

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment, Land and Planning)

**Nature Conservation (Amendment) Bill
1994**

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1994

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment, Land and Planning)

**Nature Conservation (Amendment) Bill
1994**

A BILL

FOR

An Act to amend the *Nature Conservation Act 1980*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

- 5 **1.** This Act may be cited as the *Nature Conservation (Amendment) Act 1994*.

Commencement

- 10 **2. (1)** Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- (2)** The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.
- (3)** If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which

this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

5 3. In this Act, "Principal Act" means the *Nature Conservation Act 1980*.¹

Interpretation

4. Section 5 of the Principal Act is amended by inserting the following definitions:

10 " 'Action Plan' means an instrument prepared under section 23C;

'Committee' means the Flora and Fauna Committee established under section 15A;

'ecological community' means a group of ecologically related species with shared habitat characteristics that—

(a) may inhabit a particular place;

15 (b) may vary in composition within ecological limits; and

(c) meet such additional criteria as may be prescribed;

'endangered' means—

20 (a) in relation to a community—an ecological community that is in immediate danger of extinction unless the circumstances and factors threatening its distribution, composition and viability as an ecological unit cease; and

(b) in relation to a species—

25 (i) its likely extinction unless the circumstances and factors threatening its abundance, survival or evolution cease; or

(ii) the reduction of its numbers or habitats to such a level that the species is in immediate danger of extinction;

'habitat' means an area—

30 (a) in which an organism, or a group of organisms, lives; or

(b) in which an organism, or a group of organisms, has lived and into which the organism or group has the potential to be reintroduced;

'newspaper' means a daily newspaper published and circulating in the Territory;

'species' means a group of organisms that are wildlife (including fish and invertebrates that are indigenous to the Territory) that—

- 5 (a) interbreed to produce fertile offspring; or
- (b) possess common characteristics derived from a common gene pool;
- and includes—
- (c) a sub-species; and
- 10 (d) a distinct population of organisms prescribed as being a species;

but does not include a prescribed species;

15 'sub-species' means a geographically separate population of a species, being a population that is characterised by morphological or biological differences from other populations of that species;

'threatening process', in relation to a species or ecological community, means a process that threatens, or may threaten, the survival, abundance or evolution of the species or community;

20 'vulnerable', in relation to a species, means a species that within the next 25 years is likely to become endangered unless the circumstances and factors threatening its abundance, survival or evolution cease;".

Insertion

5. After section 6 of the Principal Act the following heading is inserted:

25 **"PART IA—ADMINISTRATION**

"Division 1—The Conservator and the Service".

Insertion

6. After section 15 of the Principal Act the following Division, Part and Division heading are inserted:

“Division 2—Flora and Fauna Committee

“Subdivision A—Establishment, functions and powers

Establishment

5 “15A. There is established by this Act a committee by the name of the Flora and Fauna Committee.

Functions

“15B. The functions of the Committee are—

- (a) to provide advice to the Minister in relation to nature conservation;
and
10 (b) to exercise such powers as are provided for under this Act.

Directions to Committee

“15C. (1) The Minister may give the Committee general directions, in writing, in relation to nature conservation.

15 “(2) The Minister shall give a copy of any direction under subsection (1) to the Conservator.

“(3) The Conservator shall include in the annual report a copy of any direction given to the Committee by the Minister.

Powers

20 “15D. The Committee has power to do all things necessary or convenient to be done in connection with the performance of its functions.

“Subdivision B—Constitution and meetings

Membership

“15E. (1) The Committee shall consist of 7 members appointed, in writing, by the Minister, at least 2 of whom shall not be public servants.

25 “(2) The Minister shall not appoint a person as a member unless the Minister is satisfied that the person has appropriate expertise in bio-diversity or ecology.

“(3) A member holds office as a part-time member.

30 “(4) A member holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment.

“(5) A member holds office on such terms and conditions (in respect of matters not provided for by this Part) as are determined by the Minister in writing.

Appointment of Chairperson and Deputy Chairperson

“15F. (1) The Minister shall appoint from the members—

(a) a Chairperson; and

(b) a Deputy Chairperson.

5 “(2) The Chairperson and the Deputy Chairperson shall not be public servants.

