



National Parks Association of the ACT Inc.
1960-2010
50 years of conservation, nature protection and education

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Submission - Review of the *Nature Conservation Act 1980* - Discussion Paper November 2010.

The National Parks Association of the ACT Inc. (NPAACT) wishes to thank the ACT Department of the Environment, Climate Change, Energy and Water for the opportunity to comment on this Discussion Paper.

Comments on the discussion paper

The following comments address the questions raised throughout the discussion paper and are grouped under the discussion paper's headings and section numbering.

Introduction

The NPAACT considers that a revised version of the Nature Conservation Act (NC Act) should address the following key nature conservation issues:

- strong legislative protection for ecosystems and habitat as well as species;
- creating a fully integrated single nature conservation agency under the Conservator reporting to the Minister and adequately resourcing;
- facilitating improved connectivity across the landscape that allows species movement across;
- the need to establish environmental gradients that assist species migration, dispersal and recolonising;
- the growing problem of weeds and feral animals;
- involving the indigenous community in conservation programs;
- engaging the community in appreciating Canberra's natural environment and continuing to support participation in landcare and bushcare activities.

The NPAACT believes that positive conservation outcomes can be achieved while also realising economic and social benefits. However, social and economic interests should not outweigh conservation concerns when dealing with areas of important conservation values or area critical for environmental corridors.

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Part One: Major Conservation issues.

1) Connectivity and ecological sustainability

Connectivity is a key factor in sustaining the environmental health of ecosystems and for ecological sustainability. Expansion of the existing section 38 of the NC Act would be a significant enhancement to the legislation. These concepts can be also supported through including a requirement for areas important for connectivity and sustainability to be identified in a strategic environment assessment process. This should be supported by a requirement for any proposals to develop any areas important for connectivity and sustainability to be subject to comprehensive environmental assessments.

2) Halting vegetation and habitat decline

Our view of “no net loss of significant biodiversity” in the ACT is that nature conservation values are not tradeable and that offsets are an absolute last resort after the other avenues of avoidance or mitigation have been exhausted.

While the ACT contribution should be viewed in a regional context no cross border offsetting should be considered unless the offset land was improving connectivity between the ACT and NSW.

2.3 Strategic Assessments

Biocertification of land areas as applied elsewhere (NSW) is a broad brush approach, once they are signed off there is no consideration of changed circumstances and no further individual site assessments in the biocertified area. For this process to be acceptable for the ACT it would need to be significantly modified. Strategic Environmental Assessments are a better concept.

Licences to destroy native plants or kill native animals should not be part of a Strategic Environmental Assessment package.

3) Off reserve conservation.

3.1 Private conservation reserves.

Voluntary dedication of leased rural land where the conservation commitment was a binding covenant recognised on the title would be of long term benefit to conservation in the ACT. The lease holders could receive assistance and be publicly recognised. Several good schemes are operating in NSW.

3.2 Management Trusts.

The private trusts are being established by the ACT Government to raise private financial support for and manage public reserved land at Mulligans Flat Woodland Sanctuary and Jerrabomberra Wetlands. These Government created trusts are in their early development stage and are untested as to their efficacy.

Non government conservation trusts have a well established presence in Australia. Private management trusts of leased rural land would be particularly valuable for land that bordered Namadgi National Park, river corridors or nature park reserves. They could be managed primarily for conservation but grazing could be used for weed and

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bush fire fuel management. Examples of this type of management are Bush Heritage and Nature Conservancy properties.

4) Managing the urban bush edge.

Existing legislation does not appear to have sufficient powers to deal with encroachments onto reserved land. Where there have been encroachments there should be a staged response from letters requesting cessation and remediation to infringement notices then enforceable undertakings in all cases remediation should be the main objective. In serious cases there should be the option of taking the case to prosecution where there may have been criminal damage or where the perpetrator fails to abide by undertakings.

5) Measures to help compliance with the NC Act.

The enforcement options and penalties within the NC Act do not appear to be adequate. The inability to impound vehicles, motorcycles, bicycles, tools used to gain entry or any equipment used to facilitate unlawful activity in a reserve is a deficiency. The authority and capacity of the field staff of the conservation agency to carry out actions which enforce the NC Act need to be improved.

It is appropriate for the NC Act to contain civil penalties similar to other jurisdictions. Civil remedies are more appropriate unless criminal intent to damage or destroy is established. Civil remedies are appropriate where remediation can be carried out such as encroachments onto the conservation estate, the unauthorised clearing of bush or the failure to take steps to control weeds or pest animals.

