

Review of the

Nature Conservation Act 1980

The Southern ACT Catchment Group Incorporated (SACTCG) are a 'group-of-groups' concerned with the integrated management of our local environment and has a membership base formed through Landcare, Parkcare, Waterwatch and other community groups in southern ACT. At present we have 23 member groups and we are continuing to grow. Our member groups include the ACT Rural Landholders Association, Friends of Tidbinbilla, Birrigai Outdoor School, Cooleman Ridge Park Care, Farrer Ridge Parkcare, Friends of Tuggeranong Hill and Conder Wetlands, Gudgenby Bush Regeneration Group, Illoura Horse Owners Group, Mt Taylor Park Care, Mugga Mugga / Issacs Ridge Park Care and the Concerned Residents of West Kambah (CROWK).

SACTCG has a diverse membership that has a range of views on matters to do with the NCA however we do take this opportunity to address some, but not necessarily all of its members concerns.

The SACTCG submits the following comments for consideration and has included the questions raised in the 'DISCUSSION PAPER *November 2010*' as relevant headings.



Introduction

Calls for submissions have been made regarding a review of the Nature Conservation ACT. This is appropriate for the Southern ACT Catchment group believes there are important deficiencies in the Act and its weak implementation is evident. In this submission the questions posed in the consultation paper are addressed and many of these deficiencies are highlighted.

Initially it is worth noting that there are no specific objectives of the Act other than the broad generalisation as follows: "An Act to make provision for the protection and conservation of native animals and native plants, and for the reservation of areas for those purposes.". Later in this submission we propose it is vital to have objectives and that these be clear, meaningful and pro-active.

In the existing Act, the formal operational structures are set down which in summary are:

A Conservator of Flora and Fauna is appointed who must be a Public Servant and is appointed by the relevant Department Head. Among the tasks of the Conservator is a key one of preparing a draft nature conservation strategy in writing.

After consultation and preparation, the draft nature strategy goes to the Minister who can request changes including consideration under any relevant environmental report, the report of any relevant inquiry under the Planning and Development Act 2007, or any other relevant report

There is established by this Act “a service by the name of the Australian Capital Territory Parks and Conservation Service.”. The Australian Capital Territory Parks and Conservation Service to assist the conservator in the exercise of his or her functions under this Act

Then a Flora and Fauna Committee is established. A key caveat to membership of this committee is that “The Minister shall not appoint a person as a member unless the Minister is satisfied that the person has appropriate expertise in biodiversity or ecology”.

This brief summary sets the framework in which the subsequent comments are made.

As identified in the consultation documentation, the present circumstances suggest that 20% of the ACT lowlands are urban areas and of these lowland areas, 60% are cleared. Where vegetation remains it has been fragmented with the result that its condition has deteriorated. Moreover, “Weed and exotic animal invasion, fire management and recreation pressures are significant factors” upon this lowland area of the ACT, and there is a dramatic decline in both wildlife abundance and species diversity.

This is a summary of the self-identified degree of effectiveness of past action in protecting the environment by government utilising its legislative power as things stand! However the community consultation paper goes on to say that in the future, Climate change is likely to impose additional stresses.

Moreover, although not stated in the consultation paper document, but which is noted in the NRM strategy, the ACT has an ecological footprint that is enormous both in reality and comparatively. The NRM strategy points out that “The average Canberran cast an ecological footprint of 8.5 global hectares (gha) on the Earth’s landscape. For a population of 311 800, as it was in 2004 when the footprint was calculated, this amounts to a total area of 2.65 million gha, or roughly 11 times the area of the ACT. It is a concern that it is growing (it has increased 15% since 1999) and that it is 17% larger than the average Australian footprint.”

To repeat the point, this is situation which has come about as a result of past action with available legislation! It is identified by the ACT Government! It is their assessment.

The context of this consultation process however is provided as follows: “Important social and economic considerations may at times conflict with conservation goals. Amendments to the NC Act should not restrict broader deliberation, but should ensure that biodiversity and ecological processes are considered appropriately within the triple bottom line of social, environmental and economic perspectives.” (Page 9 of the Consultation paper). Specifically we noted above the importance of Planning and Development Act 2007.

