



# Friends of Grasslands

*supporting native grassy ecosystems*

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Dear Sir/Madam

## **Review of Nature Conservation ACT 1980**

FOG is a community group dedicated to the conservation of natural temperate grassy ecosystems in south-eastern Australia. FOG advocates, educates and advises on matters to do with the conservation of grassy ecosystems, and carries out surveys and other on-ground work. FOG is based in Canberra and its more than 200 members include professional scientists, landowners, land managers and interested members of the public.

FOG welcomes the opportunity to respond to the Discussion Paper on the Review of the Nature Conservation Act 1980 (NCA), which was issued in November 2010. Given the deterioration of at least some of the ACT's biodiversity (e.g. natural temperate grasslands, as reported by the Commissioner for Sustainability and the Environment (CSE) in 2009) and the reliance (from the community's perspective) on Federal legislation (the EPBC Act) to protect threatened species and ecosystems that are found outside our Nature Reserves and National Park, we see this review as essential and changes to the Act necessary to improve conservation of our natural environment. Another key role of the NC Act should be to ensure that Canberrans will continue to enjoy the 'bush capital' and having the natural environment close to hand, something that the recent 2030 exercise carried out by the ACT Government shows that Canberrans really appreciate.

Detailed comments on the questions raised in the Discussion Paper follow.

### **Part 1.**

#### **Page 9 *What do you consider are the key issues for future nature conservation in the ACT?***

- Legislation and mapping.
  - Planning and development. The areas of high conservation value and the links between them (landscape connectivity) need to be recognised and legislatively protected.

- Mapping of conservation assets needs to be extended to include areas of conservation value within urban areas.
- Having a strong offset policy that to a large extent prohibits destruction of biodiversity.
- Strengthening provisions for ameliorating threats. In this respect little is mentioned in the review. FOG considers that the review ought to look at integration of weed management and biodiversity outcomes, waste management and biodiversity, and of course responses to climate change.
- Seeking a unified legislative approach across jurisdictions.
- Regional focus
  - A strong Canberra region focus and recognition that Canberra is a regional as well as a national capital.
- Bush restoration theme
  - Commitment to management by 'bush restoration' principles, including a highly skilled bush management team.
  - Restoration of landscapes in urban areas to provide better landscape functionality and habitat opportunities.
  - Landscaping the city with indigenous vegetation and cease planting of exotic vegetation in Canberra's open spaces, alongside arterial roads, etc.
- Resourcing and infrastructure
  - Committed long term resourcing to conservation, possibly funded in part by a broad environmental levy.
- Education and training
  - Support for school and public education programs that emphasise the importance of biodiversity.
  - Establishment of a school or centre within a university or other institution to provide higher level education and skill training in bush management principles and practices.
  - Make Canberra the bush-education capital.
- Indigenous value
  - Provide for recording of oral histories of older indigenous peoples.
  - Emphasise cultural training in all aspects of Canberra.
  - Provide training in bush management for indigenous people.
  - Strengthen indigenous land management.
- A number of these matters are considered inadequately in the review.

*Page 9. How do you think conservation concerns can be balanced with social and economic interests?*

- Stop using this hideous concept. The social, economic and biodiversity outcomes need to be integrated, not 'balanced'. We don't ask what higher level of road toll is acceptable so that we might have better roads! Nor should we ask how much of our biodiversity can we sacrifice this year for better health or education outcomes, and then ask the same question next year. The long term effect of 'balancing' conservation concerns with economic interests is a gradual loss of biodiversity, since the same high-value biodiverse area is repeatedly under threat due to a continuing barrage of economic interests and proposals – in practice environmental considerations seem to be regarded as a constraint on the economic and social rather than being complementary.

*Page 19 How do you think connectivity and ecological sustainability across the ACT can best be protected and enhanced?*

- See answers to questions on page 9.

