



**ACT**

Government

Environment and Planning

# Nature Conservation Bill 2014 REGULATORY IMPACT STATEMENT



PREPARED BY THE ENVIRONMENT AND PLANNING DIRECTORATE  
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# Executive Summary

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The ACT Government intends to introduce a Nature Conservation Bill to the Legislative Assembly to amend the *Nature Conservation Act 1980* (the Nature Conservation Act). The Act is the primary ACT legislation for the protection and handling of native plants and animals, the identification and protection of threatened species and ecological communities, management of national parks and nature reserves and the conservation of the ACT's natural resources.

The primary objective of the Bill is to rationalise and update nature conservation processes and procedures to allow more efficient, flexible and effective application of nature conservation policy and to make processes more accountable and transparent.

The proposed new nature conservation act (new Act) aims to:

- ensure integrated management of our biodiversity, species and ecosystems at the ecosystem scale through bringing management planning for reserves into the nature conservation act and ensuring reserves are managed in accordance with International Union for Conservation of Nature (IUCN) principles;
- provide flexible options for management of species and ecosystems to assist adaptive management through species conservation plans, a migratory species action plan, Ramsar site management plans and controlled native species management plans;
- modernise the enforcement and penalty provisions of the new Act, in particular to make sure that it is consistent with the *Human Rights Act 2004* while ensuring that conservation officers have sufficient powers to manage land appropriately;
- provide for restoration and rehabilitation of damaged ecosystems within reserves;
- increase transparency and accountability by requiring monitoring of the state of biodiversity and requiring this monitoring to inform the review of key strategic documents:
  - the Nature Conservation Strategy;
  - action plans; and
  - plans of management for reserves.

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## 1. Introduction/Purpose

The *Nature Conservation Act 1980* (Nature Conservation Act) was originally a Commonwealth ordinance—the ‘Nature Conservation Ordinance 1980 No 20’ (Cwlth). This instrument was converted into an ACT enactment on 11 May 1989 (self government day).

A review was undertaken to ensure that the new Act remains contemporary and that it provides sufficient protections for the ACT’s flora and fauna and threatened species and ecosystems.

This Regulatory Impact Statement (RIS) establishes whether regulation is still required noting it currently exists and assesses the impacts of proposed changes. The RIS provides background on the nature of conservation in the ACT, identifies the problems associated with market failure, explores options to overcome these market failures, outlines consultation undertaken in reviewing options, analyses the regulatory impact of proposed changes to the new Act and undertakes a cost benefit analysis associated with regulatory impacts.

## 2. Background

### Nature Conservation in the ACT

The ecosystems of the ACT can be divided into highlands and lowlands.

The highlands, land higher than 750 metres above sea level, retain nearly all of their natural vegetation and lie almost entirely within Namadgi National Park and Tidbinbilla Nature Reserve in the south of the ACT. The sub-alpine, montane and wet forest communities that occupy this part of the ACT are part of a much greater continuous network of mountain and alpine parks that includes Kosciuszko National Park and the Victorian Alps. The scale and connectivity of this reserve network does much to protect the ecosystem function and plant and animal diversity of the ACT’s higher lands. The key aspiration here is to continue effective and high-class conservation management.

The ACT’s lowlands comprise hills, ridges and lowland plains. The retention of hills, ridges and buffers provides the backdrop for a growing Canberra as envisioned in the Walter Burley Griffin Plan. This vision still guides the planning of Canberra and provides the character which has made Canberra the Bush Capital. However, around 60 per cent of the ACT’s lowlands have been cleared and there are important elements of the natural environment under threat from a range of factors, including urban development, altered fire regimes, pest plants and animals and disease. The main challenge is to reduce impacts as much as possible, particularly on ecological communities and species that are facing extinction. The challenge is made greater because of expected climate change. Impacts can be reduced through management of pest plants and animals, managing fire risk and improving connectivity.

### Nature Conservation Act

The Nature Conservation Act protects native plants and animals, and provides management authority for conservation lands. The Act provides the legal underpinning of nature conservation policy, management and action across the Territory.

Under the Nature Conservation Act, it is an offence to kill, take, trade or keep most of the ACT’s native animals without a licence; or to take or trade in protected native plants or native plants on unleased land. The Act also allows for the declaration of particular species that require special attention and protection (such as those close to extinction), or those such as the galah or crimson rosella that can be kept as pets without the need for a licence (however, it is illegal to take these birds from the wild).

The Act prohibits destructive activities within reserve areas and provides the powers by which the

Nature Conservation Act can be enforced. It also allows directions to be given to any land occupier to undertake actions on their land for the protection or conservation of native plants and animals or native timber.

The Minister, Director-General of the Environment and Sustainable Development Directorate (ESDD) and the Conservator for Flora and Fauna (the Conservator) [a statutory appointment] are the key administrators of the Nature Conservation Act. The Act also creates the Parks and Conservation Service which includes conservation officers and authorised officers.

The *Planning and Development Act 2007* (the Planning and Development Act) is the ACT's primary legislation for land use planning and provides for environmental assessments to guide decision making about developments. In this regard, the Nature Conservation Act and the Planning and Development Act work together to inform development decisions and tradeoffs between conservation and development, where tradeoffs are necessary. Some development decisions in the ACT are also subject to consideration under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act).

### 3. Identifying the problem

#### Market failure

Characteristics of biodiversity – plants, animals, ecosystems, and the services they provide – can create market failure, whereby the allocation of goods and services by a free market is not efficient. Policies such as regulation can help correct market failure and improve outcomes.

There are three main areas of market failure in the conservation of biodiversity that regulation seeks to address:

- externalities arising from the public good aspects of biodiversity;
- weak or uncertain property rights for biodiversity; and
- information asymmetries.

#### Externalities

Pure public goods are non-rival and non-excludable which means consumption by an individual does not reduce the quality, quantity or availability to others. Some of the ecosystem services provided by biodiversity and ecosystems are public goods, for example the provision of clean water and clean air. Existence values of species and ecosystems are another public good characteristic of conservation management. Public goods problems are also closely related to externalities.

An externality occurs where prices in a competitive market do not reflect the full costs or benefits of producing or consuming a product or service. As a result producers and consumers may neither bear all of the costs nor reap all of the benefits of the economic activity, and too much or too little of the goods will be produced or consumed in terms of overall costs and benefits to society. Examples of external costs are species decline or extinction. Examples of external benefits from nature conservation include health and education benefits and people valuing the existence of biodiversity conservation.

General principles and guidelines for regulatory best practice outlined by COAG include: to reduce, or eliminate, behaviours leading to negative externalities.<sup>1</sup>

#### Property rights

<sup>1</sup> Marsden Jacobs *Enhancing nature conservation policy in the ACT: outcomes from the review of the Nature Conservation Act 1980*, ACT Government.

In part because of the public good aspects of biodiversity, property rights to biodiversity are generally held by the Crown. These property rights may be allocated to private individuals through licensing, but more generally held by the state for the enjoyment of all citizens.

The Crown (the ACT Government) has a responsibility to allocate use of the resources and for what purpose, to make decisions about what uses should be excluded, e.g. such as through restrictions on clearing of vegetation.

### Information asymmetries

Information asymmetry occurs when at least some relevant information is known to some but not all parties involved. Information asymmetry causes markets to become inefficient, since all the market participants do not have access to the information they need for their decision making processes.

For example, in order to avoid damaging or harming endangered ecological communities or species, it is important to understand where the species or ecosystems are and how threatened they are. Governments across Australia, and internationally use a process of listing threatened species, together with provisions for recovery planning (action plans in the ACT) as a way to address this information asymmetry.

