

**Review of the Nature Conservation Act
Draft Submission from the ACT Flora and Fauna Committee**

INTRODUCTION

The Committee is grateful for the opportunity to comment on the Review of the Nature Conservation Act. Some of the comments of the Committee relate not just to the Act but also to the administration of the Act as the two are a package. Nature conservation outcomes are dependent on the effectiveness of this package.

It is clear that we need to not only plan for the nature conservation issues encountered in the immediate past but also to plan for the future. In doing this, the revised legislation needs to be able to cater for likely future scenarios, some of which the Committee has already encountered and found the current legislation frustratingly wanting. This submission notes some scenarios that must be addressed for this legislative review to have been effective.

During the life of the Nature Conservation Act (twenty one years) the world has changed from being unlimited to a world that is now limited, in what we can extract from it, what we can dump into it and how many ecological elements we can eliminate without serious implications. As it stands, the Act does not fully cater for a situation where a native species in the ACT approaches limits to its survival. How can the legislation cater for the pressures that will impact the ACT environment in the critical period from 2011 to 2025?

The Committee notes two reviews that are of relevance to this submission. The first is the Marsden Report, specifically on this legislation. This submission defers to the Marsden Jacob Report in some matters.

The second review is the recent Hawke Report of government administration in the ACT which could have significant impacts on the administration of the Nature Conservation Act. This report on administrative efficiency presumes government will efficiently serve all its clients but assumes that all clients are equally vocal. When there is no adequate voice for the environment the vocal clients will always prevail. Adopting the recommendations of the Hawke Report may exacerbate deficiencies in the Nature Conservation Act and necessitate significantly stronger powers for advocates of the environment in the Act, especially limits to developments which will cause the extinction to species in the ACT.

Acknowledgements

The Committee wishes to acknowledge -

- (i) Dedicated members of the Committee in the past
- (ii) Deeply committed members of the community who foster public opinion to conserve the environment of the ACT
- (iii) Dedicated members of the government
 - in serving the Committee
 - in implementing the Nature Conservation Act, and particularly
 - in conserving the threatened species of the ACT

FRUSTRATIONS OF THE COMMITTEE

Since the establishment of the Flora and fauna Committee the Committee has faced a series of frustrations that reflect inadequacies in the Nature Conservation Act and the administration of this and associated legislation. In effect, the Committee is nominating these issues as the

basis for criteria to the evaluation of the new legislative regime and its administration. The key frustrations have been as follows -

1. Unlimited attrition of critical habitat –death by a thousand cuts

Environmental legislation has been sometimes over-ridden by the pressures to develop the city of Canberra. The greatest frustration of the Committee has been the number of cases of development proposals that inexorably cut into the remnant habitat of species in the ACT. Each proposal on its own does not threaten the survival of a species but the collection of such proposals into the future guarantee a series of extinctions, particularly in the ecosystems that are targeted by development in the ACT – lowland woodlands and the riparian corridor. In particular we need -

- (i) Limits to habitat destruction, particularly -
 - Limits to the impact on key habitat for listed lowland and riparian species, and
 - Required standards for habitat maintenance for significant holdings of such habitat.
- (ii) More effective limits to the impacts that accompany development. Predatory domestic animals such as cats expand the impacts of new suburbs over a greater footprint than the suburb itself. While developmental controls for suburbs being predator free have been introduced into planning legislation the Committee is not convinced that they are yet effective enough to control this issue. There is also the need for complementary referral clauses in the planning and conservation legislation.
- (iii) Upgraded but focused environmental reporting. Environmental reporting needs to go beyond trivial threat monitoring and also focus on restoration and improvement of habitat, where that has been prescribed.
- (iv) Preparation for the risks of climate change and the impact of extreme events. In the past we have planned on the basis of an average year but with the impact of extreme events and the risks of climate change, current habitat allocation and locations may not be appropriate. In the worst case scenario of climate change, where climatic conditions may move some distance, key species may need to be moved to new locations.