This comment about linkages to other goals follows reference to other contextual documents such as the Canberra plan with its stated goal: “ that Canberra becomes a fully sustainable city and region, where future developments are environmentally sensitive, the flora and fauna is maintained and protected; and there are responsive actions to the challenges of climate change.”(Page 8 of the Consultation paper)

A very interesting juxtaposition is highlighted here. It is that of a triple bottom line perspective with that of a fully sustainable city. The juxtaposition becomes acute when we consider what is meant by the word ‘sustainable’. What is grotesque about this juxtaposition is the omission of a key element in the original definition of ‘sustainability’ namely the concept of intergenerational equity. We return to this matter later.

There is however yet another question which arises in the context of policy and legislative review and which emerges from the consideration of the statement: “ Important social and economic considerations may at times conflict with conservation goals.” Aside from potential complexities here regarding the use of the word ‘conservation’, and its relationship to ‘ecology’ or ‘sustainability’, from a policy view point we need to ask a number of questions. For example, how will we know when there is such a conflict? How does the conflict manifest itself? Who will know about it? Who determines whether there is a conflict? Is such conflict foreseeable and if potentially so, have we leading indicators that might assist us forecast when and where such a conflict might occur? How can we judge the merit of the competing points of view in such a conflict? Who are the stakeholders in this potential conflict, who gets most weight in the respective argument and on what basis and what resolution mechanisms are there to resolve these conflicts? Who is responsible, and what constraints apply in practice, to these tasks being professionally worked through? These are issues which are quite fundamental to policy and legislative implementation?

On this subject it is worth going back to the original report of the so-called Grundtland commission (Our Common Future 1987). In this report it makes the very simple but powerful statement that “many present efforts to guard and maintain human progress , to meet human needs and to realize human ambitions are simply unsustainable... We borrow from environmental capital from future generations with no intention or prospect of repaying. ..We act as we do because we can get away with it: future generations do not vote; they have no political or financial power; they cannot challenge our decisions.”. And yet here we are today still trying to get traction to do real things about improving the earth’s environmental health in 2010 because of destruction brought about by human activities. One of the latest reports on this subject of just where we are at in terms of environment health was discussed in the electronic news producer Crikey on Thursday January 27th 2011 which states:” In new research just out, Hansen concludes that at the current temperature, no "cushion" is left to avoid dangerous climate change, and that the Australian government target goals "... of limiting human-made warming to 2° and CO2 to 450 ppm are prescriptions for disaster". Hansen is a scientist and Head of NASA Climate Studies.

In light of the clearly disastrous results of past policy, including those outlined in the discussion paper of the NC Act, it would seem that the 1987 statement of the wilful ignoring of future needs (intergenerational equity) is fully verified. At the micro level of the ACT, this is the true context of the debate about where-to in the future, about what might be in a new Nature Conservation Act and about what might be undertaken in reality through on-ground actions in support of these wider policy goals.

Are there true options to the crass and voracious growth paradigm that underpins an ACT government policy? Yes there are! There is a growing literature about prosperity without growth. The problem is expressed as follows: *“Today we find ourselves faced with the imminent end of the era of cheap oil, the prospect (beyond the recent bubble) of steadily rising commodity prices, the degradation of forests, lakes and soils, conflicts over land use, water quality, fishing rights and the momentous challenge of stabilising concentrations of carbon in the global atmosphere. And we face these tasks with an economy that is fundamentally broken, in desperate need of renewal”*.(Foreword: Prosperity without Growth. The Transition to a Sustainable Economy. Professor Tim Jackson Economics Commissioner, Sustainable Development Commission UK. 2010)

Having identified the problem, the answer is as follows: *“..there is an urgent need to develop a resilient and sustainable macro-economy that is no longer predicated on relentless consumption growth. The clearest message from the financial crisis of 2008 is that our current model of economic success is fundamentally flawed. For the advanced economies of the Western world, prosperity without growth is no longer a utopian dream. It is a financial and ecological necessity.”* (Ibid p12)

The Nature Conservation Act under this scenario is one which must be clear in intent, powerful in its aspirations and fiercely supported in practice.

Have your say

What do you consider are the key issues for future nature conservation in the ACT?

The SACTCG primary concerns include:

1. Increased pressure on finite land and water resources by an increasing population.
2. Increased public use and possible abuse of nature parks, reserves and river corridors.
3. These pressures putting the conservation of threatened ecosystems, flora and fauna at an even greater risk than they currently face.
4. Maintenance of existing areas that might have undergone conservation.
5. viable business programs for funding adequate staff numbers, volunteers and equipment due to lack of these budget requirements, an ad-hoc approach occurs every year with poorly developed budgets.