### Institutional failure

Where there are overlaps or duplication of responsibility, gaps in action may arise, or actions may be duplicated. Institutional failure is a higher risk where responsibility, for example management of reserves, is spread across different statutes, for example, the Nature Conservation Act and the Planning and Development Act.

## **4. Objective of the proposed legislative reform**

The primary aim of government intervention is to provide for the ongoing provision of ecosystem services and conservation of wildlife to meet the principles of ecological sustainability, which aims to meet the needs of current and future generations.

Environmental sustainability is based on the concept of ecologically sustainable development “which aims to meet the needs of Australians today, while conserving our ecosystems for the benefit of future generations.”<sup>2</sup> In agreeing to the National Strategy for Ecologically Sustainable Development, Australian governments established the following guiding principles for environmental sustainability:

- the sustainable use of resources;
- the integration of economic, environment protection and social considerations;
- use of the precautionary principle;
- inter-generational and intra-generational equity;
- the maintenance of biological diversity, ecological functions and ecological integrity; and
- the need to internalise of the costs of environmental protection/damage.

These principles have guided the development of a number of ACT Government approaches to managing environmental sustainability, including:

- the protection and maintenance of natural ecosystems and biodiversity within the systems of parks and reserves;

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<sup>2</sup> Ecologically Sustainable Development Steering Committee, *National Strategy for Ecologically Sustainable Development*, endorsed by Council of Australian Governments (1992) [part 1] accessed at <http://www.environment.gov.au/esd/national/nsesd/strategy/intro.html#WIESD>.

- the sustainable use of the ACT’s natural resources, water resources, soils, and vegetation management; and
- responding to increased greenhouse gas emissions and adapting to climate change.

## 5. Options to address failures

A successful policy for the conservation of biodiversity will include a range of policy approaches which generally fall into three broad types:<sup>3</sup>

### 1. legislative instruments, for example:

- those which allow for the development of strategic documents such as action plans and management plans;
- those which regulate activities that might cause harm to ecological values such as approvals for land use change, or vegetation clearing; and
- those that provide for the reservation and management of national parks and nature reserves;

### 2. market-based instruments such as development of biodiversity markets, or the provision of incentives;

### 3. voluntary arrangements or suasive measures such as providing information, education and awareness measures and agreements such as conservation agreements; and

### 4. no government intervention is required when the private net benefit of an action exceeds the public net costs, and these benefits are understood.<sup>4</sup>

A description of the types of measures and their costs and benefits is outlined in Table 1 below.

Table 1 – Policy options for the conservation of biodiversity<sup>5</sup>

	<b>Legislation</b>	<b>Financial incentives</b>	<b>Information, education and awareness – voluntary arrangements</b>
<b>Policy logic</b>	Command and control	Incentives (mostly economic)	Information and inducement
<b>Role of regulator</b>	Decide and enact binding standards and rules	Set out structures of incentives	Provide information and encourage certain actions
<b>Role of regulated</b>	Freedom of choice is delimited by regulatory acts	Voluntary, calculated choices based on incentive structures	Voluntary choices subsequent to the information available
<b>Strengths</b>	High certainty of compliance and standardised effects on regulated actors	Use of regulated actors’ personal utility functions and knowledge	Use of regulated actors’ personal utility functions and knowledge
<b>Weaknesses</b>	Potentially rigid and inflexible	Uncertainty about effect caused by reliance on individual calculus	Uncertainty about effect caused by reliance on individual calculus

3 Department of the Environment and Conservation (2006, a) *BioBanking – An Investigation of market-based instruments to secure long-term biodiversity objectives*, Background Paper, <http://www.environment.nsw.gov.au/threatspec/backgroundpubs.htm>

4 Marsden Jacobs *Enhancing nature conservation policy in the ACT: outcomes from the review of the Nature Conservation Act 1980*, ACT Government.

5 Ole Helby Petersen 2008: ‘Theorizing on Public-Private Partnerships: Regulatory Regimes, Credible Commitments and Social Trust’, International Center for Business and Politics (working paper).



## Legislation

Legislation is the preferred option for addressing policy failures because:

- it is simple and has universal application;
- low administrative cost (to Government) of implementation; and
- provides certainty by providing clear information on legal requirements.<sup>6</sup>

The key policy failures that the legislative proposal aims to address are outlined below.

1. A key policy failure that this regulation aims to improve is the provision of conservation outcomes and ecosystem service production. The focus of ecosystem service production in all Australian jurisdictions has historically been on the protection of valuable natural assets in public parks and reserves. Public provision of nature conservation through parks and reserves is a powerful and effective means of protection.<sup>7</sup> Proposals within the amendments that aim to deliver against this purpose include:
  - consolidating provisions for plans of management for wilderness areas, national parks and nature reserves under the same Act that provides for their management;
  - providing the land custodian (the Parks and Conservation Service) with sufficient powers to protect and manage reserves to address contemporary reserve management issues;
  - providing for restoration and rehabilitation of damaged ecosystems within reserves; and
  - the Conservator being enabled to negotiate management agreements for all public land.
2. A second policy failure that these regulatory provisions aim to improve is transparency and accountability.<sup>8</sup> Transparency about how conservation decisions are made and how progress is reported are increasingly important as resources become more scarce. Proposals within the amendments that aim to deliver against this purpose include:
  - objects to frame the new Act and to guide decisions under the new Act;
  - maintaining and clarifying the key roles of the Conservator to:
    - develop and publish guidelines to provide clarity about how Conservator decisions will be made; and
  - provide for increased transparency of the Government's management of biodiversity through monitoring and review of key strategic documents including review of, and minor amendments to, the Nature Conservation Strategy and plans of management for reserves.
3. A third policy failure (or perceived failure) is that decisions about conservation and native species should be scientifically rigorous and evidence based.<sup>9</sup> Proposals within the amendments that aim to deliver against this purpose include:
  - maintaining and clarifying the key roles of the Conservator to:
    - monitor the state of biodiversity, and to monitor the effectiveness of conservation programs;

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<sup>6</sup> Marsden Jacobs *Enhancing nature conservation policy in the ACT: outcomes from the review of the Nature Conservation Act 1980*, ACT Government.

<sup>7</sup> Marsden Jacobs *Enhancing nature conservation policy in the ACT: outcomes from the review of the Nature Conservation Act 1980*, ACT Government.

<sup>8</sup> Marsden Jacobs *Enhancing nature conservation policy in the ACT: outcomes from the review of the Nature Conservation Act 1980*, ACT Government.

<sup>9</sup> Marsden Jacobs *Enhancing nature conservation policy in the ACT: outcomes from the review of the Nature Conservation Act 1980*, ACT Government.

- provide advice on biodiversity issues (based on best available science;
  - provide advice to the land Custodian through input to plans of management for public land; and
  - prepare key conservation documents including the Nature Conservation Strategy, action plans, species conservation plans and controlled native species plans.
4. A fourth policy failing is that voluntary and market based measures are insufficient to protect native species and ecosystems from becoming extinct. Proposals which aim to provide controls to stop actions harming the environment can restrict the use of scarce natural resources such as threatened species. Proposals within the amendments that aim to deliver against this purpose include:
- clarifying and improving processes for declarations of threatened species, conservation dependent species and special protection and protected status species;
  - publishing information about the listing of species and ecosystems and conservation advice once a decision has been made;
  - developing and monitoring action plans for threatened species, threatened ecological communities, migratory species and threatening processes;
  - providing for the development of species conservation plans and controlled native species management plans;
  - modernising provisions relating to licensing through new provisions for biodiscovery.
  - use and enforcement of conservation directions; and
  - revising offences and penalties for illegally taking native species, or harming native ecosystems.

