plan detailing how these areas should be managed". If this took place, then it could put our members in the position of having to run nature reserves at their own expense on portions of their lease which are suddenly declared as "key areas for connectivity and sustainability" - in some cases the effect on our members could be greater than if the areas concerned were simply confiscated to become reserve land managed at the Government's expense.

We believe this change to the law could have very far-reaching implications. The existing law protects threatened species, but finding a threatened species on land is something which is beyond the bureaucratic and political whims of a given moment. Deciding that a piece of land is or is not a "key area for connectivity and sustainability" brings in a huge range for unpredictable, subjective judgement. This would make it impossible for landholders to predict what might be "key" as judged by the town-planning/political fashions of the time or some future time.

Section 2.2 No net loss of significant biodiversity values

Point 1) Non-urban land in the ACT is host to "biodiversity values". It is also host to food production on rural leases. If the "no net loss of biodiversity values within the ACT" principle is adopted, it seems likely to lead to loss of local food production within the ACT as non-urban land is urbanised. This balance should be considered.

The proposition "no net loss of significant biodiversity values" is inherently an arbitrary line in the sand. It may be true that adopting this principle will increase the public good of the people in the ACT, or it may not. This is a democracy, and the decision is inherently political. We believe that the ACT should not adopt more principles unless they are clearly in the interests of its citizens. For the record, we did not call for this principle to be adopted - but if it is adopted, we expect to be directly affected.

Point 2) As Section 2.2 points out, the ACT reserve system contains "predominantly forest ecosystems. The ACT's woodlands and grasslands are not as secure in reserves, even though there is more reserved in the ACT than in surrounding NSW." (page 19, Review of the Nature Conservation Act) As it happens, much of the non-reserve woodland and grassland is on rural leases held by our

members – so the concept “no net loss of this ecosystem” [i.e. woodland and grassland] could have a strong direct impact on us.

As to whether the “no net loss of this ecosystem” concept is better on an ACT-only basis or a regional basis, it would seem to us that arguments could be made for either approach – on the one hand, the ACT is an administrative unit, and responsible for its own environment. On the other hand, the ecosystems involved are present across the political state boundary.

If this policy is adopted in the ACT, the likely outcome would be that woodlands and grasslands currently within ACT rural lease will need to be reserved for conservation purposes in the future. This is especially likely if offsets have to be found within the boundary of the ACT.

If this policy were adopted, it would be a matter of utmost importance for the Rural Landholders Association, and we would be greatly concerned that it took place in a manner that respected the existing rights of our members.

3.1 Private conservation reserves

This section describes a system of voluntary dedication of private land for conservation purposes. Systems using conservation covenants exist in other states of Australia. Legal matters are complicated by the ACT leasehold-not-freehold system.

At first glance, it would seem to be a good thing for our members to have an option which is already available to farmers in other states – officially and permanently setting aside a portion of their land for conservation purposes. There are also advantages to the ACT Government, which would stand to increase the area of land set aside for conservation in the ACT without increasing the management costs of the government-managed estate.

As long as such dedication of conservation land is only a voluntary option offered to our members, it is difficult to see how our members' rights would suffer from this system.

However, the RLA would be very concerned that the details of implementation of such an idea should create an extra voluntary option for our members, rather than a coercive system.

Section 8.1 Role of the Conservator

Our comments on specific proposed changes to the Conservator's role are dealt with under the sections of the document relating to them – particularly Sections 3.1, 8.1.2, 11.3, 14, 15.1.5

Section 8.1.2 Land management

This section is clearly of strong direct importance to our members. Each of our members has at least one of the “Land Management Agreements” referred to. The Land Management Agreements have the potential to impact on virtually every aspect of farm management, in significant detail.

The sub-question of whether Parks and Conservation (TAMS) should be “fully responsible for administering Land Management Agreements” seems at first glance to be somewhat academic from our point of view. Parks and Conservation is already our point of contact for individual Land Management Agreements, and there are always matters in some Land Management Agreements

which require input from ACT Government departments outside Parks and Conservation. Even if Parks and Conservation is made "fully responsible for administering", it seems to us that Parks and Conservation could never be in a position of making all the ACT Government's decisions relating to the LMA.

As a general statement regarding the LMA system, we believe that existing systems are not in need of major change, and that there would be no public benefit in amending the NC Act to establish "a formal monitoring, assessment and auditing process". The government resources expended on such a process would be better spent elsewhere, perhaps on management of government reserve land.

Obviously, we wish to be involved in any further developments of policy in the area of Land Management Agreements, and the general system of ACT Government management of government responsibilities on privately held rural leases.

Sections 8.2 & 8.3 Flora & Fauna Committee; The Natural Resource Management Advisory Committee (NRMAC)

As is mentioned elsewhere in the Review document, large sections of land of conservation value are held by our members as part of their private rural leases. The future of conservation in the ACT seems likely to contain more cross-tenure considerations of environmental conservation.

For these reasons, we believe it is necessary that the RLA be represented in any advisory committee or committees in the future. Our members have a unique expertise in relation to the conservation areas on their properties, which cannot be duplicated by any other source.

Section 8.4 Mechanisms to seek community input

By similar arguments to the above, the RLA needs to be represented on any formal community consultation body that may be established on conservation.