In addition protecting and restoring native ecosystems is significant for future extreme weather events' mitigation. Ian Lawrence(CRC for Fresh Water Ecology, University of Canberra), has spoken about the importance of protecting catchments, for a variety of reasons, and even just for this effect of mitigating the effects of more extreme weather events, which are predicted under climate change scenarios. The NC Act needs to address the need to protect our catchments and to restore them when necessary.

How do you think conservation concerns can be balanced with social and economic interests?

Conservation concerns will always be under pressure from social and economic 'interests'. Once an ecosystem, or one of its vulnerable components, faces collapse (for example, localised extinction of a species) recovery will be difficult if not impossible. Social and economic interests will need to adapt to ensure limits on their behaviour. The SACTCG strongly believe that it is the role of the Nature Conservation Act; to draw boundaries around the behaviour of these 'interests' to ensure vulnerable ecosystems do not face further degradation.

Ongoing education of people is also extremely important as conservation cannot fully happen without community education. Community involvement and 'ownership' of areas means conservation need not always exclude social and economic interests.

In addition the NC Act should not just cover conservation areas but should be ensuring effective nature protection across all areas of tenure and over time. Public education needs to include the fact that conservation reserves are not enough across the landscape to ensure both species and ecosystem survival. Whereas the Act may not have the ability to ensure such education it should indicate that conservation of nature (biodiversity) is everyone's responsibility, whether you are a developer, mechanic, school teacher, or whatever.

Maintaining and potentially increasing biodiversity across our landscape, whether urban, peri urban, rural or reserved, is valuable in its own right, is valuable for better resilience for climate change effects, is valuable for species habitats and for human recreation. Maintenance and improvement in biodiversity in turn provides better watersheds for rain water, which could be better harvested as storm water goes through the current urban areas, into enhanced urban parks along waterways.

Because of human activities putting so much stress on ecosystems, on which we and other species depend, the principle of social and economic actions and needs should be put into the context of our interdependence on healthy ecosystems. Prof Janis Birkeland has written about humans needing to integrate human activities, like urban expansion, within processes that enhance the ecology: the air is improved, the water used is improved, the soils used are improved, and biodiversity enhanced. (J. Birkeland, "Positive Development from vicious circles to virtuous cycles through built environment design". Earthscan, 2008). http://www.worldcat.org/title/positive-development-from-vicious-circles-to-virtuous-cycles-through-built-environment-design/oclc/213765712?referer=list_view

1.2 Have your say

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

Under the Planning and Development Act,

“Referral entities, including the Conservator have 15 working days to provide advice to the Planning Authority once a development application has been referred. Once this advice has been given, the Conservator must act consistently with this advice unless substantially new information arises.” (p11)

Is this really sufficient time to effectively assess the risks of a potential development?

The review suggests;

“Having an approved development application, or acting in accordance with a plan of management or land management agreement does not override the need for a licence to take or kill certain native plants or animals, interfere with nests or fell timber under the NC Act. However, administrative practice is that unless there is a particular concern that warrants action then development activity that interferes with native plants and animals can be undertaken without a licence under the NC Act, consistent with the development approval. It would be appropriate that the NC Act be amended to reflect this practice and better define the relationship between the NC Act and the Planning Act.” (p11-12)

This suggests changing the NC Act to ease processes under the Planning Act. Do we really want to expedite any further activities that ‘interfere with native plants and animals’ under development, risking the assumption that there is no ‘particular concern’ until it is too late?

Planning needs to include;

1. exclusion of development from riparian zones and
2. corridors of access to enable healthy movement of flora and fauna

There is potential to link existing nature reserves and other valuable habitat via corridors that already largely exist. Nature Reserve Management Plans should sit under the NCA and the Act should direct the implementation of these plans. For example; The Canberra Nature Park Management Plan (1999) has a listed strategy (Section 3.3.8) to *Assess corridors/islands including their location, quality, use, viability, and the need for new corridors and seek to protect or improve corridors wherever possible*. This has not occurred!

Restoration and protection of ecological functioning needs to be put into the Act, to give ecological health a higher priority.

2.2 Have your say

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

Connectivity is recognised as being important for resilience and species survival, especially in relation to coping with climate change. Similarly, biodiversity is a factor in resilience, so there needs to be sufficient funding to maintain biodiversity.