### Market-based initiatives

Markets for biodiversity rely on well defined and enforceable property rights and also a number of participants to drive competition and thus provide lower costs for provision of ecosystem services. The functioning of a market also needs to have sufficient information about the values providers (e.g. landholders) have, and the values the buyer (in most cases the Government) wants.<sup>10</sup>

The Productivity Commission notes that markets alone are insufficient to address all issues of conservation with a combination of policy instruments recognised as the best approach to conservation.<sup>11</sup> The Productivity Commission notes that markets cannot be relied on to provide for biodiversity conservation and management because of the: “public good aspects of biodiversity, to the time horizon one needs to appreciate the value of biodiversity and to the uncertainties associated with its importance” in addition the “intrinsic, aesthetic and cultural values in other areas of society have always been protected by legislation, and that will continue to be true in the area of biodiversity.”<sup>12</sup>

The ACT leasehold system provides a level of uncertainty for market-based approaches and, because there are relatively few providers, it is uncertain whether private markets for biodiversity would function. Suasive approaches are also likely to be insufficient to protect biodiversity in the ACT. As such, the preferred approach is to retain the new Nature Conservation Act as a

<sup>10</sup> Industry Commission, *A Full Repairing Lease: Inquiry into Ecologically Sustainable Land Management*, Industry Commission Inquiry Report (2009)

<sup>11</sup> Productivity Commission, *Impacts of Native Vegetation and Biodiversity Regulations: Inquiry report (2004)* p. 196

<sup>12</sup> Heal, G.M. (1998) *Markets and Biodiversity* in Guruswamy, L.D and McNeely, .A. (ed) *Protection of Global Biodiversity-Converging Strategies- Introduction*, Duke University Press, USA, p.126

central plank of the ACT Government's approach to environmental sustainability and improve the regulatory approach to conserving biodiversity in the ACT. Repealing the Nature Conservation Act and having no regulatory arrangements in place is not a feasible option.

There are no proposals included in the reform package which aim to facilitate markets for biodiversity outcomes. The small size of the Territory, the low numbers of primary producers and the nature of the leasehold system do not lend themselves to a large functioning market for biodiversity. Grants with standard "take it or leave it" provisions are more effective where there is little competition for the provision of ecosystem services. Limited markets might arise through the private provision of environmental offsets but are not part of this reform package. As such there are no regulatory provisions that are focused on market measures.

### Voluntary measures

Voluntary mechanisms are largely underpinned by the provision of information. This includes moral influence, best practice (ranking), monitoring schemes, industry/product accreditation, rating systems, awards, eco-labelling etc. The purpose of information measures is to change perceptions and behaviour of resource users and consumers by heightening environmental responsibility and awareness. These measures represent a low fiscal and economic cost to government and resource users/producers/consumers. They are normally voluntary and assist markets to make efficient resource allocations.<sup>13</sup> Voluntary measures on their own are unlikely to be optimal as they primarily address information failure.

Voluntary measures are most appropriate when there is both a private and a public net benefit because this approach can inform private individuals about the private benefits of action.<sup>14</sup>

A range of voluntary actions are underpinned by regulation in the ACT. Primarily this is through the provision of information contained in the Nature Conservation Strategy, action plans, species conservation plans and plans of management for reserves. These information products have statutory effect, but can also be used to underpin voluntary actions.

### The preferred option

The major components of the Nature Conservation Act will be retained. The amendments to the new Act aim to rationalise regulatory approaches while maintaining appropriate and efficient environmental standards. This means clarifying some of the enforcement and compliance provisions so that serious actions that destroy or damage biodiversity attract significant penalties, whereas minor infringements can be dealt with through infringement notices. The regulatory environment needs to be reformed so that unnecessary regulation is removed and more efficient approaches are adopted. There are some parts of the Nature Conservation Act that are now duplicated in other Acts, such as the *Pest Plants and Animals Act 2005*. These parts will be removed.

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<sup>13</sup> Marsden Jacobs *Enhancing nature conservation policy in the ACT: outcomes from the review of the Nature Conservation Act 1980*, ACT Government.

<sup>14</sup> Marsden Jacobs *Enhancing nature conservation policy in the ACT: outcomes from the review of the Nature Conservation Act 1980*, ACT Government.

The legislative proposals:

1. provide objects to frame the new Act and to guide decisions under the new Act;
2. maintain and clarify the key roles of the Conservator to:
  - a. monitor the state of biodiversity, and to monitor the effectiveness of conservation programs;
  - b. provide advice on biodiversity issues (based on best available science);
  - c. provide advice to the land custodian through input to plans of management for public land;
  - d. prepare key conservation documents including the Nature Conservation Strategy, action plans, species conservation plans, controlled native species plans;
  - e. use and enforce conservation directions;
  - f. negotiate management agreements for all public land; and
  - g. develop and publish guidelines to provide clarity about how Conservator decisions will be made;
3. clarify and improve processes for declarations of threatened species, conservation dependent species and special protection and protected status;
4. provide for increased transparency of the Government's management of biodiversity through:
  - a. monitoring and review of key strategic documents including review of and minor amendments to the Nature Conservation Strategy and plans of management for reserves;
  - b. publishing information about listing of species and ecosystems and conservation advice once a decision has been made;
  - c. developing and monitoring action plans for threatened species and threatened ecological communities, migratory species and threatening processes, and providing for minor amendments and reviews;
  - d. providing for the development of species conservation plans and controlled native species management plans; and
  - e. making it clear that the Flora and Fauna Committee (termed Scientific Committee in the Bill) can provide advice to both the Minister and the Conservator;
5. the proposals will also make changes to reserve management through:
  - a. consolidating provisions for plans of management for wilderness areas, national parks and nature reserves under the same Act that provides for their management;
  - b. providing the land custodian (the Parks and Conservation Service) with sufficient powers to protect and manage reserves to address contemporary reserve management issues; and
  - c. providing for restoration and rehabilitation of damaged ecosystems within reserves;
6. modernise provisions relating to licensing through new provisions for biodiscovery;
7. provides for revised offences and penalties to ensure compliance with the *Human Rights Act 2004*;
8. revise a range of definitions and processes to improve clarity; and
9. provide for a range of other proposals which are of a technical or minor policy change nature or to reflect modern drafting practices.

## 6. Mutual Recognition

A range of legislation operates at local, State/Territory and National levels throughout Australia to protect biological diversity and the environment. The Convention on Biological Diversity is an international treaty to sustain the rich diversity of life on Earth and promotes common approaches to conservation. Australia is a long standing signatory to the Convention and regulations across the Commonwealth and States and Territories are largely consistent with the objectives of the Convention. COAG promotes alignment of policy and approaches to environmental regulation across jurisdictions. Mutual recognition is not a critical issue as options largely relate to transparency and accountability, noting that it is proposed to make the level of penalties more consistent with New South Wales.

## 7. Impact analysis - proposed amendments to the new Nature Conservation Act and Planning and Development Act

The proposed amendments to the new Nature Conservation Act and Planning and Development Act are largely procedural. Many of the provisions are aimed at providing additional transparency and accountability of government decision making.

In relation to monitoring and review, the proposed changes give statutory effect to the current processes to improve accountability. Because these functions are already occurring there are no additional resources required to implement the amended provisions of the new Act.

Other amendments can be implemented through a reprioritisation of activities.

A summary of the proposed amendments which are not considered to impose any appreciable regulatory impact or cost follows. A full regulatory impact assessment has not been undertaken for those measures with no, or negligible, regulatory impact. The regulatory impact of measures that may result in additional costs is considered in Section 8.

Proposed amendments which will not impose any appreciable impact

	<b>Legislative proposal--</b>	<b>Comment on impact</b>
1.	<b>Objects</b> A new objects provision is proposed. Providing objects for legislation represents best practice in jurisprudence. Objects guide the intent and interpretation of provisions, including when sanctions are imposed by a court.	The regulatory impact of proving an object clause is limited. Objects provide clarity to decision makers and assist the Courts in making judgements, but do not have broader impact in isolation of other clauses.