*Page 20 What are your views on no net loss of significant biodiversity and its applicability to the ACT?*

- We believe that the word ‘significant’ ought to be deleted as superfluous.
- We support the concept of ‘no net loss’ and, putting aside semantic considerations, we believe that there should be emphasis on net gain.
- The concept should result in making the clearing of native vegetation and particularly the loss of threatened ecological communities and habitat for threatened species prohibitively expensive. In general, current disincentives seem too weak.
- FOG’s view is that there should be no development that impacts on vulnerable or endangered species habitat or ecosystem communities, i.e. no development in high conservation areas. As well, losses from development should be minimized in any area with a conservation value. However, recognizing the reality of the current situation where offsets are mandated by government for the destruction of native vegetation, FOG considers that:
  - In such situations, offsets should always occur, i.e. there should be no development impacting on sites with a conservation value without an offset being obtained;
  - Where offsets are provided they should be on the basis of like-for-like, although trading up for a more threatened community or species could be allowed.
- We have been very concerned by the piecemeal approach to loss of habitat of golden sun moth, grassland earless dragon, striped legless lizard, and pink tail worm lizard, to mention a few, and consider that any strategic approach in conservation of these species is lacking.
- While research is important we consider that, in and of itself, it is not an offset. Emphasis should be placed on on-ground work which would protect and maintain (or actually improve) areas of land. Establishment of funds for long-term management based on bush management principles could be considered as part of any package.

*Page 20 Does the ACT contribution need to be viewed in the broader regional context, and if so how could cross border offsetting considerations apply?*

- We agree that the ACT contribution needs to be done in a broader regional context.
- There is scope for consideration of wildlife corridors across the landscape – integrated planning between the ACT and adjoining NSW shires to preserve higher quality areas would aid conservation of these corridors.
- Granting offsets for the destruction of ACT assets within the wider region needs to be approached very cautiously, with a number of issues needing consideration, such as the ‘like for like’ principle and long-term maintenance of such offset areas.

*Page 21 Should the ACT consider a similar approach to NSW biocertification to allow a better interface between the NC Act and the Territory Plan?*

*What are your views on including licensing provisions as part of strategic assessments to deliver maintained or improved biodiversity across a planning area?*

- We would give this qualified support if there is evidence that better outcomes would ensue. For example, we have raised concerns about the piecemeal approach to

clearing of habitat for particular threatened species. If there was a strategic approach which might lead to say captive breeding programs (if required) or better reservation management, then such a policy might be supported. However, it has been our experience that licences to remove threatened species have often not been accompanied by actions that would guarantee better outcomes, and in fact the outcomes have just lead to loss of plants and animals.

*Page 22 Do you think voluntary dedication of leased land for conservation should occur in the ACT? If so, what would be the simplest and most effective mechanism for achieving this?*

- Yes.
- We do not have a definite answer. Possibly, initially, the Murrumbidgee Catchment Management Authority could be asked to undertake the process which would involve the use of Property Vegetation Planning procedures and monitoring.

*Page 22 Do you think that private management trusts could be one way to encourage private lease conservation? How else do you think private lease conservation could be facilitated?*

- We would want to urge proceeding with caution.
- The trustees would need to have people who know how to manage land, in particular the type of native ecosystem on each piece of land.
- The resourcing of trusts would need to be carefully considered.
- Friends of Grasslands are de-facto managers of many public lands and our aim is to have the owners take a greater responsibility. We would be concerned that trusts may be a way for government to walk away from its responsibilities.
- In the ACT, it may be possible for the various catchment groups to take some responsibility for trusts.

*Page 22 Does existing legislation have sufficient powers to deal with encroachments onto reserve land? What, if any, amendments should be made to the NC Act?*

- Apparently, the current legislation is not strong enough, given the level of impact of urban areas on surrounding bushland.
- FOG would strongly support changes to legislation to prevent encroachments onto reserves.
- We would favour government paying for any cleaning up initially (as this encroachment has been a long-standing one), publicising it, but in future make landowners responsibly and having appropriate penalties as required. We are aware that such matters should be handled carefully as cultural behaviour may need to change and care should be exercised to avoid creating additional problems for people with poor coping skills.
- Cat and general pet containment should also be legislated in all Canberra areas.