Any developments that occur invariably upset the balance of biodiversity. For instance, a developer will first cut down trees and shrubs and then scrape the topsoil off. After the building is complete and more soil and vegetation is added it takes a long time to re-establish the flora and fauna. Both will be different and most likely non-indigenous. To “off-set” this loss of biodiversity with other plantings elsewhere is unacceptable. Already the local area has been fragmented and habitat and animals destroyed. Plantings elsewhere take many years to mature enough to be useful – hollows for example. To think ‘regionally’ when many small areas are being destroyed is almost impossible. Each plant and each animal (including mammals, insects, fish, bacteria etc) is part of the ecosystem and contributes to the overall biodiversity of an area.

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

The concept of ‘offsetting’ parcels of land is a concern as it must assume or make judgements that some sites are less value in terms of biodiversity than others. This could, if done badly, result in the loss of significant sites that we have yet to realize.

A discussion paper on this topic outlining the process that would be used would be valuable.

2.3 Have your say

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?

The review suggests;

“Currently, licences are still required under the NC Act for taking native plants, killing native animals or interfering in nests of native animals within an area of an approved strategic assessment even if the assessment has prevented any significant impact and has appropriately offset any biodiversity loss. If wildlife and licensing requirements under the NC Act were considered as part of this assessment, it would improve the timely delivery of strategic environmental approvals. It would make the need to consider licensing issues on an individual or development-by-development basis unnecessary and deliver any offsets that may be required under the ACT biodiversity offset approach.”(p20)

This proposal is inadvisable. Keeping licensing separate will help ensure accountability and rigor in providing protection to endangered species.

Communication between all involved bodies MUST be open and easily available.

Ongoing involvement and commitment is vital.

3.1 Have your say

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?

Voluntary dedication of land for conservation should occur. Also the Commissioner for Sustainability and the Environment recommended in the following quote from the review:

“The Commissioner for Sustainability and the Environment investigated the ACT’s Lowland Native Grassland and found that enforcement of conditions in land management agreements in rural leases seemed lacking, possibly because it is too difficult given the current system. The Commissioner recommended that rural lease processes (including those for land management agreements) be simplified and responsibilities clarified. The Commissioner thought it appropriate for Parks and Conservation (Department of Territory and Municipal Services) to be fully responsible for administering land management agreements. The authority for this may need to be established under the NC Act. Lease management agreements can currently contain lease conditions relating to conservation. These lease conditions can be written to apply across the life of a 99-year lease.”(p 21)

If PCL(TAMS) are to enforce LMA’s, as suggested, sufficient resources will be necessary.

If voluntary dedication of leased land is encouraged provisions must also be made for ongoing maintenance and landholders be adequately compensated and supported to set aside areas of land as ‘Conservation Zones’.

3.2 Have your say

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?

The SACTCG agree that private management trusts are a valid proposal. In addition, catchment groups with their exiting incorporation could play a valuable role in administering trusts and assisting with private lease conservation projects.

The Australian Wildlife Conservancy (AWC) has examples of management arrangement practices that work extremely well. Empowering community groups contribute to this process is also a good idea, through organisations such as Greening Australia.

4.1 Have your say

Does existing legislation have sufficient powers to deal with encroachments onto reserve land?

What, if any, amendments should be made to the NC Act?

Greater powers maybe needed under the NC Act to prosecute encroachment offenders. The legislation is just the first step. It’s the oversight of competent management personal that is vital in implementation.

Certain reserves in the ACT have for a long time been encroached by peoples gardens. SACTCG members have seen vegetable gardens and compost bins on the reserve side of the fence in some areas. Obviously TAMS have been aware of these in the past. Is this a lack of enforcement itself or a lack in the strength of the legislation?

Removal of offending material and restoration of the reserve should be included in the NC Act. It should be a responsibility of landholders on urban- reserve interfaces to be aware of weed incursions, of cat-control, of dogs only on leashes, and a requirement for them to remove and restore if necessary where offences have occurred.

5.1 Have your say

Are the enforcement options and penalties within the NC Act adequate?

If not, what could improve them?

The SACTCG agrees with the review suggestion that they are not. SACTCG also agrees with the following proposals:

“potential use of a tiered approach where the level of

- investigation and penalty is tailored to the level of offence” penalties that are sufficient to act as a serious
- deterrent when economic gain is a factor in a breach use of strict liability offences under the NC Act
- that powers of seizure, search and entry be improved.’

