



## **Submission from The Wilderness Society on the review of the Australian Capital Territory Nature Conservation Act 1980**

The Wilderness Society (TWS) is a nationwide, community-based, not-for-profit organisation whose purpose is protecting, promoting and restoring wilderness and natural processes across Australia for the survival and ongoing evolution of life on Earth.

With over 30 years of success, The Wilderness Society has been instrumental in the protection of more than eight and a half million hectares of magnificent wilderness, including globally recognised Australian icons such as the Daintree, Kakadu, Macquarie Island, Ningaloo Reef, Fraser Island and Tasmania's south-west. The Wilderness Society was also central to achieving the secure protection of over 20 million hectares of bushland from destructive land clearing practices.

The Wilderness Society has a long-term vision and strategy to revolutionise conservation planning in Australia and give nature its best possible chance of survival in the future which it refers to as *WildCountry*. Using a new understanding of large-scale connections across the continent, *WildCountry* is developing a science-based, continent-wide approach to conservation planning that involves both *protecting* the best of what is left of Australia's natural environment, and *restoring* important areas. Crucially, *WildCountry* focuses on maintaining and/or restoring ecological processes and connections in the land- and sea-scapes.

We welcome the opportunity to comment on the current revision of the Nature Conservation Act 1980.

### **Part 1 Connectivity**

We commend the increased recognition of the importance of ecological connectivity, particularly considering the extensive fragmentation suffered by lowland vegetation in the ACT. Consideration of scale, processes, time and the organisms for which connectivity is being addressed is important. In many cases requirements may overlap between taxa but it may be useful to model connectivity requirements for a range of focal taxa, considering the particular resource requirements of each species and their availability and accessibility at different times of year. Not all of these require corridors of trees. For instance, some organisms may require rocky habitats to be maintained in sufficiently large patches to allow viable populations. Others may depend on nectar being available within a given area throughout the year.

A buffer should be allowed to allow for increasing uncertainty with our changing climate. Consideration of regional ecosystem protection and management across and beyond ACT borders is also important; effort should be made to influence broader regional management both of recognised conservation areas and other areas of ecological importance currently not designated for conservation, such as the Travelling Stock Route Network.

It may be useful to consider connectivity more broadly, *sensu* Soule *et al* 2004, which describes some essential elements of landscape function. These include considerations such

### **The Wilderness Society Inc National Campaign Office**

1<sup>st</sup> Floor, Baileys Corner, 143 London Circuit, Canberra City, ACT  
PO Box 188, Civic Square, ACT, 2608, AUSTRALIA  
Ph: (02) 6249 6491 Fax: (02) 6249 1002  
Email: [campaign@wilderness.org.au](mailto:campaign@wilderness.org.au) Website: [www.wilderness.org.au](http://www.wilderness.org.au)  
**ABN: 62 007 508 349**

as trophic regulation, which have application, for instance, in management of kangaroo populations and in determining the status and management of dingoes. Management of fire to ensure continuous availability of suitable habitat for whole communities and highly sensitive taxa is another example of ecological connectivity in a broad sense. Likewise, maintaining naturalistic movement of water across the landscape rather than prioritising quick drainage and impoundment is likely to increase ecological function. The recognition of the importance of riparian areas in the review document and some initial efforts at restoring watercourses are encouraging. It would be useful to identify other areas that are ecological and evolutionary refugia and ensure that they are protected, buffered and easily accessible by organisms that rely on their resources and shelter.

In restoring ecological connectivity to the ACT it seems useful to include priority areas in an overlay as part of the Nature Conservation Strategy and to require reference to this in planning decisions. Some principles for more detailed site assessments could also be included as this information may not be available at sufficient resolution when creating the overlay. Provision should be made for this overlay to be updated at no more than five year intervals and upon significant discoveries or increases in understanding of ecological process. Such an overlay could also be used in prioritising new areas for reservation and providing incentives for landholders to manage to enhance ecological values.

#### **Vegetation decline.**

We recognise the ongoing decline of vegetation in South-eastern Australia and that in the ACT, some vegetation types have been preferentially cleared. The passive clearing of vegetation by a range of processes is also problematic. The lack of recruitment of new individuals while mature trees senesce and die is also a creeping threat. Stock control measures and requirements to control introduced pests such as rabbits and means to control native fauna populations (in particular, Eastern Grey Kangaroos) are important starting activities. However, these losses remain difficult to sufficiently regulate and so must also be addressed through other means, such as incentive schemes.