*Page 23 Are the enforcement options and penalties within the NC Act adequate? If not, what could improve them?*

- FOG supports measures to strengthen compliance with existing legislation, bearing in mind that we don't wish to create additional problems for people who lack coping skills.
- We note that the current Act does not appear to be much of a deterrent, both in terms of enforcement and penalties. This needs to be addressed by dealing with all of the possible reasons, including difficulty in applying the Act, penalties not being worth pursuing, and lack of resources in the Government to catch miscreants.

*Page 25 Is it appropriate for the NC Act to contain civil penalties similar to that used in other jurisdictions? If so, to which matters under the NC Act could these most usefully apply?*

- Yes. It should be used as a tool where the Conservator considers that a good outcome will result.
- Where a protected area is damaged by illegal activities, the obligation should be on the person who undertook the damage to fully restore the area. That would include:
  - Replanting and repopulating the area with the same species,
  - Managing the area, or paying for managing the area, until it is restored (say twenty years), and
  - Paying compensation for that which cannot be replaced. This would include compensation for loss of habitat for the period while the vegetation is regrowing.
  - Much of this is akin to concepts of ‘offsets’ plus penalties.

*Page 26 Are the levels of penalties available under the NC Act appropriate?*

- Some penalties appear to be too low and FOG would support strengthening them.
- The offences may need to be clarified. For example, it is possible to hold certain threatened species under licence where these are common in captivity (e.g. green and gold bell frogs). Harming such animals is more akin to harming other animals held in captivity.

*Page 27 Is there a case for the expansion of strict liability offences under the NC Act? If so what sort of offences?*

- FOG would support widening of ‘strict liability’ offences for clearing of native vegetation or habitat, including firewood, killing or harming indigenous animals without an appropriate licence.

*Page 27 Are the current powers of search and seizure under the NC Act adequate?*

- FOG would support strengthening search and seizure powers.

*Page 28 Are there further reforms required to better integrate Commonwealth and ACT nature conservation law?*

- FOG in principle supports the move towards a uniform framework and law for biodiversity across Australia. There are a number of inefficiencies that exist in having parallel jurisdictions. We would support the ACT (Conservator) automatically recognising any Commonwealth decision, strategy etc.
- Having said that there should be flexibility to allow jurisdictions to declare additional species, plant communities or habitats as threatened if local circumstances warrant such action.
- We also have significant concerns about how a national biobanking scheme might work, particularly as offsetting implies a net loss of biodiversity.

*Page 29 Should the provisions that control public activities in reserved areas be extended to public activities in open space and unleased lands generally?*

- Yes.

Page 30 *Should the NC Act indicate how to determine the appropriate uses for reserved lands (or other types of public land)? Should certain types of activities have regulated management requirements?*

- FOG would support changes to the NC Act which give greater control over developments, and possibly reduce their impacts, in reserved lands.

Page 30 *Should the Conservator be able to issue orders for restoration work on reserved land and/or to cover the cost of reserve staff involvement in assessing the activity?*

- Yes

Part 2

Page 32 *Should objects be incorporated in an objects section in the NC Act?*

*What do you consider would be appropriate objects?*

- FOG believes that it is desirable to spell out the objectives of the Act. The suggested list needs strengthening to include the issues covered in our answers to question on Page 9.

Page 33. *Do you think that the current role of the Conservator is appropriate? If not, how could it be improved?*

- This is possibly the most difficult question to answer as the current role seems to cover a number of functions, sometimes conflicting, which in other jurisdictions would be separated. It is not clear what is the Conservator's role vis a vis: The Minister, The Land and Planning Authority, The Commissioner for Sustainability for the Environment, Land Management, and Natural Resource Management. We often hear complaints that as development approvals all go through the office and the office is not well resourced, development applications and licences are rushed through. It is all very well to say that development applications need to be hurried through and this could be achieved in many cases, but this cannot be done at a cost to biodiversity.
- It may assist if the office was made a fixed-term statutory office with powers to provide independent advice.
- There should be a conservation layer within the Territory Plan for which only the Conservator can agree to developments that may take place there.
- We would also like to see carried out the Commissioner's recommendation for establishment of a formal monitoring, assessment and auditing process for land management agreements.