In addition, there could be compulsory restitution through weeding/planting programs like Green teams. Although this suggestion requires more staff time and resources.

5.3 Have your say

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?

The use of civil penalties is quite appropriate as the civil fine is not considered to be a criminal punishment. It is primarily sought in order to compensate the state for harm done to it, rather than to punish the wrongful conduct. Potentially and if the fine was large enough, they could be successfully used against offences under the NC Act committed by corporations and large organisations.

5.4 Have your say

Are the levels of penalties available under the NC Act appropriate?

They are lower than other states and should be increased accordingly.

5.5 Have your say

Is there a case for the expansion of strict liability offences under the NC Act?

If so what sort of offences?

The SACTCG believe there is. Offences under *strict liability* should include:

- deliberate harm to wildlife,
- trapping and taking without licenses,
- setting of illegal traps in reserves and waterways,
- dumping,
- deliberate damage to gates and fences on reserves,
- deliberate damage by off road vehicles (including bicycles),
- holding of unauthorised and unreturned keys for reserve gates.

This list is not exhaustive but highlights some major concerns of our group.

5.6 Have your say

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

The review says: “A major issue is the unauthorised possession and/or use of keys to parks and reserves. Currently, such use is not an offence and authorised conservation officers have no powers to demand the return of unauthorised keys. Similarly, the cutting of fences, locks or gates is not specified as an offence under the NC Act, and therefore wire cutters or other such equipment cannot be seized. It would help compliance activities if it was also an offence not to surrender such equipment when asked to do so by an authorised officer.”(p27)

The powers of seizure should be increased to help compliance activities.

5.8 Have your say

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

Integration should not come at the cost of meeting the needs of endangered species and ecosystems. I am also suspicious of the following:

“A separate policy on biodiversity offsetting (or banking) that aligns with Commonwealth Government principles is also being developed for consideration by the government.”(p28)

Ecosystems are not like other ‘resources’ that one may simply ‘bank’ or replace (read: ‘offsetting’). A hectare of mature forest for example, does not equate to a hectare of rehabilitation plantings after clearing. We as a community need to be careful about areas where we allow the natural environment to be degraded in the interests of ‘progress’. The main pressure affecting conservation of remnant woodland and grassland communities in the ACT comes from urban development and the ‘needs’ associated with the increasing population. Do we necessarily allow an area to be developed because of a promise to ‘make up for it’ somewhere else?

It may be agreed that policies should reflect the same level of conservation principles but a real concern exists that the less rigorous of the two pieces of legislation may be readily accepted due to the ‘ease’ of integration.

There must be integration of philosophy and implementation of strategies across state boundaries.

6.1 Have your say

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

The SACTCG generally agrees with the suggestion that ‘..that government agencies managing land are provided with a consistent, easy-to-use range of permissive and enforcement powers.’(p29) As long as it does not add another layer of bureaucracy to simple things like running an event.

6.2 Have your say

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?

The SACTC strongly agrees with the reviews opinion that:

“One option is for the NC Act to provide greater statutory management direction for reserved lands by establishing codes of practice as disallowable instruments. These could be general in nature or relate to specific issues such as kangaroo management. The NC Act could also mandate work plans for particular classes of activity on reserved lands.”
(p30)

Management implies appropriate use of all reserved land and appropriate and ONGOING management of flora and fauna using the lands, waterways and air spaces.

6.2.1 Have your say

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?

The SACTCG believes the NC Act should follow the practice that: ‘In other jurisdictions conservation managers are able to charge a developer fees for the conservation input of their staff (that is, expertise and time spent assessing developments). They are also able to charge up-front performance-based restoration bonds before any work starts.’(p30)

This legislation needs to ‘have teeth’. The conservation managers must be able to pursue further legal action if not complied with.

7.1 Have your say

Should objects be incorporated in an objects section in the NC Act?

This seems like a sensible inclusion, especially if it assists legal interpretations of the NC Act.

What do you consider would be appropriate objects?

The five examples on page 31 seem quite suitable.

8.1 Have your say

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

It is the SACTCG’s strong belief is that the provisions for development applications under the Planning Act should be subordinate to approvals under the NC Act. This would remove uncertainties about actions undertaken under a DA and the need or otherwise for specific licenses as these would be dealt with under the NC Act in the first instance.