	<b>Legislative proposal--</b>	<b>Comment on impact</b>
2.	<p><b>Conservator functions.</b></p> <p>These proposals require the Conservator to:</p> <ul style="list-style-type: none"> <li>• monitor the state of biodiversity, and to monitor the effectiveness of conservation programs;</li> <li>• provide advice on biodiversity issues (based on best available science);</li> <li>• provide advice to the land custodian through input to plans of management for public land;</li> <li>• prepare key conservation documents including the Nature Conservation Strategy, action plans, species conservation plans, controlled native species plans;</li> <li>• use and enforce conservation directions including processes for assessing complaints; and</li> <li>• negotiate management agreements for all public land.</li> </ul>	<p>These proposals have no additional regulatory burden. They merely clarify and provide transparency around current practices</p>
3.	<p><b>Conservator of Flora and Fauna - guidelines</b></p> <p>This proposal enables the Conservator to develop and publish guidelines and criteria that articulate the biodiversity priorities that the Conservator will pursue and require the Conservator to consider the following when providing advice, guidelines or criteria, or making decisions:</p> <ul style="list-style-type: none"> <li>• the objects of the new Act;</li> <li>• action plans for threatened species and ecological communities;</li> <li>• plans of management for reserved areas;</li> <li>• the Nature Conservation Strategy;</li> <li>• the results of monitoring programs; and</li> <li>• other relevant Government policies and plans such as the Kangaroo Management Plan.</li> </ul>	<p>This accountability measure aims to make processes and criteria by which the Conservator makes decisions more transparent through the development of guidelines. It does not provide increased regulatory burden.</p>
4.	<p><b>Scientific Committee <sup>1</sup>– listing advice</b></p> <p>It is proposed to publish on the internet the Scientific Committee’s advice to the Minister on reasons for declaring a species or ecological community once it has been approved by the Minister. Information which could lead to the species or community being further threatened (for example by illegal collectors) would not be released.</p>	<p>This accountability measure will provide transparency and build confidence in the listing process and make available information useful for nature conservation. This information would generally be included in action plans but this measure will make the information available at the time of listing. There is no increased regulatory burden associated with this proposed amendment.</p>

	<b>Legislative proposal--</b>	<b>Comment on impact</b>
5.	<p><b>Scientific Committee – conservation advice</b></p> <p>It is also proposed that a conservation advice be prepared at the time of listing. A conservation advice provides basic information to guide management of the species or ecological community in the absence of an action plan.</p>	<p>This information would generally be included in action plans but this measure will make the information available at the time of listing and improves transparency of decision making.</p> <p>The conservation advice is generally less specific than an action plan and would include general management guidance. There is no increased regulatory burden associated with this proposed amendment.</p>
6.	<p><b>Scientific Committee – advice to the Conservator</b></p> <p>It is proposed to amend the Act to give the Scientific Committee the statutory role of advising both the Minister and the Conservator.</p>	<p>These measures clarify minor responsibilities of the Minister, the Conservator and the Scientific Committee. There is no increased regulatory burden associated with this proposed amendment.</p>
7.	<p><b>Scientific Committee</b></p> <p>It is also proposed to require the Conservator to refer a draft action plan to the Scientific Committee for comment. The Committee will also be consulted on a range of other plans.</p>	<p>This process already occurs in an informal basis. This measure merely provides the statutory basis for common practice. As such the regulatory impact is considered minimal.</p>
8.	<p><b>Other Committees</b></p> <p>Situations may arise where management of flora and fauna, conservation reserves or the ACT's natural resources may be subject to additional advisory committees or management arrangements. A provision is proposed to allow the Minister to enter such arrangements under the Act if it is convenient to do so, and there is a need for statutory oversight.</p>	<p>There is no significant regulatory impact from this proposal. It is a facilitative provision that allows for the establishment of Statutory Committees other than the Scientific Committee if it is convenient to do so.</p>
9.	<p><b>Variation to the Nature Conservation Strategy</b></p> <p>It is proposed to amend the new Act to provide for part of an adopted and current Nature Conservation Strategy to be amended prior to its replacement with a completely revised Strategy at the end of its expected life. Currently, once a Nature Conservation Strategy has commenced there is no provision to allow it to be amended. The amendments would provide for an appropriate process for public comment on this part-review.</p>	<p>There is minimal regulatory impact from this amendment because it aims to provide additional flexibility to make changes to the Nature Conservation Strategy without the need to make a new strategy.</p>
10.	<p><b>Monitoring and review of the Nature Conservation Strategy</b></p> <p>It is also proposed to provide for a review of the Nature Conservation Strategy every 10 years.</p>	<p>This process already occurs in an informal basis. This measure merely provides the statutory basis for common practice. As such the regulatory impact is considered minimal.</p>
11.	<p><b>Special protection status</b></p> <p>Amend processes for declaration of special protection status to simplify the process.</p>	<p>This change has no additional regulatory burden it merely provides a change to the way in which special protection status is declared to remove uncertainty.</p>

	<b>Legislative proposal--</b>	<b>Comment on impact</b>
12.	<p><b>Protected species</b></p> <p>Criteria for providing species with protected status will be amended. Three categories of 'protection' will be developed: of-trade concern; rare; and data deficient. The Conservator will be able to add additional categories if needed.</p>	<p>There is no significant regulatory impact from providing criteria for things that are given protected status.</p>
13.	<p><b>Listing of threatened species – taxa that can be listed</b></p> <p>The aim of this measure is to limit the types of taxa that can be considered. This is to make it clear that taxa such as 'breeds', 'varieties' and 'cultivars' etc are not listed as threatened species. However, there may be circumstances that other taxa is required to be considered, for example populations and so a regulation making power is proposed.</p>	<p>This change has no additional regulatory burden. The addition merely specifies what taxa can be considered.</p>
14.	<p><b>Listing of threatened species categories</b></p> <p>New categories of 'extinct', 'extinct in the wild', 'critically endangered' and 'conservation dependent' are proposed for species.</p>	<p>There is no additional regulatory burden through listing species as 'extinct', 'extinct in the wild' or 'critically endangered'. Extinct and extinct in the wild do not have any significant regulatory effect. They are given special protection status to protect captive populations or in the unlikely circumstances that they are rediscovered. They are not required to be assessed through an Environmental Impact Statement (EIS) processes. Critically endangered species are a sub-category of endangered and are already specially protected and required to be considered through EIS processes. As such there is no additional regulatory burden.</p> <p>Conservation dependent listings may have some additional regulatory burden and is discussed at 8.1.</p>
15.	<p><b>Categories for listing</b></p> <p>New categories of 'critically endangered' and 'vulnerable' for ecological communities are proposed.</p>	<p>New categories of 'critically endangered' and 'vulnerable' ecological communities are proposed. Critically endangered ecological communities are a sub-category of endangered and are required to be considered through EIS processes.</p> <p>Vulnerable communities are a new listing category. They are not required to be considered for an EIS.</p> <p>As such there is no additional regulatory burden.</p>
16.	<p><b>Criteria for listing</b></p> <p>A change to how the criteria are established is proposed for the Minister to set the criteria for listing species rather than the Scientific Committee. This is to ensure that the criteria reflect any agreed COAG model.</p>	<p>There is no regulatory impact arising from this change. The change only reflects a change in decision maker.</p>