The level of penalties should be reviewed.

There is a case for the expansion of strict liability offences under the NC Act.

The current powers of search and seizure under the NC Act are inadequate.

5.8 Inter-relationship with Commonwealth environmental legislation

The reforms required to better integrate Commonwealth and ACT nature conservation law include the ACT Conservator automatically recognising any Commonwealth decisions and improved joint agreements on nature conservation on Commonwealth controlled land. The ACT should retain its listing powers for threatened and endangered species.

6) Consistent management of public lands.

6.1 Extension of lands to which Part 8 of the NC Act may apply

There is a case for the provisions of Part 8 of the NC Act to apply to all public land. The provisions that control public activities in reserved areas should be extended to public activities in open space and unleased lands generally.

6.2 Non-conservation uses and activity in reserves, national parks and wilderness

The NC Act should provide guidance on how the Conservator should consider licences and leases for non conservation uses on the nature conservation estate. There should also be specific provisions covering the requirements for the conservator to

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monitor licence compliance or enforce conditions or order remediation of environmental harm.

The NC Act should indicate how to determine the appropriate uses for reserved lands or other types of public land by including principles for assessing impact on conservation values.

6.2.1 Implementation of non-conservation uses

The Conservator should 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.

Part two: Specific issues – those that relate to a part of the NC Act

7) Part 1 of the Act –Preliminary –Objects of the NC Act.

The deficiency of the 1980 NC Act in not having objectives (purpose) expressed in the first paragraphs must be remedied in the revised act.

Similar acts from both the federal and state jurisdictions have Statements of Objectives.

- The Commonwealth Government – *Environment Protection and Biodiversity Conservation Act 1999* has in Section 3 - a statement of the Objectives of the Act (8 objectives) – a statement on how the objectives can be achieved. (8 principles/objectives).Section 3A Expresses 5 principles of ecologically sustainable development.
- *The New South Wales National Parks and Wildlife Service Act 1974* which preceded the ACT's 1980 Act by 6 years has a set of Objectives, states how the Objectives are to be achieved and what are the functions of the Minister, Director General and the National Parks and Wildlife Service.
- *The Victorian National Parks Act 1975* has a preamble and objectives and the *Victorian Wildlife Act 1975* has purposes.

Based on the NSW NPWS Act, the following is a proposed statement of objectives and functions for the new ACT Nature Conservation Act .

“Objects of the Act.

(1)The Object of the Act are as follows:

(a)The conservation of nature, including, but no limited to, the conservation, enhancement, recovery and restoration of:

- i) native species of flora and fauna and ecological communities, in particular those which are threatened
- ii) habitat ecosystem and ecosystem processes, and ecological connectivity
- iii) natural biological diversity at the community, species and genetic levels, and
- iv) landforms of significance, including geological and geomorphological features and processes, and
- v) landscapes and natural features of significance including wilderness and wild rivers,

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(b) the conservation of objects places or features (including biological diversity) of cultural value within the landscape, including but not limited to:

- i) places objects and features of significance to Aboriginal people, and
 - ii) places of social value to the people of The Australian Capital Territory and Australia and,
 - iii) places of historic, architectural or scientific significance,
- (c) fostering public appreciation understanding and enjoyment of nature and cultural heritage and their conservation,
- (d) facilitating appropriate research into natural systems and their management,
- (e) providing for the conservation management of land reserved under the Planning and Development Act in accordance with best practice management principles applicable for each type of reservation, and
- (f) promoting a cooperative approach to the protection and management of the environment involving, governments, the community, landholders and indigenous peoples,
- (g) promoting off-reserve conservation management.

(2) The objects of this Act are to be achieved by applying the principles of adaptive ecological management and the precautionary principle.

(3) In carrying out functions under this Act, the Minister, the Conservator and the Nature Conservation Agency are to give effect to the following:

- (a) The objects of this Act,
- (b) the public interest in the protection of the values for which land is reserved under this Act and the appropriate management of those lands,
- (c) international best practice in nature conservation,
- (d) interventions to improve resilience against injurious agencies, including climate change, and
- (e) the precautionary principle.

8) Part 2 of the Act - the Conservator and the Flora and Fauna Committee.

The Conservator should lead an integrated nature conservation agency combining policy, research and on ground conservation management.