Fire management is also a key part of maintaining and protecting vegetation communities in the ACT. Fire frequency and severity is likely to alter the floristic and structural characteristics of native vegetation communities, subsequently altering habitat availability (e.g. Bradstock *et al* 1998; Ooi *et al* 2006). In many cases frequent burning will cause vegetation to become more fire prone. It may be useful for The Nature Conservation Act to contain provisions to ensure that appropriate fire management is defined, overseen by the Conservator and outcomes monitored. Planning fire management should similarly be undertaken in light of the above considerations of connectivity, ecological integrity and habitat value and take into account the needs of a broad range of taxa, rather than only fire intervals required by a limited set of plant species. Any other conservation planning should also consider the likely result of planned fire regimes and be revised in the events of fire.

Climate change is likely to change conditions for vegetation in the ACT, including fire behaviour in the ACT. Resultant changes in flora and fauna community composition and range should be noted and considered in determining strategies for conservation, both of private and public land.

We support the provision of no net loss of biodiversity (and suggest removing the word 'significant' from this goal, as this may allow gradual attrition of habitat values). It is suggested that to increase developers' immediate consideration of the value of remnant vegetation, particularly grasslands, where conservation values may be more easily overlooked, that this be reflected in the Planning Act. However, within the scope of this review and to ensure future updates consistent with priorities for connectivity, threatened species and other notable ecological 'assets' it may be practical to instead require reference to the Nature Conservation Act regarding applications to clear vegetation. Zoning and issue of licences to clear should reflect rarity, maintaining ecological integrity and configuration of vegetation.

The approach to issuing offsets should also reflect rarity and ecological integrity, given the low likelihood of achieving adequate offset for rare vegetation and the danger of substituting areas of lower ecological value. In general we advocate a very cautionary approach to offsets and have concerns about their use particularly for rare or threatened ecosystems, as these are, by definition likely to be impossible to satisfactorily offset. Offsets should only be approved if afforded the highest level of protection. Thus, we recommend that offsets be used as a last resort only and that their use should not be considered part of standard practice in planning and approvals. Further, we suggest that the amount of investment required as part of the offsetting agreement should be sufficiently high to act as a real disincentive to plan developments that require clearing of vegetation or other types of habitat destruction. While we endorse cross-border co-operation in conservation planning and management, adequate resources should be allocated to manage natural areas in each State and Territory. The provision of management subsidies from cross-border offsetting has potential to create a dependency upon offsets.

It may be useful to work with NSW to develop an overall regional conservation plan to inform developers and land use in each state. Strategic assessments may be useful in directing development towards locations that are likely to be less damaging. Nevertheless, great care must be taken that site values are not overlooked and that there is provision to make amendments to protect features of value that may later become apparent or are present in greater quantity than originally recognised. Private land conservation should be seen as supplementary to the establishment of adequate public reserves and not used to justify more extensive development of other land.

In recognising and documenting loss of habitat we suggest that greater emphasis be placed on values additional to the presence of trees. In particular, recognising the value of dead wood and leaf litter, rocky outcrops, established tree hollows and understorey plants should be recognised and provisions made to protect these features as well as the broader vegetation cover. Condition monitoring is important and should recognise a broad range of habitat characteristics, including features such as patches of bare ground.

### **Off-reserve conservation**

The role of privately managed lands in achieving conservation goals is increasingly recognised. While some level of responsibility should rest with landholders as a duty of care, the provision of incentives and assistance for those managing land to a higher standard can be efficient and also increase long term community connection with natural environments. The success of such schemes depends on adequate support for landholders, including provision of

advice on services available and environmental features of special conservation interest; appropriate management and feedback on the success of their management (dependent on monitoring) as well as assistance with management costs.

Monitoring the effectiveness of agreements at both individual and program scale is important and requires the careful choice of indicators suitable at various temporal and spatial scales. Enforcement of agreements is also important. While it is preferable to avoid unnecessary complexity in schemes, some kind of tiering may be useful. For instance, higher level payments for management may be made in priority vegetation types or where threatened species are expected to be present, to encourage participation in these areas. Also, there could be a basic level of incentives available for landholders meeting minimum criteria and higher level payments available should the land be covenanted with more extensive management obligations in a management agreement. Those landholders who have a strong interest in land management for conservation could also submit tenders for delivering higher level services. The experiences of both government and non-government bodies involved in private land conservation would be valuable in establishing incentive and enforcement mechanisms.