	<b>Legislative proposal--</b>	<b>Comment on impact</b>
17.	<p><b>Provisional listings</b></p> <p>It is proposed that the Minister be able to make provisional threatened species and ecological community listings. A provisional listing would provide special protection status for the species, and would require the species or ecological community to be considered through an EIS.</p>	<p>This proposal would have no additional regulatory burden. The <i>Planning and Development Act 2007</i> has a trigger (4.3.1 (f)) “a species or ecological community if the Scientific Committee has stated criteria for assessing whether the committee should recommend the making of a declaration under the <i>Nature Conservation Act 1980</i>, s 38 (Declaration of species, community or process) in relation to the species or community” the purpose of which is to recognise species or ecological communities in the process of being listed. This essentially is the same as a provisional listing but is very unclear. This proposal aims to make the process clearer but is no different in intent, and therefore has no additional regulatory impact.</p>
18.	<p><b>Process for listing</b></p> <p>Minor amendments to the current processes are proposed to allow for the publication of listing advice and conservation advice.</p>	<p>There is no additional regulatory impact from this proposal. It only provides additional transparency and provides advice on the management of species and ecological communities in the absence of an action plan.</p>
19.	<p><b>Criteria for action plans</b></p> <p>It is proposed that the new Act be amended to allow the Conservator to prepare guidelines on the scope, use and monitoring of action plans. These guidelines would be a notifiable instrument and could enable action plans to map species and community distribution, biodiversity values, ecological connectivity, critical habitat and areas for vegetation restoration.</p>	<p>There is minimal regulatory impact from this amendment because it aims to provide additional transparency and accountability only.</p>
20.	<p><b>Monitoring and review of action plans</b></p> <p>It is proposed that the new Act be amended to allow for a progress review of action plans after five years and for mandatory review to occur at 10 years. Amendments are also proposed that allow parts of action plans to be reviewed and provide for an appropriate public consultation process for that part-review. Current legislation does not permit the review of parts of action plans. The Scientific Committee will have roles in the review of the plans.</p>	<p>There is no additional regulatory practice because it reflects current non-statutory practices.</p>
21.	<p><b>Flexibility to adopt action plans from another jurisdiction or to not do action plans</b></p> <p>It is proposed that the Conservator can adopt an action plan (recovery plan) from another jurisdiction if convenient to do so, and need not develop an action plan if of the view that a conservation advice or a species conservation plan is adequate.</p>	<p>These measures add flexibility to the management of threatened species to ensure that management is suitable for the circumstances of the species and that resources are applied to the management of those that require most effort. There is no additional regulatory burden.</p>

	<b>Legislative proposal--</b>	<b>Comment on impact</b>
22.	<p><b>Listing of conservation dependent species and development of Species Conservation Plans</b></p> <p>Species conservation plans are a flexible way of managing many species where the species requires management.</p> <p>Conservation dependent is a new category of listing species.</p> <p>Species conservation plans are a flexible management tool that can be applied to species that are not threatened but require management (conservation dependent species), or are threatened nationally but are not threatened in the ACT.</p> <p>For example endangered species such as the Murray Cod are nationally endangered but are stocked in local lakes and can be fished. The plans could be used to secure conservation agreements with the Commonwealth to reduce the need for EPBC Act approvals.</p>	<p>Species conservation plans aim to identify actions for management of the species that would not require additional licensing. As such they aim to reduce regulatory burden, without removing important species protections. They may also be used to secure conservation agreements with the Commonwealth which would reduce the need for individual EPBC Act approvals. As such they reduce regulatory burden while providing a flexible management tool.</p> <p>Species conservation plans for conservation dependent species and protected species are associated with a regulatory impact and are discussed at Section 8.1.</p>
23.	<p><b>Species management – Controlled Native Species Management Plans</b></p> <p>It is proposed to amend the new Act to enable native species that cause damage to be managed in accordance with controlled native species management plans.</p> <p>Controlled native species management plans would specify management requirements, stakeholder responsibilities and provide a statutory basis for compliance and enforcement. They could, amongst other things, permit rural leaseholders to cull native animals on their leases without a licence as long as this was consistent with a controlled native species management plans.</p>	<p>The Act licensing mechanism is cumbersome because a licence must be issued to each individual carrying out management, whereas a Pest Management Plan under the <i>Pest Plants and Animals Act 2005</i> can authorise any person who is acting in accordance with the plan.</p> <p>These measures do not increase regulatory burden because they will facilitate a more strategic approach to management of native species.</p> <p>They may also be used to secure conservation agreements with the Commonwealth which would reduce the need for individual EPBC Act approvals. As such they reduce regulatory burden while providing a flexible management tool.</p>
24.	<p><b>Maintaining lists</b></p> <p>This proposed change only changes the way lists are prepared.</p>	<p>This is a procedural matter only.</p>
25.	<p><b>Migratory Species Action Plan</b></p> <p>Migratory species are a protected matter under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> and have routinely been given Special Protection Status in the ACT. As such they are required to be considered for an EIS.</p> <p>Although migratory species are a trigger for an EIS there is little consolidated information about them or their habitat. This measure aims to improve information for the EIS process and management of reserves through requiring the development of a migratory species action plan for the ACT.</p>	<p>There is no additional regulatory impact from this proposal because migratory species are already considered in the EIS process, because they are recognised as having special protection status. This measure should provide improved information to the EIS process.</p>

	<b>Legislative proposal--</b>	<b>Comment on impact</b>
26.	<p><b>Repeal of part 6</b></p> <p>It is proposed that Part 6 of the Nature Conservation Act be repealed. Part 6 allows the Conservator to declare an organism of a particular kind to be a controlled organism. The intent of Part 6 was to manage pest animals or plants (i.e. weeds) and also viruses or bacteria that pose a threat to native plants and animals. These provisions have not been used and the issues they cover are now addressed by the <i>Pest Plants and Animals Act 2005</i>, the <i>Animal Diseases Act 2005</i> and the <i>Plant Diseases Act 2002</i>.</p>	This will reduce duplicate regulation through the removal of redundant and duplicative provisions.
27.	<p><b>Revised penalties for offences to protection of animals and fish and plants</b></p> <p>There is likely to be some minor increased regulatory burden.</p>	This proposal relates to increasing/enforcing existing rules and penalties. Under s36b of the Legislation Act 2001), this is considered to not operate to the disadvantage of anyone and is an exemption from RIS requirements.
28.	<p><b>Conservation directions</b></p> <p>Some minor changes are proposed for conservation directions. In particular it is proposed to clarify the circumstances in which conservation directions will be applied.</p>	There is no regulatory impact from these measures which clarify procedures.
29.	<p><b>Conservation directions</b></p> <p>Higher penalties for not complying with a conservation direction relating to threatened species habitat or to threatened ecological communities may have a regulatory impact as discussed at Section 8.4.</p>	This proposal relates to increasing/enforcing existing rules and penalties. Under s36b of the Legislation Act 2001), this is considered to not operate to the disadvantage of anyone and is an exemption from RIS requirements.
30.	<p><b>Management of reserved areas – management planning brought under new Nature Conservation Act</b></p> <p>It is proposed to bring requirements for management planning for reserves into the new Act. This would align management planning responsibilities with the role of the Conservator and the creation of the Parks and Conservation Service.</p>	This provision does not add any regulatory burden because it merely transfers provisions for management planning from one Act to another.
31.	<p><b>Management of reserved areas – IUCN categories</b></p> <p>It is proposed that the Conservator be required to allocate to all reserved areas one of the six protected area management categories developed by the IUCN.</p>	This provision does not add any regulatory burden because it merely provides for an alternate way of setting management objectives.
32.	<p><b>Plans of Management</b></p> <p>Minor changes are proposed to clarify processes for plans of management. The proposals add discretion to refer a revised plan of management to the Assembly where the changes are not significant, and also to put in place statutory timeframes for Assembly consideration.</p>	There is no additional regulatory burden arising from these changes. They streamline processes and put in place statutory timeframes.
33.	<p><b>Management of Ramsar sites</b></p> <p>Ramsar sites are not specifically protected under the Nature Conservation Act. There is only one site listed in the ACT, and it is included in Namadgi National Park. Although there is no Statutory effect for management planning it does have a management plan specifically for the site.</p>	This proposal gives statutory effect to current practice. It does not have any additional regulatory impact. The purpose is to inform management at a more detailed level than can occur through a plan of management.