Page 34. *Is it appropriate that the Flora and Fauna Committee and the Natural Resource Management Advisory Committee be merged?*

- While we recognise that there is some duplication in terms of the issues they deal with, we believe that they perform separate tasks and require separate skills. The paper does not give a solid rationale as to why the entities should be merged but we are open to more information on this.

Page 34. *Is there any advantage in the role of the Natural Resource Management Advisory Committee being legally established as a statutory committee?*

- FOG would support this. It should be, and seen to be, independent of government.



Page 34. *Do you think the role of the Flora and Fauna Committee should be expanded?*

- FOG believes that the Fauna and Flora Committee should expand on its role of reviewing the success of action plans.
- FOG would support separate statutory status for this committee. It should be, and seen to be, independent of government.

Page 35 *What would be an appropriate model by which Indigenous groups were engaged under the Act?*

- We do not feel competent to comment on this.

Page 35 *Is there a need for a formal community consultation body representing conservation interests?*

- No. However, legislation might recognise
  - the importance of the contribution of community groups and volunteers,
  - the need to consult and take advice from community groups,
  - the need to support and facilitate the formation and maintenance of community groups,
  - training of volunteers to undertake advocacy and governance roles, and to acquire special skills such as use of herbicide.

Part 3

Page 36

*Should the NC Act establish a formal mechanism and timeframe for reviews of the Nature Conservation Strategy?*

*How could the role of the strategy in defining areas that require landscape-wide consideration be better integrated with the ACT's strategic land use planning process?*

*Should the NC Act allow for amendments to the strategy? If so, given the potential impact on land use planning, should this adopt a transparent public process similar that used for Territory Plan variations?*

*Should the NC Act allow for some policy documents to be given statutory force? If so, which and why?*

- FOG does not consider that a formal mechanism is required. The process followed by the woodland review some years ago provided a good model.
- The strategy should be recognised by ACTPLA and guide it, particularly if good mapping of conservation and linkages areas are provided.
- FOG would support amendments being made to the strategy if there is a strong basis for such amendments.
- Giving policy documents a statutory force would be desirable as it would keep the strategy document as a whole simple.

Page 37 *Are any other changes warranted in relation to the declaration of protected and exempt species?*

- Parts of the NC Act which deal with special protection status seem to be a hangover from before the time that the Fauna and Flora committee became responsible for recommending listing of threatened species. For example the pink tail worm lizard was listed as having special protection status even though it was not on the ACT threatened species list. FOG and ACTHA put in a submission to rectify this and it was accepted. Additionally, this section seems somewhat cumbersome. FOG would recommend that it be either deleted or pared back. It could also include categories such as ACT declared species, including those under watch by the Flora and Fauna

committee, species listed as threatened in other jurisdictions but not in the ACT, other native species, and other species with additional categories if required.

*Page 39 Do you think section 38 of the NC Act should be amended to incorporate greater categorisation of threatened status, and should the new categories relate to IUCN categories?*

*Should the definitions and listing categories in the NC Act and the EPBC Act be better aligned?*

- Yes to both
- In particular, FOG thinks that the Act should allow for the protection of threatened ecosystems. At present, some areas of threatened ecosystems outside existing reserves are of far higher quality than those found in some of these reserves, but are afforded no protection under the Act.
- As well, the habitat of threatened species should be protected under the Act.
- We would also like to see the coverage of the NCA extended to include clearly demarked connectivity corridors.
- Better alignment of the NC Act and the EPBC Act would decrease the reliance on the latter to protect threatened ecosystems and habitat for threatened species within the ACT.

*Page 39 Should the NC Act include the requirement for action plans to have formal monitoring and review provisions?*

- Yes.
- As far as we are aware, there is very little monitoring carried out at present, for example in respect of Action and Management Plans. However, some form of monitoring is essential if our environmental resources are to be adequately managed by TAMS and subsequently audited by the CSE. We think that monitoring is particularly necessary given the deterioration of the ACT's biodiversity as recognised in the Discussion paper.
- We understand the reluctance to resource such activities given the overall resource constraints faced by Government agencies. Thus, monitoring processes should be kept simple and not too costly where possible.