Secretary to Committee

10 “15G. The secretary to the Committee shall be a public servant who is occupying or performing the duties of an office in the Department, nominated by the administrative head, in writing, for the purpose.

Remuneration and allowances

“15H. (1) A member shall be paid such remuneration and allowances as are determined by the Minister.

15 “(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Leave of absence

“15J. The Minister may, by writing, grant leave of absence to a member on specified terms and conditions as to remuneration or otherwise.

Disclosure of interests

20 “15K. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee shall, as soon as practicable after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a Committee meeting.

25 “(2) A disclosure shall be recorded in the minutes of the meeting and, unless the Minister otherwise determines, the member shall not—

(a) be present during any deliberation of the Committee with respect to that matter; or

(b) take part in any decision of the Committee with respect to that matter.

30 **Resignation**

“15L. A member may resign office, whether as Chairperson, Deputy Chairperson or member, by writing signed by him or her and delivered to the Minister.

Termination of appointment

“15M. (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

“(2) If a member—

- 5 (a) without reasonable excuse, contravenes section 15K; or
(b) is absent from duty, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Committee;

the Minister shall terminate the appointment of the member.

Acting members

10 “15N. (1) The Minister may appoint a person to act as a member of the Committee.

“(2) The Minister shall not appoint a person to act as a member of the Committee unless the Minister is satisfied that the person has appropriate expertise in bio-diversity or ecology.

15 “(3) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that—

- (a) the occasion for the person’s appointment had not arisen;
(b) there was a defect or irregularity in connection with the person’s appointment;
20 (c) the person’s appointment had ceased to have effect; or
(d) the occasion for the person to act had not arisen or had ceased.

Convening meetings

“15P. (1) The Chairperson, or, if he or she is unable to do so, the Deputy Chairperson, shall convene such Committee meetings—

- 25 (a) as he or she considers necessary for the efficient performance of its functions; and
(b) as the Minister directs by notice in writing given to the Chairperson or the Deputy Chairperson.

30 “(2) Where the Chairperson or the Deputy Chairperson proposes to convene a meeting of the Committee, he or she shall, not later than 5 working days before the date of the proposed meeting, give each member a notice, in writing, specifying—

- (a) the date, time and place of the meeting; and
(b) the matters to be considered at the meeting.

Procedure at meetings

“15Q. (1) The Chairperson shall preside at all Committee meetings at which he or she is present.

5 “(2) Where the Chairperson is not present at a meeting, the Deputy Chairperson shall preside.

“(3) Where the Chairperson and the Deputy Chairperson are both absent from a meeting, the members present shall elect 1 of their number to preside.

10 “(4) The member presiding at a meeting may give directions regarding the procedure to be followed in connection with the meeting.

“(5) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting.

“(6) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

15 “(7) The Committee shall keep minutes of its proceedings.

Quorum

“15R. At a meeting of the Committee, a majority of the members for the time being constitute a quorum.

“PART II—NATURE CONSERVATION STRATEGY ETC.

20 “*Division 1—Nature conservation strategy*

Draft nature conservation strategy

“15S. (1) The Conservator shall, as soon as practicable after the commencement of the *Nature Conservation (Amendment) Act 1994*, prepare a draft nature conservation strategy in writing.

25 “(2) A draft nature conservation strategy prepared pursuant to subsection (1) shall include proposals in relation to the protection, management and conservation of flora and fauna indigenous to the Territory.

Variation

30 “15T. (1) The Conservator may prepare a draft variation of a nature conservation strategy in the same manner as a draft nature conservation strategy.

“(2) This Division applies to a draft variation of a nature conservation strategy as if it were a draft nature conservation strategy.

Public notification of draft nature conservation strategy or variations

“15U. (1) The Conservator shall cause to be published in the *Gazette*, and in a newspaper, a notice—

- 5 (a) stating that copies of a draft strategy are available for public inspection during a period of not less than 21 days specified in the notice at a place specified in the notice; and
- (b) inviting interested persons to submit written comments about the draft strategy to the Conservator at an address specified in the notice and within that period.
- 10

“(2) The Conservator shall make copies of the draft strategy available for public inspection during office hours during the period, and at the place, specified in the notice.