Section 11.1 Definition of an animal and native animal

Currently, a farmer requires no licence to shoot a pest animal on their land. This is true also in the case of the pest animal being a dingo. No licence should be required to shoot a declared pest animal on farm property - this should continue to include dingoes. Dingoes on a farm have the potential to do great damage to stock very quickly. Also, it is hard to tell a dingo from a feral dog while it is attacking stock. It is hard to see circumstances in which a licence to shoot dingoes on a farm would reasonably be refused, so the administration of such a licence would give no benefit.

Section 11.2 Onus of proof for the taking of an animal

This does not directly influence the interests of RLA members greatly. We wish to agree with the point made in the review document that criminals are entitled to a "presumption of innocence", even though this does greatly complicate the job of prosecuting them. We see no reason why those persons charged with taking a native animal from the wild should lose the same basic right extended to murderers and rapists.

Section 11.3 Killing native animals - should the focus be on habitat?

This proposed legislation, if interpreted strictly, could completely dominate the management of a farm "... a person must not, by an act or an omission, do anything to any habitat of a threatened species, endangered population or an endangered ecological community if the person knows that the land concerned is habitat of that kind." This is even more all-encompassing than the existing law about native animal nests under parts 4 & 5 of the NC Act of which, as the NC Act Review paper already says, "Interpreted literally, these existing provisions mean that virtually any clearing of vegetation on unleased land - for example slashing; removal or spraying of a woody weed containing a nest; and so on – requires a licence [from the Conservator of Flora & Fauna]". (page 39, section 10, para 5, "Review of the Nature Conservation Act") As far as we know, the above quote might extend to "on unleased or RURAL LEASE land". Fortunately, as that section 10 goes on to discuss, in practice, the existing provisions are not enforced in this literal manner.

The prospect of further provisions impacting on operation of a rural enterprise on a rural lease is not attractive to our members. We wish to be consulted about any further developments of laws along these lines.

Section 12.1 Infringement notice for firewood collecting

It is of relatively little interest to our members whether firewood collecting takes place on unleased reserve land or not. However, any measures to stop this practice should be designed so as not to impact on our operations on our farms – any such laws should relate only to Government-managed, unleased reserve land.

Section 14 Part 7 of the Act – Conservation directions

This section of the Review document is contemplating enhancing the powers of the Conservator to make Conservation Directions. It would seem to contemplate allowing Conservation Directions for "restorative actions", and "land management actions". As this section points out, it is already the case that Conservation Directions "can be long term and ongoing" for the entire length of that leaseholder's occupation of the land.

There is also the alarming comment that "In a report on Lowland Native Grassland of the ACT, the Commissioner for Sustainability and the Environment found that 60 per cent of the Territory's lowland native grassland sites need urgent land management action." It is likely that many of the sites asserted to need urgent action are on privately held rural land. Taking this statement in conjunction with the wish to issue far-ranging Conservation Directions, it would appear that this matter is potentially of huge importance to our members.

We wish to be involved with any further developments in legislation along these lines.

In answer to the question at the end of this section "Should the leaseholder be compensated for any loss of amenity or commercial value that results from the directions?", we must reply that the answer is obviously "yes". In some cases, it could be that far-reaching Conservation Directions over a block of land would be of more harm to amenity and commercial value than simply confiscating that block of land to turn it into Government-managed reserve. In the same way as it is fair to compensate landholders for confiscating their land, it is fair to compensate them for confiscating their rights to free use of that land.

Section 15.1.2 Hunting in reserved areas

The issue of hunting in unleased reserved areas is of relatively little direct interest to our members. It is important to us that any steps taken do not complicate our use of our land – for example, if hunting licences were required to hunt on private land in the ACT, this would be a significant burden on our members.

Section 15.1.5 Restoration in reserved areas including wilderness

Restoration in Government-managed reserve areas is not of great direct concern of our members. As with other issues, we ask that any steps taken in this issue be taken with a view to potential impact on our members, and that there is a clear distinction between Government-managed unleased reserve land and privately held rural lease land.

Indeed, reading Section 15 in conjunction with Section 14 of this Review document, it would seem that the intention may be to create a system where the Conservator will issue a wide range of "restorative" Conservation Directions over privately-held rural lands – which could have a huge negative impact on our members.

We wish to be consulted about any changes to the law in this area which could impact on our members' rights on their private leases.

Section 16 Part 9 of the Act – Injunctive orders

We are not expert on this section of the Act, but it would appear to give potential for third-party injunctions under the NC Act, including on private rural leases. If this is true, it is of concern to our members, who would prefer to be responsible to the relevant government departments representing the Conservator of the Environment, rather than open to unpredictable third-party suits subject to the uncertainties of court litigation. It is somewhat comforting to read in the review document that "This provision has not yet been used."

Overall comment regarding scope of law changes

Many of the changes suggested do not directly influence our members as long as it is clear that changes in the law relate only to unleased reserve land - but stand to have major negative impact if they apply to our rural leases. There are parts of the ACT where reserves (or a close approximation in the form of river corridor or withdrawal clause segments) are already part of private rural leases, and any effect on the status of these areas should also be considered in any proposed law changes.

We recognise that the ACT Government has a need to find cost-effective solutions for protecting the environment in the ACT. Our members are already funding environment conservation on our various private leases. It may be appropriate to consider means of making permanent commitments to conservation covenants on rural leases. We ask that we be involved in any further process of legislative change which may affect our interests.