	<b>Legislative proposal--</b>	<b>Comment on impact</b>
34.	<p><b>Management of reserves – extension of enforcement powers to all reserves</b></p> <p>It is proposed to extend the powers of conservation officers to all reserves managed fully or partially for nature conservation.</p>	<p>This proposal relates to increasing/enforcing existing rules and penalties. Under s36b of the Legislation Act 2001), this is considered to not operate to the disadvantage of anyone and is an exemption from RIS requirements.</p>
35.	<p><b>Resource Protection Areas</b></p> <p>These proposals relate to special provisions to protect, restore or rehabilitate reserves, or parts of reserves.</p>	<p>Discussed at Section 8.2.</p>
36.	<p><b>Offences and permits in resource protection areas and reserves</b></p> <p>It is proposed that regulations can provide for permits in resource protection areas and other areas.</p>	<p>This proposal gives statutory effect to current practice. It does not have any additional regulatory impact but does make it clear that activities in reserves can be subject to permits.</p>
37.	<p><b>Enforcement and penalties – restructure of provisions</b></p> <p>The Act currently contains enforcement power provisions in Parts 2, 8 and 14. It is proposed that these provisions be consolidated in one Part to signal to the community a renewed commitment to enforcement, to simplify the administration of the new Act, and to reflect current arrangements where one directorate (TAMSD) has principal responsibility for compliance and enforcement.</p>	<p>This is a restructuring measure only. There is no regulatory impact.</p>
38.	<p><b>Enforcement and penalties – Littering</b></p> <p>The Nature Conservation Act provisions on littering provide for a narrower range of offences than those in the <i>Litter Act 2004</i>. It is proposed to delete these provisions. Instead TAMSD would appoint all conservation officers as authorised officers under the Litter Act through its operational procedures. This would make the regulations clearer.</p>	<p>There is no additional regulatory impact because the provisions are already in the Litter Act.</p>
39.	<p><b>Clearing native vegetation in reserved areas</b></p> <p>The current provisions will remain but some of the definitions about causing serious harm and material harm will be clarified, as will the definition of native vegetation.</p> <p>The Conservator will be able to apply to the Court for restoration, rehabilitation and damages orders.</p>	<p>There is no additional regulatory impact as the proposal merely clarifies definitions and makes it clear that the Conservator can make an application to the court for order.</p>
40.	<p><b>Damaging land in reserved areas</b></p> <p>The current provisions will remain but some of the definitions about causing serious harm and material harm will be clarified, as will the definition of native vegetation.</p> <p>The Conservator will be able to apply to the court for restoration, rehabilitation and damages orders.</p>	<p>There is no additional regulatory impact as the proposal merely clarifies definitions and makes it clear that the Conservator can make an application to the court for order.</p>

	<b>Legislative proposal--</b>	<b>Comment on impact</b>
41.	<p><b>Enforcement and penalties – Remedies</b></p> <p>The Nature Conservation Act does not enable the Conservator to apply to the court for an order to remedy environmental harm where a conviction has occurred. This leaves the cost of repairing any environmental harm to the Government or the community. It is proposed that the Conservator be given the opportunity to make such an application.</p>	<p>This is a minor procedural amendment that allows the Conservator to make an application to the court for an order to remedy environmental harm. The regulatory impact is minor because the courts can already make orders for remediation.</p>
42.	<p><b>Management agreements for public land</b></p> <p>It is proposed to extend the arrangements to all government agencies managing biodiversity assets. This provides a proactive and collaborative way of managing biodiversity on all public land.</p>	<p>As this is a facilitative mechanism and arrangements are negotiated there is no regulatory impact.</p>
43.	<p><b>Licensing - biodiscovery</b></p> <p>It is proposed to amend the new Act licensing provisions to ensure that commercial benefits obtained through research or collection of flora and fauna in ACT reserves are shared appropriately with the ACT Government and traditional owners (where appropriate).</p> <p>Under the proposed amendments, licence applicants would be required to develop and participate in a benefit sharing agreement with the ACT Government and/or traditional owners and obtain prior informed consent and mutually agreed, fair and equitable terms for relevant government and commercial interests and Aboriginal groups (e.g. where traditional ecological knowledge informs commercial use of species).</p>	<p>This is a facilitative provision that aims to reduce uncertainty about access to genetic resources.</p>
44.	<p><b>Licensing – clarification of relationship with the Planning and Development Act</b></p> <p>Amendments are proposed to clarify current uncertainty regarding the requirement for a licence to take or kill native plants and animals. Currently, approval under the Planning and Development Act does not replace the need for a licence from the Conservator to take or kill native animals or plants. A licence from the Conservator may also be needed to interfere with a native animal nest or fell or damage timber if approval under the Planning and Development Act is held, however this is unclear.</p> <p>To streamline processes, it is proposed to remove the requirement for a licence for activities consistent with a development approval under the Planning and Development Act. This limits ‘red tape’ duplication.</p>	<p>This measure generally has no additional regulatory impact as it is primarily aimed at clarifying provisions about licence arrangements.</p>
45.	<p><b>Licensing – clarification about Ministerial powers</b></p> <p>Section 106(1) requires the Conservator to only vary a licence in accordance with criteria determined by the Minister. It is not clear that section 106(2) gives the Minister the power to set criteria for varying a licence. It is proposed to clarify that the Minister does have this power. The processes for licensing have been modernised and made clearer with most provisions now in the Act.</p>	<p>This measure has no additional regulatory impact as it clarifies provisions about licence arrangements.</p>

	<b>Legislative proposal--</b>	<b>Comment on impact</b>
46.	<p><b>Licences – species management</b></p> <p>Changes are proposed to streamline licensing conditions that are subject to species conservation plans and controlled native species plans.</p>	This measure has no additional regulatory impact as it clarifies provisions about licence arrangements.
47.	<p><b>Offences</b></p> <p>If a licence has conditions attached it would be an offence to fail to meet those conditions.</p>	This proposal relates to increasing/enforcing existing rules and penalties. Under s36b of the <i>Legislation Act 2001</i> , this is considered to not operate to the disadvantage of anyone and is an exemption from RIS requirements.
48.	<p><b>Director’s liability</b></p> <p>Directors’ Liability is one of the 27 regulatory reforms under the Seamless National Economy (SNE) National Partnership Agreement. The reforms aim to achieve a nationally consistent and principled approach to the imposition of personal criminal liability of directors or other corporate officers for corporate fault.</p> <p>Proposed amendments to the new Act will ensure that the amended legislation is compliant</p>	This measure is largely procedural. There is no significant regulatory impact.
49.	<p><b>Reviewable decisions</b></p> <p>The proposed changes are minor to reflect new provisions.</p>	There is no significant new regulatory impact as this proposal only updates the review process to reflect new proposals.
50.	<p><b>Definition of clearing</b></p> <p>It is proposed to amend the definition of clearing native vegetation to remove ambiguity. The definition, which appears in section 74 of the Nature Conservation Act, also applies in the <i>Planning and Development Act 2007</i> where it is used in determining whether an environmental impact statement is required. Subsection 74(2) states that “Native vegetation is cleared in an area if vegetation cleared in the area is substantially native vegetation.” This is ambiguous as determining the meaning of “substantially” is difficult when native vegetation is interspersed with non-native weeds.</p> <p>It is proposed to clarify this ambiguity by referring to “more than 50% by area perennial native species and/or trees or shrubs indigenous to the area have a canopy cover of 10% or greater in any stratum over an area”.</p>	There is no additional regulatory impact from this amendment because it aims to reduce ambiguity through clarification.
51.	<p><b>Definition of harm</b></p> <p>It is also proposed to clarify the circumstances in which serious harm, material harm and harm would apply.</p>	There is no additional regulatory impact from this proposal as it only clarifies an existing provision.
52.	<p><b>Plans and strategies to be made available online</b></p> <p>This proposal provides for plans and strategies under the new Act to be provided online rather than in printed version.</p>	This proposal does not have any additional regulatory burden because it only changes the medium for consultation.