*Page 40 How do you think the protection of plants and animals in the ACT should be regulated?*

*Is there a greater role for self-reporting by licensees on compliance? Should fees reflect the full cost of administering licences?*

- FOG recognises that regulation to protect plants and animals faces many challenges. Any regulation should aim to ensure:
  - That the indigenous flora and fauna are safeguarded in the wild.
  - That flora and fauna can be taken under strict regulation and on a limited basis to facilitate research, education and commerce. For example:
    - Small amounts of seed may be used for conservation and commercial purposes. There should be a move towards using such seed to source seed orchards.
    - Animals may be collected (and returned if possible) for education and research purposes.
    - Injured and other animals that cannot be returned to the wild could be used as breeding stock if appropriate.



- That the keeping and trading of native fauna, and some flora, needs some form of regulations.
- We want to encourage the use of indigenous plants in restoration work and for use in home and public gardens. This could result in great outcomes by encouraging learning about our local biodiversity, community participation in biodiversity conservation, building local community pride, and generally removing weed threats to the local environment. Use of indigenous plants in our private and public gardens and in restoration work will also increase food sources and habitat for small fauna, many of which is in decline and threatened by our 'exotic' landscapes.
- We want to encourage the use of local fauna as 'pets' where this is suitable and practical, if this can increase our understanding of local fauna and move people away from exotic pets to indigenous pets, or to better control of exotic pets, especially cats.
- Obviously regulations are required to manage such activities, with licensing a tool to be used in the process:
  - Commercial licences to collect and trade in flora and fauna may be granted and strictly supervised.
  - Licences can also be granted to community groups (and professional scientists and vets) who specialise in developing knowledge and conservation of local flora and fauna. This would also apply to groups whose members care for injured animals.
  - Allowing people to collect small amounts of plant material for their own use under certain circumstances may also be permitted.
- FOG supports efforts to recover costs and also believes that resource taxes (although there may be legal problems here) or royalties payments are appropriate, especially if charges do not discourage good outcomes or encourage a black market. For example, if small charges would assist in financing the regulation of the industry more effectively then they are obviously desirable.
- Whatever administrative system is on place, it should not be too cumbersome. FOG would support self reporting providing the players work to support the types of objectives outlined above.
- FOG would support greater use of captive breeding programs. It believes that such programs could be supervised and carried out by government, university-based organisations and/or community groups.

*Page 41 Should the definition of animal and native animal under the NC Act, or specific uses of these terms, be amended and how?*

- FOG considers that the definitions of animal and native animal should be expanded to include invertebrates and fish.
- FOG would support changes to the NC Act to allow for more effective management of animals. We want native animals to be protected and non-native animals to be appropriately managed and, if causing a threat to biodiversity, controlled or eliminated.
- Because of our change in land management practices since European settlement, some native animals may exist in excessive numbers and pose a threat to agriculture, grazing or conservation of biodiversity. In these cases, numbers need to be controlled, with the procedures used being based as far as possible on solid scientific research.
- The dingo requires special attention. FOG supports its protection in selected areas, but agrees that it needs to be controlled outside those areas.

- FOG would support annually reporting of issues such as dog attacks on animals, actions taken etc. Kangaroo culling could also come under this category. Maybe there should be greater harmonisation of gun control legislation with a revised NCA.

*Page 41 How can the origin of a captive wild animal be verified?*

- FOG considers that the word ‘wild’ be problematic here. The offence should be keeping a particular (named) species without evidence that it has been born in captivity or taken from the wild under licence. Evidence, including declarations by holders or sellers, should not be difficult to establish. Falsifying evidence should bring harsh penalties.

*Page 42 Should damage or destruction of known habitat (or identified critical habitat) be sufficient evidence for prosecution of an offence?*

- Yes (noting that at times it may be a problem to prove that it was a known habitat).

*Page 42 Should a provision be included that the taking of native animals and native invertebrates from reserved land requires a licence?*

- Yes.

*Page 42. Should the removal of native timber incur the issuing of an infringement notice?*

- Yes.

*Page 42 Should the definition of native plant be changed to encompass only species indigenous to the ACT?*

- Yes

*Page 43 Does the NC Act need to retain provisions relating to pest organisms?*

- Qualified support.