“(3) In this section—

- 15 ‘draft strategy’ includes a draft strategy that has been revised under subsection 15V (1).

Revision, deferral or withdrawal of draft strategy or variations

“15V. (1) After the expiration of the period specified in the notice under subsection 15U (1), the Conservator may—

- 20 (a) confirm the draft strategy;
- (b) revise the draft strategy;
- (c) by notice published in the *Gazette* defer until a specified date, or until the occurrence of a specified event, the submission of the draft strategy to the Minister; or
- 25 (d) by notice published in the *Gazette* withdraw the draft strategy.

“(2) In confirming, revising, deferring or withdrawing a draft strategy under subsection (1), the Conservator shall consider written comments about the draft strategy received from any person.

- 30 “(3) Where a draft strategy is deferred by notice under paragraph (1) (c), as soon as practicable after the date, or the event, specified in the notice, as the case may be, the Conservator shall cause to be published in the *Gazette* a notice stating that the draft strategy is revived.

Submission etc. of draft strategy or variations to Minister

“15W. (1) Where the Conservator—

- 35 (a) confirms a draft strategy (including a draft strategy that has been revised under subsection 15V (1)); or

- (b) publishes a notice under subsection 15V (3) in relation to a draft strategy;

5 the Conservator shall, after the expiration of any applicable period specified in a notice under subsection 15U (1), submit the draft strategy to the Minister for approval, together with a written report setting out the issues raised in any written comments concerning the draft strategy submitted pursuant to the invitation in that notice.

10 (2) Where a draft strategy is deferred by notice under subparagraph 15X (b) (v), as soon as practicable after the date, or the event, specified in the notice, as the case may be, the Conservator shall cause to be published in the *Gazette* a notice stating that the draft strategy is revived.

(3) Where the Conservator—

- 15 (a) gives effect to a direction under paragraph 15X (b) (other than a direction under subparagraph 15X (b) (v) or (vi)); or
(b) publishes a notice under subsection (2);

in relation to a draft strategy, the Conservator shall re-submit the draft strategy to the Minister for approval.

Draft strategy or variations—powers of Minister

20 “15X. On receipt of a draft strategy submitted or re-submitted for approval, the Minister shall—

- (a) approve the draft strategy in the form in which it is submitted or re-submitted;
- 25 (b) return the draft strategy to the Conservator and direct the Conservator to take any 1 or more of the following actions in relation to it:
- (i) conduct further specified consultation;
- (ii) consider any relevant environmental report, the report of any relevant inquiry under the *Land (Planning and Environment) Act 1991*, or any other relevant report;
- 30 (iii) consider any revision suggested by the Minister;
- (iv) revise the draft strategy in a specified manner;
- (v) defer, by notice published in the *Gazette*, the re-submission of the draft strategy to the Minister until a specified date or the occurrence of a specified event;
- 35 (vi) withdraw the draft strategy by notice published in the *Gazette*; or
- (c) reject the draft strategy.

Notice of rejection of draft strategy

"15Y. Where the Minister rejects a draft strategy he or she shall cause to be published in the *Gazette*, and in a newspaper, a notice stating that the draft strategy has been rejected.

5 Commencement of nature conservation strategy or variations

"15Z. (1) To the extent that they have not been disallowed or deemed to be disallowed under the *Subordinate Laws Act 1989*—

- 10 (a) the provisions of an instrument prepared for the purposes of subsection 15S (1) (including any revision of the instrument) become the text of the nature conservation strategy for the Territory (in this section called the 'strategy'); and
- (b) the provisions of an instrument prepared for the purposes of subsection 15T (1) (including any revision of the instrument) become the text of a variation of the strategy.

15 "(2) As soon as practicable after the provisions of an instrument become the text of the strategy, or a variation of the strategy, the Minister shall cause to be published in the *Gazette* a notice specifying—

- (a) the date (not being earlier than the date of publication of that notice) on which the strategy or variation takes effect; and
- 20 (b) the place or places where copies of the strategy or variation may be obtained;

and the strategy or variation shall take effect on that date.