## Planning and Development Act Changes

53.	<p><b>Schedule 4 EIS trigger</b></p> <p>At present, matters of national environmental significance are a trigger for environmental assessment where they are listed through special protection status (e.g. threatened and migratory species under the Nature Conservation Act), protected species status or because they may occur within reserves (such as Ramsar sites).</p> <p>This proposal will directly reference matters of national environmental significance as triggers for an EIS rather than using the current special protection status provisions. This provision does not add any new triggers it merely provides clarity about current triggers.</p>	<p>These proposals do not change the current EIS triggers except for 'conservation dependent' species. These are discussed at sections 8.1 (relating to conservation dependent species).</p>
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## 8. Cost Benefits Summary

This section of the RIS presents a cost/benefit summary of each amendment that may impose some appreciable cost to Government, business or the community. Proposals that may impose some impact include:

1. listing of species –new category of conservation dependent; and
2. resource protection areas.

### **8.1 Listing of species – new category of conservation dependent**

As identified earlier there is no regulatory impact from listing critically endangered species as they are a subset of the endangered category, and the consequences of listing as the sub category are exactly the same, i.e. the species requires an action plan to be developed; it has higher penalties for illegal taking in the wild (but no higher than the endangered category); and is required to be considered in an EIS. While it is likely that decision makers are unlikely to support actions that significantly impact on a species that is critically endangered, this would be likely irrespective of whether it is called endangered or critically endangered. Extinct and extinct in the wild species would have special protection status but would not require an EIS. This aligns with Commonwealth processes.

Conservation dependent species are species that are the focus of a specific conservation program. Mostly they will be for non-threatened species, or nationally threatened species that are non-threatened in the ACT. These species are ones which require specific management to allow populations to persist. Examples in the ACT include the bettongs in Mulligans Flat, brush-tailed rock-wallabies and some native fish species. Generally these species would be managed in reserves. They will have special protection status but will only require an EIS if they are subject to a species conservation plan.

## Analysis of alternative options

Alternative options	Benefits and constraints
Retain the current legislative provisions	<p><b>Benefits</b></p> <p>Conservation dependent species could be listed as ‘protected’ species under the current provisions. An EIS is required for all ‘protected’ species.</p> <p><b>Constraints</b></p> <p>There is no requirement for a species conservation plan so a species can be protected but there is no information that can be used to inform an EIS requirement. This means that a proponent may need to investigate whether the protected species is likely to be in the area.</p>
Amended provisions	<p><b>Benefits</b></p> <p>An EIS would only be required when subject to a species conservation plan. This would assist development proponents to identify when significant impacts are likely to occur.</p> <p>There would also be benefit in identifying management actions, such as research, monitoring, translocation, breeding programs etc for which licencing is not required.</p> <p>Species conservation plans can be a substitute for an action plan, or be supplementary to an action plan. They could also be used to secure conservation agreements with the Commonwealth for EPBC Act listed species that are impacted through management rather than development. Such species include the Murray cod, grey-headed flying-fox and similar species. This means that management actions consistent with the plan and the conservation agreement would not need separate EPBC Act approval.</p> <p><b>Constraints</b></p> <p>Species conservation plans will only be useful if they are targeted and implemented. They are intended to be operational and generally guide management of the species on public and private land.</p> <p><b>Costs</b></p> <p>The primary costs of this measure would be in developing species conservation plans. These costs would be met through internal reprioritisation of resources, and there would be savings by not requiring separate licences for each action. There would be significant savings if the species conservation plans can avoid further EPBC Act approvals for species management.</p> <p><b>Cost/Benefit Assessment</b></p> <p>Although there are costs associated with preparing plans, there are savings through offsetting requirements for individual licencing of actions. The benefits to developers and land managers through knowing management expectations up front outweighs the costs of preparing the plans. Overall the benefits of the proposed reform outweigh the costs.</p>

### 8.2 Resource Protection Areas

These proposals relate to special provisions to protect, restore or rehabilitate reserves, or parts of reserves. Resource protection areas would be managed by the Parks and Conservation Service. The intent is to allow closure of reserves for a significant period of time (greater than 6 months) to allow for rehabilitation, restoration or resource protection. Currently the Nature Conservation Act allows reserve closure for operational reasons but not over the longer term.



## Analysis of alternative options

Alternative options	Benefits and constraints
Retain the current legislative provisions	<p><b>Benefits</b></p> <p>The current provisions are well understood and savings to government would occur because there would be no need for development of new processes. The current provisions would continue to operate on an as needs basis.</p> <p><b>Constraints</b></p> <p>The community may be concerned if reserves need to be closed for significant periods of time because the processes are aimed at short-term operational needs.</p>
Amended legislative provisions	<p><b>Benefits</b></p> <p>The main benefit of closure of reserves would be to allow reserves to be rehabilitated or restored over significant periods of time. The circumstances in which the reserves are closed would be made clear in the declaration process and the notice would make it clear what can and cannot be done within the closed area of the reserve.</p> <p><b>Constraints</b></p> <p>Restricting access to reserves may be difficult. Because significant penalties would apply for unauthorised actions there would need to be significant community education to ensure that the penalties are understood.</p> <p><b>Costs</b></p> <p>The main regulatory impact of this measure is that otherwise allowable uses might be restricted for long periods to allow the resource to recover. There would be some costs associated with ensuring that the community understands the reasons for closure and also the actions permitted or prohibited. It is unlikely that any individuals would face direct costs through not being able to access resources, for example.</p> <p>Overall the benefits of the proposed reform outweigh the costs.</p>

## 9. Consultation

Consultation on the operation and effectiveness of the ACT's current Nature Conservation Act has occurred as part of the review, primarily through the release of a Discussion Paper.

The review has also been informed by other relevant consultation processes including investigations by the Commissioner for Sustainability and the Environment and the ACT Government's *Time to Talk* community consultations processes.

The review was also informed by a specific review on the roles and functions of the Conservator as a component of the Review of the Nature Conservation Act, undertaken by consultancy firm PriceWaterhouseCoopers.

### Review of the Nature Conservation Act 1980 – discussion paper

In developing the 'Discussion Paper – Review of the Nature Conservation Act' the ACT Government undertook internal consultation and consulted with the Flora and Fauna Committee (to be renamed Scientific Committee) and the Natural Resource Management Committee. The Minister for the Environment and Sustainable Development announced the release of the *Discussion Paper on the Review of the Nature Conservation Act 1980* for public consultation on 3 December 2010. Submissions formally closed on 18 February 2011 although a number of late submissions were accepted until mid April 2011.

In undertaking the formal consultation process: Aboriginal people and organisations (ACT Aboriginal and Torres Strait Island Elected Body, United Ngunnawal Elders Council) were contacted through the ACT Indigenous Network assisted by the ACT Office of Aboriginal and Torres Strait Islander Affairs; information announcing the Review was sent via the ACT Natural Resource Management (NRM) distribution list to 105 people; over 400 copies of the Discussion Paper was distributed through direct mail, libraries and community groups; stakeholder briefings were held with the NRM Advisory Committee, the Flora and Fauna Committee, NRM Council, Heritage Council and the Rural Landholders Association; and a public Community Forum for the Nature Conservation Act Review was held at the Canberra Business Event Centre, Regatta Point, attended by 39 people.