The role of the Conservator should be spelt out in the NC Act as it is in NSW for the Director General, Parks and Wildlife service Below is an example of how one of the functions of the Conservator could be expressed using part of the NSW Act.

“Functions of the Conservator relating to reservation and protection of lands of conservation value.

(1) The Conservator is to consider, and may investigate, proposals for additional areas of land to be reserved or protected as part of the integrated nature conservation system of the ACT.

(2) When considering or investigating any such proposal, the Conservator is to have regard to the following:

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- a) the desirability of protecting, the full range of natural heritage and the maintenance of natural processes across the land scape,
 - b) the establishment of a comprehensive, adequate and representative protected areas system,
 - c) the contribution that such lands may make to building ecological resilience and in mitigating the impacts of injurious agencies across the landscape,
 - d) the desirability of protecting cultural heritage,
 - e) providing opportunities for appropriate public appreciation and understanding, and sustainable visitor use and enjoyment, and scientific research, of the ACT's natural heritage, within such constraints that maintain the natural condition, integrity and ecological functioning of such lands,
 - f) the opportunities for promoting the integration of the management of natural and cultural values,
 - g) the desirability of protecting wilderness and wild river values,
 - h) the objects of this Act and international best practice,
 - i) the desirability of protecting world heritage properties and world heritage values,
 - j) the application of the precautionary principle.
- 3) The Conservator, when carrying out functions under the Act, must seek and consider advice, including technical advice, from a wide range of relevant and expert sources, including the Flora and Fauna Committee, the NRM Council and Boards established for the purpose of managing specific components of the conservation estate.”

8.3/4 NMRAC and Mechanisms to seek community input

While there is some overlap we do not think the Flora and Fauna Committee and the NRM Advisory Committee should be merged. The 2 committees have different roles and the FFC are experts able to make recommendations on the status of ecosystems, plants and animals. No advantage is seen in the NRMAC being made a statutory committee. The role of the FFC is adequate but the Conservator should be required to seek their advice.

8.4 Mechanisms to seek community input.

Indigenous engagement should be mentioned in the Objectives of the Act. Engagement should be based on custodianship of the conservation estate, eg joint management of Namadgi National Park.

The NRM Committee and Catchment Groups provide avenues for representation of community groups and interests. A formal advisory committee might be appropriate for Namadgi National Park or any other future national parks as is the practice in NSW National Parks but should also include community interests in other ACT reserves such as Canberra Nature Park.

9) Part 3 of the Act – Nature conservation and declarations.

The NC Act should establish a formal mechanism and timetable - 5years - for reviews of the NC Strategy.

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ACT Planning Land Authority should consider nature conservation at all stages of the planning process.

The NC Act should allow for amendments to the NC Strategy which are subjected to a public process of examination before adoption.

The Nature Conservation Strategy could be given statutory force as this is the overarching conservation policy for the ACT and could by incorporation give statutory status to new conservation policies.

9.2.2 Section 34

The sections of the NC Act declaring special protection status, protection of native species and exempt fauna should be updated to reflect changes in national species lists and improved knowledge of uncommon plants and animals in the ACT.

9.3 Declarations of species, community or threatening process

Amendments to Section 38 of the NC Act to incorporate greater categorisation of threatened status. We believe this proposal needs more discussion. The legislation (NC Act) is ACT specific but cannot be viewed in isolation.

9.4 Action Plans

The NC Act should include the requirement for action plans to have formal monitoring and review provisions and mandate an annual state of the parks report.

10) Parts 4 & 5 of the Act – Plant and animal offences.

This part of the NC Act needs a through review to address the challenges to implementation listed at the bottom of page 40. Licensing actions or activities appears to be the best form of regulation but the system should be transparent. There is a role for self reporting but the reports will still need to be checked. Costs of administering need further discussion – is this specifically about native animal keeping?

11) Part 4 of the Act- protection of animals and fish.

11.1 Definition of animal and native animal.

Changes to the wording of section 44(2) would allow the killing of a native animal where the animal is a danger to a person or is a wild dog or dingo attacking stock. However some mechanism needs to be put in place for the mandatory reporting of the killing of wild dogs and dingos by land managers -a requirement in land management agreements may be appropriate.

11.2 Onus of proof for the taking of an animal.

The origin of animals can be verified by a DNA investigation – but this would be expensive and the databases determining local differences within a species are not developed. It can be used to authenticate claims that animals (birds) have been bred in a specific captive population.