"Division 2—Declarations of special protection status etc."**Declaration of special protection status**

25 7. Section 16 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) "or" (last occurring);
- (b) by adding at the end of paragraph (1) (b) "; or"; and
- (c) by inserting after paragraph (b) the following paragraph:
- 30 (c) the Minister makes a declaration under section 21—
- (i) that a species is endangered; and
- (ii) that the species has not been declared to have special protection status."

Insertion

35 8. Section 18 of the Principal Act is repealed and the following Divisions are inserted in Part II:

“Division 3—Declaration of species, community or process

“Subdivision A—Criteria and guidelines for declarations

Criteria for recommending declaration

5 “18. (1) The Committee shall, within 6 months of its establishment, by instrument, specify criteria for assessing whether the Committee should recommend the making of a declaration under section 21.

“(2) In specifying criteria for the purposes of subsection (1) the Committee shall have regard only to factors relevant to—

(a) the conservation of a species or ecological community; or

10 (b) the ecological significance of a threatening process;

in relation to the Territory and the surrounding region.

Guidelines for recommending declaration

15 “19. The Committee shall, within 6 months of its establishment, by instrument specify guidelines for the procedures to be followed by the Committee in relation to making a decision on an application under subsection 22 (1).

Public consultation on preparation of relevant criteria and guidelines

20 “20. (1) Before specifying criteria under section 18, the Committee shall cause a notice to be published in a newspaper—

(a) outlining the proposed criteria; and

(b) inviting written suggestions in relation to the inclusion of relevant criteria to be lodged with it within 28 days after the date of the invitation.

25 “(2) Before specifying guidelines under section 19, the Committee shall cause a notice to be published in a newspaper—

(a) outlining the proposed guidelines; and

(b) inviting written suggestions in relation to the inclusion of relevant criteria to be lodged with it within 28 days after the date of the invitation.

30 “(3) On receiving any such suggestions the Committee shall consider those suggestions.

“Subdivision B—Making of declarations**Declaration of species, community or process**

5 “21. (1) Where, having regard to the criteria specified under section 18, the Committee has reasonable grounds to believe that a species is vulnerable or endangered, the Committee shall advise the Minister of that opinion and recommend to the Minister that the species be declared to be vulnerable or endangered, as the case may be.

10 “(2) Where, having regard to the criteria specified under section 18, the Committee has reasonable grounds to believe that an ecological community is endangered, the Committee shall advise the Minister of that opinion and recommend to the Minister that the community be declared to be an endangered community.

“(3) Where, having regard to—

- 15 (a) the criteria specified under section 18; and
(b) the significance of a process within the Territory and the surrounding region;

20 the Committee has reasonable grounds to believe that the process is a threatening process, the Committee shall advise the Minister of that opinion and recommend to the Minister that the process be declared to be a threatening process.

“(4) Where the Minister accepts a recommendation under this section, the Minister shall, by instrument, make the declaration sought.

Request to Committee to recommend making of declaration

25 “22. (1) A person may make an application to the Committee requesting the Committee to recommend the making of a declaration under section 21.

“(2) An application shall be—

- 30 (a) in writing;
(b) in a form approved by the Committee; and
(c) accompanied by a statement containing the reasons why the applicant considers that the declaration should be made.

“(3) On application, in accordance with this section, the Committee may, after considering the relevant criteria—

- 35 (a) make the recommendation sought; or
(b) refuse to make that recommendation.

“(4) Where the Committee, in accordance with paragraph (3) (b), refuses to make a recommendation, the Chairperson shall give to the applicant a written notice including a statement of reasons for the decision.

“Division 4—Action plans

5 Draft Action Plan

“23. (1) The Conservator shall, as soon as practicable after the commencement of the *Nature Conservation (Amendment) Act 1994*, prepare, for public information, a draft Action Plan in relation to each species, ecological community or process the subject of a declaration under section 21.

“(2) A draft Action Plan prepared pursuant to subsection (1) shall include—

- 15 (a) proposals to ensure, as far as is practicable, the identification, protection and survival of the species, or the ecological community; or
- (b) proposals to minimise the effect of any process which threatens any species or ecological community.

Variation

“23A. (1) The Conservator may prepare a draft variation of an Action Plan in the same manner as a draft Action Plan.