The role of the NC Act, and subsequently the Conservator, should be central to administering land management agreements, as per the recommendations on page 33.

8.2 & 8.3 Have your say

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

It would provide broader expert advice 'to formalise both and their respective species and communities or landscape focuses' rather than merge the two committees, as per the comments on page 34.

Simplification of management to improve communications and clarity and effectiveness of action should be a goal.

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

There is, even if it is not merged with the FFC.

Do you think the role of the Flora and Fauna Committee should be expanded?

The FFC should provide expert advice to the NRMAC on species specific issues while the NRMAC incorporates this to provide regional (landscape wide) advice. Both could have merged arrangements to provide advice to the Minister for the Environment, as per the current arrangements. The FFC should have a role appropriate to this end.

9.1 Have your say

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

Reviews are essential and should also identify successes and failures during the term of review.

Should the NC Act allow for amendments to the strategy?

The SACTCG believe this would be appropriate.

If so, given the potential impact on land use planning, should this adopt a transparent public process similar that used for Territory Plan variations?

The SACTCG believe this would also be appropriate.

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

The SCATCG believes so, and The Plan for Managing the Natural resources of the ACT, 'bush Capital Legacy' should be high on this list.

Management plans such as the Kangaroo Management Plan and Willows Management Plan, among others should be used to help direct The Plan for Managing the Natural resources of the ACT. The expertise and work that has gone into producing such plans seems wasted if the recommendations are not acted upon.

9.2 Have your say

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

The provisions detailed under 9.2 of the review seem quite thorough.

The species status lists need to be updated periodically to reflect changes in the pest and pet species that are being introduced.

For example, the red-eared slider turtle was introduced to this country by the illegal pet trade and, as very often happens, has escaped into the wild. Previously there may not have been any threats to native turtle species but now there is. The pet trade is now selling non-native invertebrates. Should these escape to the wild, or be released into the wild, local invertebrates could be affected.

Another example is the cane toad. It was introduced to control an exotic beetle on an exotic crop. Entire populations of native species are being grossly affected, some to the point of extinction.

There are changes happening and events often beyond our control, whether anticipated or not, and for that reason the protected and exempt species lists should be regularly reviewed.

9.3 Have your say

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?

The NC Act should provide protection to endangered communities, as suggested on page 37 and ecosystem connectivity as suggested on page 38 of the review.

The problem is that each state has different categories which can be very confusing, especially if a species or a protected habitat is listed in different states/ Commonwealth. IUCN classifications would be useful, as it is a widely recognised system.

Classifications and definitions of native species should be aligned with the EBPC Act. Comparisons are thus easier to make between states.

If classifications were aligned with the EBPC, which also incorporates penalties, and because there are large areas of Commonwealth land within the ACT it would seem a logical move.

However, to add a “regional” classification for endangered and extinct animals would give a clearer perspective of local native animals.

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

A new category of 'regionally extinct' would, as suggested, 'reinforce to the general community that threat categories are about extinction, and that the ACT has already lost many species from local habitats.'(p38)

9.4 Have your say

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

The SACTCG strongly agrees with requirements for monitoring and review, as per the review recommendations on page 39.

10 Have your say

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

The suggestion in the review that; 'In summary, contributing reasons why parts 4 and 5 of the NC Act have proved challenging to implement consistently include:

- the wording of these sections makes it difficult to discriminate between major and minor actions and offences
- development approval from the Planning Authority for an activity that will clear native vegetation or harm wildlife can be used as a defence against not having an approved license from the Conservator.' appears well worth addressing.

Regulation may indeed help.

Information needs to be also available so that the general public understand why it is important to comply with the regulations. For instance; on websites, in conventional media and information sessions to community groups etc. For many people education would go a long way to reducing breaches before any enforcement is required.

Hotlines and community reporting sites might allow reporting of offences. More authority might need to be given to rangers to stop and investigate offences. More staff might need consideration.

Is there a greater role for self-reporting by licensees on compliance?

Any form of self reporting has to at least be followed up by random site visits to ensure compliance.

Should fees reflect the full cost of administering licences?

This would appear to be reasonable. Proper costing of fees would highlight the importance of the license.

11.1 Have your say

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

This is not seen as necessary. It should also still be a requirement to have a license to kill native animals even when they are listed as a 'pest' species. This would assist in gaining accurate information about animal populations in the ACT.