Thirty-two written submissions to the Review were accepted. These submissions have assisted in the development of the amendments to the Nature Conservation Act.

### Exposure Draft consultation on the Nature Conservation Bill 2013

Consultation on an Exposure Draft of the Nature Conservation Bill 2013 was undertaken from 31 October 2013 to 13 December 2013. Some stakeholders were given an extension until 31 December 2013, where requested. Late submissions were accepted until 8 January 2014.

Key conservation stakeholders were advised about the consultation process by letter on 31 October 2013. During the consultation period, Environment and Sustainable Development Directorate (ESDD) officers met with the Commissioner for Sustainability and the Environment, the Conservation Council of the ACT Region, the Natural Resource Management Advisory Committee and also with operational officers from the Parks and Conservation Service within the Territory and Municipal Services Directorate (TAMS).

All submissions were carefully considered. Most suggestions were adopted. Some suggestions were dealt with in alternate ways such as through use of conservator guidelines, or as a consideration for the development of Action Plans.

### Roundtable consultation on the Nature Conservation Bill

A Roundtable consultation with key stakeholders 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 Committee and ACT Natural Resource Management Council also attended.
- Staff from the Office of the Commissioner, and from the Environment and Sustainable Development and Territory and Municipal Services 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. The Roundtable Report is available on the Environment and Planning Directorate's website at [www.environment.act.gov.au](http://www.environment.act.gov.au).

### Other relevant consultation processes

Other relevant consultation processes that have informed the proposed amendments have included:

- Draft Nature Conservation Strategy consultation (closed December 2012);
- the Commissioner for Sustainability and the Environment's Reports on ACT Lowland Native Grassland Investigation; Investigation into the Canberra Nature Park (nature reserves); the Molonglo River Corridor (nature reserves) and Googong Foreshores;
- Australian Environment Act: Report of the Independent review of the *Environment Protection and Biodiversity Conservation Act 1999* by Dr Alan Hawke for the Commonwealth Government; and
- the Natural Resource Management Ministerial Council review of the National Strategy for the Conservation of Australia's Biological Diversity (1996) in 2010 and the new strategy, Australia's Biodiversity Conservation Strategy 2010-2030 (2010).

### Time to talk

Lowering Canberra's carbon emissions, reducing consumption and generally being more environmentally responsible has emerged as a universally shared goal.<sup>15</sup> Canberra's relationship to its landscape, fresh air and the system of open space are seen as critical assets. Enhancing the "green spaces" of Canberra is seen as a way of balancing climate extremes and of keeping Canberra's clean air and water as well as providing places for meeting, exercising and enjoying nature. Continuing to be innovative and to invest in sustainable energy and transport is a community priority.<sup>16</sup>

### PriceWaterhouseCoopers Review of the Role of the Conservator

ESDD commissioned PriceWaterhouseCoopers (PWC) to review the Roles and Functions of the Conservator as a component of the Review of the Nature Conservation Act.

PWC identified two key concerns: firstly that powers are limited in the Planning and Development Act but overly detailed and prescriptive in the Tree Protection Act; and secondly a lack of transparency in relation to planning authority's decisions in relation to the Conservator's advice. The PWC Review recommended that: the Conservator adopt a more strategic approach to planning and development; the ACT Government consider whether the powers of the Conservator under the Planning and Development Act should be strengthened; more comprehensive reasons should be provided when planning and developments decisions are made; and the Conservator should be replaced as the principal decision maker under the Tree Protection Act by an ACT Tree Curator<sup>17</sup>.

It is proposed that non-legislative changes are implemented to increase transparency by improving the quality of consultation on planning and development under the Planning and Development Act. The planning authority, now part of ESDD, will work with the mandatory referral entities including the Conservator to improve the rigour of the advice provided by these entities and the quality of its written reasons when not accepting the entities' advice.

This would provide greater accountability for advice given and decisions taken, and would not significantly increase processing time or costs. It is feasible, practical and consistent with PWC recommendations.

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<sup>15</sup> ACT Government, Time to talk, Canberra 2030: Outcomes report (December 2010) p. 8.

<sup>16</sup> ACT Government, Time to talk, Canberra 2030: Outcomes report (December 2010) p. 8

<sup>17</sup> The Government has agreed in principle to create a Tree Curator position and to reduce the involvement of the Conservator in tree management, except in new subdivisions. This is subject to a separate legislative process.

## 10. Conclusion

The Nature Conservation Act is an important statute that underpins conservation of the ACT's natural resources. The Nature Conservation Act provides for a number of processes that provide information about the value of biodiversity and its state. This provides the basis for environmental considerations to be taken into account in decision making, under the Nature Conservation Act and the Planning and Development Act.

The proposed amendments to the new Act are designed to:

- rationalise arrangements for the management of the conservation estate and public land;
- clarify regulatory provisions to reduce duplication or uncertainty;
- provide for increased transparency and accountability of Government processes;
- align processes with NSW in regard to enforcement provisions; and
- rationalise processes for licensing of management of native species and for biodiscovery.

The proposed amendments are largely procedural and costs to the community are minor, or can be avoided. Costs to the Government are low and can be absorbed into current processes, or met through a redirection of current priorities. For these reasons, and because market and voluntary approaches are unlikely to be effective in maintaining conservation values and ecosystem services, regulation is the preferred option.

The community identified the desire for more significant reforms through the consultation process. Many of the reforms related to the need for landscape scale conservation and connectivity of ecosystems. Legislation is a blunt tool to encourage positive conservation actions across a range of tenures. Instead the Act facilitates actions at the strategic level through providing for the development of a range of strategic plans and strategies that can assist in the prioritisation of actions and inform investment decisions. For this reason the Nature Conservation Strategy identifies positive conservation actions that work in concert with the provisions of the Nature Conservation Act to encourage investment in actions across the landscape.

## 11. Implementation and review

The proposed Nature Conservation Bill will distribute responsibilities to reflect similar levels of decision making as currently are in place, with the Minister responsible for strategic decision making under the new Act, and the Director-General, Conservator and Parks and Conservation Service responsible for the new Act's implementation.

The Bill proposes decision making as follows:

1. The Minister responsible for administering the new Act is responsible for high-level strategic decision-making including, appointing the Scientific Committee, directing the Scientific Committee, declaration of threatened species and ecological communities, approval of the Nature Conservation Strategy, declaring species as controlled native species and setting licensing criteria.
2. The Director-General of the Directorate administering the Act is responsible for appointing the Conservator and Conservation officers, and the Secretary to the Scientific Committee, and for issuing identity cards.
3. The Conservator is primarily responsible for implementing decisions made by the Minister. This involves preparing and implementing the Nature Conservation Strategy, action plans, species

conservation plans and controlled native species plans; monitoring biodiversity, deciding whether licences should be issued and issuing conservation directions. The Conservator is supported by the Parks and Conservation Service and other officers as needed.

4. The Scientific Committee provides scientific advice to the Minister, and to the Conservator.
5. The Parks and Conservation Service supports the Conservator in the exercise of their responsibilities and for enforcement of the new Act. As land custodian, the Parks and Conservation Service is responsible for preparing and implementing plans of management for conservation reserves.

Because the proposed legislation replaces the *Nature Conservation Act 1980*, administrative processes to implement the new Act are already in place. Administrative responsibility for the new provisions rests primarily with the Conservator and the Parks and Conservation Service. Administration of the new Act will be mapped to current areas of administration, and new guidelines and/or standard operating processes developed where necessary.

Subsidiary documents under the new Act require formal review at 10 year intervals. It would be appropriate for the new Act to also be subject to a formal review at 10 years after its implementation.