2. Species Issues

- (i) Threatened Species
The Committee recommends maintaining and enhancing the current threatened species listing standards and listing processes. Part of the enhancement should be to monitor key sub-critical species (species that do not yet justify nomination for listing but are approaching that situation). These key species also justify reporting, possibly in the ACT State of the Environment (SOE) Report with the key SOE criteria being legislatively defined.
- (ii) The Committee recommends investigating the expansion of species protection by adding threatened Ecological Communities and threatened Ecological Processes for listing, as is done under the Commonwealth EPBC Legislation. If the Commonwealth listing automatically covers the issues in the ACT then such listing and the additional bureaucracy may not be necessary at the Territory level.
- (iii) Add special protection for endemics to the ACT
In the last few years a small number of ACT endemic species (species that only occur in the ACT) have been identified. In most cases it is appropriate to consider action on species conservation in the light of abundant populations in neighbouring NSW and Victoria, where the responsibility for maintaining these populations is shared with the other jurisdictions, however, the responsibility for preventing an internal endemic

species from becoming extinct cannot be shared and the ACT legislation should reflect that position. The Committee notes -

- There are only a small number of species are involved
- These species are generally very limited in distribution, often limited to a few hectares, and
- These species require the non-negotiable protection for remnant habitat.
- These species require the highest penalties as a deterrent for interference to habitat and individual specimens.

The objective is to have the highest levels of protection for listed ACT endemics.

(iv) Super-abundant native species

There are a number of native species that have the natural potential to become super-abundant species in the absence of natural predators, with populations expanding until they devastate their habitat, often pushing other native species towards extinction. As predator populations decline the prey populations can assume plague proportions particularly if they are prevented from dispersing by development and fencing. It is preferable that the natural predators undertake their work naturally but proximity to an urban area may make this untenable.

There is a growing need for management programs for native species with plague tendencies, e.g. western grey kangaroos, and for the law to partially diffuse the emotional debate on this issue. Therefore the Nature Conservation Act requires amendment for the declaration of species requiring active population management and enabling subsequent species management plans across all jurisdictions. Some management plans may need to be general, across the ACT, others may be specific for specific holdings where unhealthily large numbers may be accumulating.

3. Functional Issues for the Committee

The Committee also has some comments on its own operation. The Committee needs focus on substantial species issues. To do this -

- (i) The Committee needs to be kept informed of emerging issues from the field. This is generally getting better over time. The Committee is now included in discussions on key environmental issues relating to habitat under pressure, e.g. the Jerrabomberra Wetlands. This may be an artefact of patronage of issues by senior politicians but is a valuable opportunity to ensure remnant habitat does not receive recognition only after it has disappeared. Keeping the Committee actively informed also requires active engagement of the Conservator in the issues of the Committee.
- (ii) Roles and linkages need to be consolidated into legislative functions. There is a constant need for scientific rigor and independence in decisions that impact native species in the ACT

4. Functional Issues for the Administration

There are some issues of concern in the administration of the Nature Conservation Act, specifically -

- (i) The Conservator
 - The role of the Conservator needs to be consolidated with stronger powers where species and habitat issues are concerned.
 - Effectiveness of a statutory office can often be dependent on the personality of the office holder and the personality of the relevant Minister. The role of the Conservator needs to be constructed so that it is not personality dependent in powers effecting the ultimate survival of species in the ACT.