Trusts may be a useful way of involving the community in conservation. Compulsory participation in on-ground management seems unlikely to be effective but a levy could be placed on leasees with land in proximity of the natural area to be managed. This could be used to provide tools, resources and expert advice to community management groups. Non-financial incentives could be provided to those actively involved, for instance, assistance in making members' own properties more conservation-oriented. Other incentives could include activities such as bird and wildflower walks, provided at a cost to anyone but booking preference or free entry being granted to those who had made contributions to management activities in the previous month. Monitoring and review of the effectiveness of management at each area would be important. A long term objective of programs for private land conservation might be to raise the duty of care accepted and held by communities.

### **Managing the urban-bushland edge**

Encroachment onto reserved lands is an important source of pressure on these lands. Edge effects are broader than the direct spilling of structures and activities, and include weed invasion and damage caused by domestic animals. Increasing awareness of neighbours to conservation areas as well as restrictions on some activities likely to cause damage could improve this situation. For instance, a prohibition of growing some plant species known to be invasive could be softened by provision of seedlings of plants indigenous to the area. Requirements to constrain the movement of cats may also be of value and we note that this is occurring in some new developments adjacent to bushland.

Where neighbours to reserves are encroaching upon these areas, perhaps warnings could be followed by the installation of public signs explaining the damage being done and requirements to rehabilitate.

### **Measures to help compliance with the NC ACT**

Enforcement and the public expectation of enforcement are important in maintaining effectiveness of any conservation legislation. The use of a tiered approach, reflecting seriousness of offence seems sensible. As suggested by the South Australian example, a range

of options for penalties, including restitution, where possible, as well as fines and publication of the damage caused may be suitable, with the equivalent minimum fine specified for different types of offence. As recognised in the discussion paper, current fines seem inadequate to act as a serious deterrent. While fines and restitution may be useful penalties in many cases, we suggest that criminal penalties including imprisonment are not abandoned, to allow for cases where offenders are prepared to risk fines for causing damage. This may be most relevant where the offenders are corporations and there is a need for personal responsibility to be taken by complicit senior staff and where the willful destruction of native wildlife or vegetation is involved.

We support a cautious approach to increasing the application of strict liability offences. With regard to powers of search and seizure it seems more relevant to include activities such as cutting of fences as offences under the Act, rather than adding powers to seize equipment such as cutters.

The approach to off and on reserve activities should reflect the special role and status of dedicated conservation areas but also encourage the development and understanding of approaches to conserving broader landscapes.

The integration of Commonwealth and ACT conservation regulation and requirements is sensible, but it is necessary to ensure that standards are not lowered in the process. For instance, the EPBC does not list many taxa that are locally threatened, due to its focus on national threat. In particular, consideration of taxa at levels below species should be made with regard to conservation priorities and regulation in the ACT. Furthermore, while The Wilderness Society strongly endorses the consideration of broader landscapes in conservation planning, care must be taken that in this shift of focus we do not overlook requirements of individual taxa or fail to address the particular threats they face.

#### **Consistent management of public lands**

We agree with the extension of public lands where Part 9 of the Nature Conservation Act is applicable, to allow broader protection of ecological values. There are clear advantages in taking a consistent approach though it may also be necessary to consider which areas are of especially high value when prioritising use of resources. Some powers relevant to other kinds of public land could sit under other Acts so management requirements in these areas are not overlooked, but with reference made to the Nature Conservation Act and any changes made to this Act.

Utility agreements should include provisions for enforcement and recovery of costs, as well as prohibit entry into areas recognised as being of high ecological value.

## **Part 2**

### **Objects of the Nature Conservation Act**

We agree that the Act should specify its object. We suggest that stated objectives could also include addressing threats to native species, ecosystems and ecosystem function in the ACT.

### **Flora and Fauna Committee**

The Flora and Fauna committee contributes valuable expertise in advising on the application of the Nature Conservation Act. It may be useful for the group to have a specific role in

commenting on sustaining processes in the landscape and for particular species and communities (though to some extent this should also be covered by the Natural Resource Management Advisory Committee). The use of some joint committee meetings may also allow for the specific expertise and focus of each group to be retained but allow communication on overlapping areas.

#### **Mechanisms to seek community input**

The establishment of a formal community consultation body may be good practice, with provision to invite additional informal consultation. Given the existence of a relevant group to represent Ngunnawal people, this should be formally recognised, –Safeguards should also be put in place to ensure that the Committee is able to deal with conflicts of interest if they arise in relation to native title so that there is adequate representation of the views of all Traditional Owners.