*Page 43 In what circumstances do you think it would be appropriate for the Conservator to issue conservation directions?*

*What powers should the Conservator be allowed to exercise?*

*Should the Conservator’s directions be tied to land title rather than to the landowner?*

*Should the leaseholder be compensated for any loss of amenity or commercial value that results from the directions?*

- FOG considers that there is a weakness in biodiversity legislation across Australia in that, while landowners cannot deliberately destroy flora and fauna, there is no obligation on them to prevent its loss through poor management. FOG would support efforts to allow the Conservator to make orders to ensure that biodiversity assets are maintained in good order. Normally, the carrot approach is used by offering incentives for fencing (to exclude or control stock), weeding and the like to manage biodiversity assets. Therefore, the Conservator should be able to offer assistance (but not compensation), as well as to issue orders, to bring about desired outcomes.

*Page 44 Should the owner of a vehicle be held liable for the misdeeds of the driver, within a reserve area?*

*Should the NC Act allow for the restriction of non-motorised vehicles to certain suitable areas?*

- Yes to both

Page 44 *Should hunting without a licence be specifically listed as an offence?*

- Yes

Page 45 *Should there be a licensing provision for the taking of non-native animals and pest plants into a reserved area?*

*Should the NC Act be amended so that it is clear that it is legal to take animals into a reserve in a way that is allowed by a management plan?*

- Yes to both

Page 45 *Should the NC Act provide guidance on the issuing of commercial concessions on reserved or possibly other public land and provide for the regulation of such activity as it affects biodiversity values, nature conservation objectives and general public enjoyment? Do you support the provision of clauses in the NC Act that would allow regulation of private or community organisation use of reserved land?*

- Yes to both

Page 46 *Should the NC Act be amended to allow for the requirement of a restoration plan and/or performance based bond?*

- Yes. FOG strongly supports this principle.

Page 46 *What wilderness protection or restoration provisions do you think should be included under the NC Act?*

*Are the current management plan provisions under the Planning Act sufficient for the provision of wilderness management?*

- FOG has been more focussed on grassy ecosystems and less with 'wilderness' areas. However, FOG understands that 'wilderness' is largely a northern hemisphere concept and that Aboriginal people dislike the concept. FOG believes that all remnant vegetation should be protected to a high standard and therefore there is an argument for treating 'wilderness areas' in the same way as any other area and for downplaying the word 'wilderness'. Having said this, this should not be seen as an argument for opening up such areas to activities not previously undertaken.

Page 46. *How should damage capable of causing serious or material damage be defined? What thresholds should be used to distinguish between different levels of harm?*

- This may vary depending on the vegetation community affected. When considering with threatened and endangered ecosystems and species (e.g. natural temperate grasslands), any damage caused to a site containing these is serious, i.e. thresholds should be set very low and penalties should be higher.

Page 48 *Should licensing fees reflect cost recovery?*

- This question has already been asked. See answer to questions on Page 40.

Page 48 *Are the existing appeals mechanisms as they relate to the NC Act adequate?*

- No comment.

Page 46 *Should the NC Act encompass the concept of royalties for biodiscovery? Are current royalty provisions for native plants, native animals and timber sufficient?*

- No comment.

### *Final comments*

The very recently released Hawke review of the ACT Public Service provides a good opportunity to look at the administration of nature conservation in the ACT. Unfortunately, we did not have the opportunity to look at this review until after finishing this submission, and it is possible our views may differ in a few places once we know more about the review's recommendations. Given the number of players involved in conservation matters (including ACTPLA, TAMS, ECCEW, the Conservator, the Fauna and Flora Committee, the Natural Resource Management Council and the CSE), it seems likely that the recommendations of the Hawke review will have an impact on these players outside those canvassed in the Discussion Paper.

Given the different views likely to be offered by different segments of the community, outcomes following this consultation process may or may not be along the lines raised in the Discussion Paper. We would welcome the opportunity to comment on the new Act once it is drafted and before it is presented to the Government.

Sincerely yours

A handwritten signature in black ink, appearing to read 'Geoff Robertson', written over a light grey rectangular background.

Geoff Robertson  
President

16 February 2011