- (ii) Split departmental responsibilities that handicap the implementation of the Nature Conservation Act
- In the last decade the effective conservation of species has been handicapped by the fragmentation of responsibilities for environmental regulation across several portfolios. In some cases this has led to development applications being approved without reference to the Conservator regarding the clearing of vegetation that may be of high conservation significance.
 - There is also a serious danger if the Hawke - One Department recommendation for the ACT is adopted. This could arise when a senior administrator may resolve development/conservation tensions in favour of the most vocal pressure group, which are most likely to be land developers or young voters hungry for “cheap” residential land. To address this issue the Conservator also needs powers, of direct action or referral to the Minister, that escalate according to the more critical levels of species listing.
- (iii) Resourcing the implementation of the legislation
- It is necessary to appropriately resource the implementation of the Nature Conservation Act, specifically when species and ecosystem monitoring is required and management/recovery/threat abatement plans need to be drafted or revised. This could be done through -
- Using market concepts to consolidate limits that encroach on the final area of critical habitat with a limit on the minimum area required for species survival. It is necessary that approaching the minimum area of habitat is the final barrier to offsets and the prices of incursion increase steeply as the limit is approached.
 - An environmental levy on impacts to critical habitat, possibly through an offset system, as has been proposed
- (iv) Engaging the community early on nature conservation issues
- It is critical that the administration engages the community strategically on nature conservation issues so that the community has a chance to prepare for the cost of undertaking nature conservation works but also to become aware of the cost of not undertaking such works, e.g. extinction of an ACT endemic. It is also necessary to promote the Act its purpose and functions and to establish close links to education institutions in the ACT. One way to engage the community in the purpose of the Nature Conservation Act is to clearly articulate the objectives of the legislation at the beginning of the Act, or even as is done in the EPBC Act, to define the objectives at the beginning of every “Part” of the legislation.

The Committee is in general agreement with the Marsden Jacob report, particularly as to how the Nature Conservation Act is working administratively. The Committee also notes that -

- (i) The Act loses sight of environmental outcomes, particularly in restoring as opposed to maintenance of critical habitat
- (ii) There is a fragmentation of themes in the Act
- (iii) The Act focuses too much on penalties
- (iv) Environmental monitoring is not a serious focus of the review.

5. Language

There are some archaic terms used in the Act which need to be updated, such as the word “nest” in relation to the breeding sites of a range of animals.

Criteria for the evaluation of the revised Nature Conservation Act.

In general, the Committee feels that the ACT environmental legislation would benefit from omnibus revision, with the consolidation of all environmental issues into a single Act, however, if this is beyond the resources and schedule of the Government then the following criteria should be considered for nature conservation legislation that can competently cater for the future challenges that will have to be faced. These criteria are derived from the comments above.

- CRITERION 1 Can the legislation and its administration protect the remnant habitat of listed species in the ACT, preferably by gradual increase of costs and penalties as the limits to minimum species habitat is approached?
- CRITERION 2 Can the legislation and its administration protect the small number of ACT endemics from human induced extinction?
- CRITERION 3 Do the legislation and its administration have the powers to protect listed species in remnant habitat from predatory domestic pets?
- CRITERION 4 Do the legislation and its administration have the powers to actively manage super-abundant native species when they start to significantly impact the populations of other species?
- CRITERION 5 Does the Conservator have the power to control impacts on listed species and their habitats, even for actions of the Crown, e.g. the planning authority?
- CRITERION 6 Does the administration have a resource base to effectively implement the Nature Conservation Act?
- CRITERION 7 Does the administration have the powers and resources to engage the public in nature conservation issues before they become critical or, when the issue becomes critical, to salvage, recover and rehabilitate the species or habitat?
- CRITERION 8 Is there independent scientific advice for Government decision making on nature conservation matters?
- CRITERION 9 Is there a graduated process of penalties for infringements of the Act?
- CRITERION 10 Is the primary nature conservation function in protected areas, with a secondary function in agreements with leaseholders?
- CRITERION 11 Does the Conservator have the power to protect non-listed species from becoming threatened?
- CRITERION 12 Does the legislation interact well with the Commonwealth EPBC legislation regarding the protection of species, communities and ecological processes in the ACT, e.g. maintaining the habitat required for migratory species and ready ratification/adoption of EPBC plans related to ACT species?

COMMITTEE COMMENTS ON SPECIFIC STRUCTURED QUESTIONS

The Committee would also like to respond to some specific questions posed by the Government in the Review handbook. The responses to these questions are documented in the attached table. The questions posed are dealt with in the order in which they appear

CONCLUSION

The Committee is proud to have been associated with some of the actions during the life of the Nature Conservation Act that have resulted in the survival of species that would have

otherwise sunk to extinction, however, the Committee looks forward to being able to do this work more effectively under revised legislation.

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The Flora and Fauna Committee