#### **Declaration of special protection status, protected and exempt species; Declaration of species, community or threatening process**

In declaring protected flora and fauna as having Special Protected Status, in some cases it would be prudent to consider subspecies and significant populations, rather than species. Provision should also be made for listing ecological communities requiring special protection.

A more taxonomically precise approach to listing threatened taxa (such as listing subspecies) may in practice have some similar results to extending definitions to include regionally extinct (extirpated) species. As previously discussed, alignment with the EPBC lists should be done with care, so as not to compromise recognition of locally threatened species or lower taxa. The approach of listing species lost to the region may be useful to encourage re-introduction. Conversely, it may also be useful to highlight species for which the ACT remains a stronghold. Approaches to re-introduction should consider both ecological function and genetic integrity of the population.

#### **Action plans**

It is common in Australia that the creation of action plans lags behind the listing of threatened taxa. Nonetheless, increasing the requirements of plans to have formal monitoring against both quantitative and qualitative targets and regular review is essential if the Act is to be effective..

#### **Definition of an animal and native animal**

We consider the listing of dingoes as a pest (under the Pest Plants and Animals Act 2005) to be contrary to its status as a native animal and its role as a key regulator of trophic processes. Problems with inflation of populations of kangaroos and the public outcry at culling are indicative of the need to restore this status and role and we suggest that further moves are made to incorporate dingoes into management of natural areas. The ability of socially intact dingo packs to suppress predators such as cats and foxes as well as assist with population control of over-abundant kangaroo populations is now well documented (e.g. Glen *et al* 2007; Ritchie and Johnson 2009). In some landscapes the presence of intact dingo packs is associated with improved populations of small mammals and birds (Wallach *et al* 2010).

#### **Killing native animals**

With relation to the damage to native animals done through loss of habitat and habitat quality we agree that destruction of known habitat should be sufficient evidence for prosecution. While there are some practical difficulties with regard to providing licences in an informed and efficient way, invertebrates should also be considered in granting approvals.

### **Protection of plants**

The role that fallen timber plays in providing habitat and its contribution to nutrient cycling is only slowly being understood by communities. Education on the values of timber and other non-living habitat structures is clearly needed. This should be reinforced by the ability to issue infringement notices (which should include information on the value of fallen timber in ecosystems).

The definition of native plants could be reasonably changed to include only plants known to be indigenous to the ACT, if there is allowance for review and the development of species lists with additional survey. Range shifts also occur naturally over time and with rapidly changing climates some flexibility in the approach to natural ranges must be allowed.

### **Prohibited and controlled organisms**

The damage caused by invasive organisms in Australia is immense, so limiting further introductions and spread are warranted. Additional controls to feral animals currently present, for example cats, would also be useful and could be incorporated both into the Nature Conservation Act and the Planning Act.

### **Conservation directions**

Conservation directions issued by the Conservator would be appropriate for protecting the integrity of ecological communities, especially if threatened; they would also be appropriate for protecting ecological function. Directions should be attached to land title and discretionary powers given to allow payment of compensation, although there should not be automatic expectation of this. While it may not be specifically within the scope of the Act, conservation directions should be accompanied with assistance and incentives for landholders to participate in conservation activities.

### **Restriction on activities in reserved areas**

It seems reasonable to restrict activities such as mountain bike riding in sensitive areas and to have provision to prosecute unauthorised drivers in reserves. A requirement for the vehicle owner to identify the driver also seems appropriate.

Hunting should also be an offence in reserved areas and the focus should be on the act of hunting rather than the seizure of equipment such as GPS devices, which may be used for a range of other purposes.

### **Wilderness protection**

Areas we describe as wilderness are often areas of high ecological integrity and should be managed to maintain or improve that integrity. Wilderness areas should be designated and specific provisions made for their management to protect their wilderness values. These provisions may include restricting vehicular access and access for provision of utilities. Active management of these areas is still required and recognition of the relationship between

Traditional Owners and their country is also consistent with current definitions and management of wilderness areas.

#### **Clearing and damaging native vegetation in reserved areas.**

The definition of harm to native vegetation should include criteria for area damaged, severity of damage, time for restoration, rarity of the vegetation community or species contained therein. Examples of levels could be provided but some discretion is likely to be needed in application suitable to the circumstances.

#### **Ownership of genetic material**

It seems reasonable that the Crown should receive some benefits from the exploitation of bioresources. The Intellectual Property rights of Traditional Owners should also be given sufficient consideration in granting use of biological resources.

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