It would be more consistent to include all animals, including pest native species and exotic species, and then single out particular animals for exclusion if provisions do not apply to those species.

This section talks about immediate action if a dingo is worrying stock. The dingo could be singled out as in the above paragraph by changing the wording as suggested on p41.

11.2 Have your say

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

Only through effective licensing. For example RSPCA wildlife carers in the ACT are registered and trained by the organisation and hold a license to look after (keep) animals as per their skills and training. I definitely believe there should be an 'onus of proof' to keep any wildlife (dead or alive). The risk of injury or infection from ignorance may provide sufficient 'public interest' justification for 'reverse onus of proof' prosecutions, in addition to the obvious potential for cruelty being inflicted by those lacking the knowledge to care for native animals.

Animals taken from the wild have certain behavioural characteristics that are easily identified by an experienced person. However these characteristics diminish with time. Certain birds, especially Galahs and Sulphur crested cockatoos, humanise extremely quickly if young when taken. Adult animals retain wild traits for longer.

The illegal pet trade is enormous in terms of numbers of animals being taken from the wild and sold locally and globally. Paperwork for animals are 'laundered' around the world and it is extremely difficult to prove that an individual animal is captive bred. However, having said that, there is little that can be done about the global scale of animal selling. So, to concentrate on local markets: if there is a suspicion that an animal has been taken from the wild, the onus should be on the owner to supply receipts to the contrary. The presumption of innocence is admirable but what was the prompt for suspecting foul play?

It should most definitely be an offence to have an animal sourced from the wild.

11.3 Have your say

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

The SACTCG strongly believe that this should be the case.

If an endangered animal has been identified in a particular habitat then it is more sensible to protect the habitat. In doing so the biodiversity within that habitat is preserved and hence the endangered animal is also preserved.

It should be an offence to knowingly destroy a habitat of an endangered animal (or threatened animal). Keep the focus on the habitat.

A point to ponder; if it is not an offence to destroy habitat of non-endangered animals then destroying that habitat could potentially lead to that species, and others, becoming endangered.

11.4 Have your say

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

It would be prudent to have a licensing requirement to take invertebrate species identified by the FFC as being at risk. A license to take any invertebrates could adversely impact education programs, such as those delivered by Waterwatch, which seek to broaden community appreciation of aquatic habitat diversity.

Alternatively, if licensing provisions were available at an institutional level (such as the current license to keep wildlife held by the RSPCA on behalf of its volunteers), this would be a reasonable approach and would allow, for instance, volunteers to continue to undertake aquatic invertebrate surveys on behalf of Waterwatch in the ACT reserves.

12.1 Have your say

Should the removal of native timber incur the issuing of an infringement notice?

Fallen timber and hollow bearing trees provide essential habitat and nesting sites for numerous species of birds, reptiles and mammals. Parks Conservation Rangers provide fire wood where appropriate for campers at camping and picnic sites and domestic fire wood is available from a number of sources in the ACT that do not involve removal of wood from reserves.

12.2 Have your say

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

In light of the comments in the review, this is a sensible suggestion and should include the ACT's Jervis Bay region.

Protected plant species listed should be those that are indigenous to the ACT. A plant that is national indigenous that is not currently a weed in the ACT may become a weed with climate change or future introductions.

13 Have your say

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

Unless the 'Pest Plants and Animals Act 2005' is to be updated, giving the Conservator powers to make decisions for the ACT is vital.

Control and management of pest animals in nature parks & reserves, needs to be specified in the NC Act, and some of the pest animal controls for Mulligans Flat in Gunghalin, should be more widely expressed in the NC Act. An appendix of species should be able to be amended as necessary. For example, when the NC Act was introduced in 1980, there was no problem with indian mynah birds, but they became a problem. Also, wild pigs are a problem in more specific areas.

The NC Act should include provision for land managers to take action to reduce rabbit numbers, including destruction of rabbit warrens and rehabilitation, so as to restore areas and prevent erosion.

It is insufficient for Parks & Conservation to ask Parkcarers to take on more, and more widespread weed control in the ACT, especially as most cannot, even with ranger assisted weed programs, keep up with weed proliferation in the parks & reserves in which they regularly work.

14 Have your say

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

In any instance where the activity conflicts with recommendations and management plans supported by the NRMAC and the FFC, in line with the territory plan. The NC Act should be the overarching legislation in the regions covered by the act in the ACT.