“(2) Sections 23B and 23C apply to a draft variation of an Action Plan as if it were a draft Action Plan.

Public notification of draft Action Plan

“23B. (1) The Conservator shall cause to be published in the *Gazette*, and in a newspaper a notice—

- 25 (a) stating that copies of the draft Action Plan are available for inspection at a place specified in the notice; and
- 30 (b) inviting interested persons to submit written comments about the draft Action Plan to the Conservator at a specified address and within a specified period, being not less than 21 days from the day on which the notice appears.

“(2) The Conservator shall make copies of the draft Action Plan available for public inspection during office hours during the period, and at the place specified in the notice.

35 “(3) The Conservator shall consider any comments lodged with him or her in accordance with an invitation under paragraph (1) (b).

Action Plan

- 5 “23C. After the expiration of the period specified in the notice under paragraph 23B (1) (a), the Conservator may, after considering any comments lodged with him or her in accordance with paragraph 23B (1) (b) and effecting any revisions, prepare an Action Plan.

Public notification of Action Plan

- 10 “23D. (1) The Conservator shall cause to be published in the *Gazette*, and in a newspaper, a notice stating that copies of the Action Plan are available for public inspection during a period of not less than 21 days specified in the notice at a place specified in the notice.

“(2) The Conservator shall make copies of the Action Plan available for public inspection during office hours during the period, and at the place specified in the notice.

“Division 5—Tabling and disallowance**15 Instruments to be disallowable instruments**

“23E. A draft strategy approved by the Minister under section 15X, a draft variation approved under that section and an instrument made under section 16, 17, 21 or 23C is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”

20 Further amendments

9. The Principal Act is further amended as set out in the Schedule.

SCHEDULE

Section 9

FURTHER AMENDMENTS**Section 5 (definition of “animal”)—**

Omit “man”, substitute “humans”.

Section 5 (definition of “unleased land”)—

Insert “or her” after “him”.

Subsection 7 (2)—

Omit “his”.

Subsection 7 (3)—

Omit “he”, substitute “the person”.

SCHEDULE—continued

Section 8—

Omit “him”, substitute “the Conservator”.

Section 9—

(a) Insert “or her” after “his”.

(b) Insert “or her” after “him”.

Paragraph 10 (2) (a)—

Insert “or her” after “his” (wherever occurring).

Subsection 10 (2)—

Omit “his” (last occurring), substitute “the Conservator’s”.

Subsections 11 (1) and (2)—

Insert “or she” after “he”.

Section 12—

Insert “or her” after “his”.

Section 13—

Insert “or her” after “him”.

Subsection 14 (1)—

(a) Insert “or her” after “him”.

(b) Insert “or her” after “his”.

Subsection 15 (3)—

Insert “or her” after “his” (wherever occurring).

Paragraph 46 (2) (a)—

Insert “or she” after “he”.

Paragraph 46 (2) (b)—

(a) Insert “or she” after “he” (wherever occurring).

(b) Insert “or her” after “his”.

Subsection 46 (3)—

Insert “or her” after “him”.

Subsection 62 (7)—

Insert “or she” after “he”.

SCHEDULE—continued**Subsection 62A (3)—**

Omit “she or he”, substitute “he or she”.

Subsection 63 (4)—

Insert “or she” after “he”.

Subsection 63A (1)—

Omit “one”, substitute “1”.

Paragraph 74 (1) (c)—

Insert “or her” after “his”.

Subsection 75 (2)—

(a) Insert “or her” after “him”.

(b) Insert “or her” after “his”.

Subparagraph 75 (4) (b) (ii)—

Insert “or her” after “him”.

Section 76A—

Insert “or her” after “his”.

Section 83—

Insert “or her” after “his”.

NOTE

1. Reprinted as at 31 January 1994.

NOTE ABOUT SECTION HEADING

On the day on which the *Nature Conservation Act 1980* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, headings to sections of the Principal Act are altered as set out in the following table:

Section	Alteration
10	Omit the heading, substitute the following heading: Termination of appointment of Conservator
17	Omit the heading, substitute the following heading: Declaration of fish, invertebrates or animals to be protected, exempt or restricted

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