11.3 Killing native animals

The damage or destruction of known habitat (or identified critical habitat) should be sufficient evidence for prosecution of an offence.

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11.4 Invertebrates

A provision should be included that the taking of native animals and native invertebrates from reserved land requires a licence.

12) Part 5 of the Act - Protection of Plants

12.1 Infringement notice for firewood collecting

Firewood collecting infringement notices should apply to collecting native fallen timber (and standing timber) from the National Park or Nature Reserves, conservation areas within rural leases and rural road sides. It should not apply to fallen timber in the urban area.

12.2 Taking of native weed plants

The definition of native plant should be changed to encompass only species indigenous to the ACT.

13) Part 6 of the Act - Prohibited and controlled organisms

The NC Act needs to retain provisions relating to pest organisms.

14) Part 7 of the Act – Conservation directions

The Conservator should be able to issue conservation directions when they believe it is necessary.

The powers of the Conservator should be sufficient to ensure that the nature conservation objectives of the ACT are achieved. The Conservator's directions should be tied to land title rather than to the land owner.

Compensation to land holders who claim to have been disadvantaged by an order from the conservator should have their claims considered on a case by case basis.

15) Part 8 of the Act

15.1.1 Unauthorised car use

Breaches in respect to unauthorised car use should be strict liability offences. This would place the onus on the owner of a car to prove that they were not responsible for the offence if the perpetrator was not able to be apprehended at the scene of the breach.

The NC Act should allow for the restriction of non-motorised vehicles to certain suitable areas.

15.1.2 Hunting in reserved areas

Hunting without a licence should be specifically listed as an offence.

15.1.3 Taking animals and plants into reserved areas

There should be licensing provisions for the taking of certain non native animals into the reserve system, it is probably safe to assume that this applies particularly to stock (sheep or cattle) that are to be used for bushfire fuel reduction and to horses and dogs for stock recovery or dogs used for search and rescue or law enforcement. A

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licensing provision for taking non native plants (indigenous to the ACT) into the reserve system should be approved on the grounds that it puts in place a similar process as for animals.

The NC Act should 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.

15.1.4 Commercial and non-commercial concessions

The NC Act should provide guidance on the issuing of commercial concessions on reserved and other public land and provide for the regulation of such activity as it affects biodiversity values, nature conservation objectives and general public enjoyment. The NC Act should also include clauses that would allow for the regulation of private or community organisations use of reserved land.

15.1.5 Restoration in reserved areas

The NC Act should be amended to allow for the requirement of a restoration plan and/or a performance based bond.

15.1.6 Wilderness Protection

Principles regarding wilderness purpose and management should be in the NC Act. The ACT has only one wilderness area, in Namadgi National Park. In the Namadgi Plan of Management (2010) there are specific references to permitted access including total numbers of visitors and number of overnight campers at any one time.

15.1.7 Clearing and damaging native vegetation in reserved areas

Thresholds could be determined by; the cost of restoration, the time it would take for restoration (natural or directed), the affected area as a percentage of that ecosystem occurring in the ACT reserve system, if it affects the status of any threatened ecosystem, plant or animal and the public enjoyment of that part of the reserve.

18.2 Licensing fees

Licensing fees should reflect cost recovery.

19) Part 12 of the Act – Review by the administrative and civil appeals tribunal.

The permitting of third party appeals should be incorporated into this part of the Act.

20) Part 14 of the Act- Miscellaneous

Royalties for biodiscovery. In the licence approval process the purpose of collecting material from the reserve estate should be clearly stated. If the collected material leads to a commercial benefit it would be reasonable that some royalty should be paid. The most likely scenario is the propagation of plants from collected seed or tissue.

Other issues not otherwise addressed in the discussion paper

Bushfire management

The primacy of public land plans of management over the strategic bushfire management plan (*Emergencies Act 2004*) should also be referred to in the new NC Act.

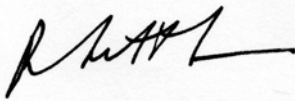
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Definitions of National Parks, Nature Reserves, etc

Should the Act define the differences in public land managed as National Park and public land managed as Nature Reserve.

Should you wish to discuss this further please contact Clive Hurlstone (m 0407783422) or email cjhurls@bigpond.net.au or admin@npaact.org.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Griffiths', is centered on a light-colored rectangular background.

Rod Griffiths
President.
National Parks Association of the ACT.
4 March 2011