What powers should the Conservator be allowed to exercise?

As recommended by the Commissioner for Sustainability and the Environment 'the Conservator of Flora and Fauna have powers to direct, when necessary, that land management actions be undertaken.' (p43)

The Conservator must have the power to fully enforce and to take legal action if required.

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

This should be the case, with the provision for review if requested by the new landowner.

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

Definitely not. Compensation for 'loss or value' is a subjective concept dependant on the activities disallowed. Compensation devalues the environmental need for the action - it suggests that the Conservator is sorry to have to take the action.

Maybe it would be wiser to have the option of having the lease purchased from the leaseholder by the ACT government if they feel they cannot adequately conduct their activities under the Conservator's directions.

15.1.1 Have your say

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

Yes, if the driver cannot be identified. It should follow the same procedures as for other traffic offences.

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

This is seen as a valid suggestion by the SACTCG.

Although there's a place for mountain biking, they often form their own cross-country tracks, or ride down steep paths, and exacerbate the soil erosion. The approach in Bruce Ridge, where Parks & Conservation, with Park Carers and mountain bikers negotiate use and best practice, works well. In relation to the NC Act, groups like mountain bikers should be made aware of the Act and their responsibilities for protection of plants and their habitats. Perhaps it is possible for the NC Act to contain, under compliance, clauses about negotiated uses of Parks and Reserves.

15.1.2 Have your say

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

There are two types of hunting – for pure sport and for practical reasons.

Hunting for sport is a terrible practise. Recreational hunters are responsible for the deaths of many ducks every year. These hunters go specifically to areas where this sport is allowed and kill not only ducks, but indirectly other species because of mis-identification (intentional or otherwise) and poisoning of waterways. They do not always follow up on their 'kills' and some animals die terrible painful and slow deaths.

Even recreational hunters who shoot rabbits and pigs may not be accurate shooters and produce a clean kill with a majority of their shots. Do any of these hunters have to undergo accuracy testing as do professional kangaroo slayers?

Reserves should be a sanctuary for native animals and hunters should not be allowed within these areas at all. Professional shooters should be employed/licenced to eradicate pigs and other feral pests within reserves.

Yes, hunting without a licence should be listed as an offence.

15.1.3 Have your say

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

No. The management plans of reserves should provide enough provision for guide dogs and horses. There is no need for ‘pest’ species, including domestic dogs to be in reserves other than those where it is already part of the management plan. For example TAMS has made adequate provision for dogs in reserves by allowing them at places like Uriarra and Point Hut Crossings.

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?

This is much simpler than trying to administer a system of licenses.

15.1.4 Have your say

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?

This should be dealt with through the reserve’s management plan.

Do you support the provision of clauses in the NC Act that would allow regulation of private or community organisation use of reserved land?

Once again the NC Act could include such clauses, but leave the details to the management plans of the reserves, which have the maintenance of the conservation value of the particular reserve as a central focus.

15.1.5 Have your say

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

The SACTCG strongly believes this should definitely be the case.

15.1.6 Have your say

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?

This is arguably less important in the ACT than in other states and territories.

The management plans for Namadgi NP and Tidbinbilla Reserve should have adequate restoration provisions for any works to fire trail etc that occur with them.

15.1.7 Have your say

How should damage capable of causing serious or material damage be defined?

For legal clarity in the case of prosecutions this would seem wise.

What thresholds should be used to distinguish between different levels of harm?

Some thresholds may include:

- The area or amount of habitat damaged as a percentage of the reserve.
- The type of damage, eg release of toxic substances is arguably a greater level of harm than physical damage.
- The number and significance of species affected by the damage.
- The type of habitat damaged and its significance.

16, 17 &18 Have your say

Should licensing fees reflect cost recovery?

This is seen as a valid suggestion by the SACTCG.

19 Have your say

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

The SACTCG believes they are.

20 Have your say

Should the NC Act encompass the concept of royalties for biodiscovery?

This is also seen as a valid suggestion by the SACTCG.

Are current royalty provisions for native plants, native animals and timber sufficient?

Any of the options discussed in the review are an improvement on the NC Act's current provisions.

The knowledge input into this submission has come from many years of staff personnel, contractors and long-term volunteers of 30 years. This knowledge will be critical in helping the Review make the Nature Conservation Act valued and positive for future years in the ACT.

