

**1994**

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**NATURE CONSERVATION (AMENDMENT) BILL (NO. 2) 1994**

**EXPLANATORY MEMORANDUM**

**Circulated by Authority of the Minister for the Environment,  
Land and Planning**

**Mr Bill Wood MLA**

## **NATURE CONSERVATION (AMENDMENT) BILL (NO. 2) 1994**

### **OUTLINE**

This is an amending Bill. It amends the Nature Conservation Act 1980 (the Principal Act) which is the primary ACT legislation for the protection and handling of native plants and animals and management of national parks and nature reserves. The Nature Conservation (Amendment) Bill (No.2) 1994 (the Bill) is separate to, but consistent with, the recently passed Nature Conservation (Amendment) Act 1994 which provided for the identification and protection of threatened species and ecological communities.

The primary objective of the Bill is to streamline and update nature conservation processes and procedures to allow a more efficient, flexible and effective application of nature conservation policy and to take account of developments in nature conservation concepts and strategies. The amendments enhance the statutory basis for management of issues that are important to conservation of the biological diversity of the ACT and the ecological integrity of lands with nature conservation values. They include an improved ability to implement anticipatory measures for nature conservation and thus obviate or lessen the need for later more stringent or urgent statutory action. A number of deficiencies in the Principal Act that can result in opportunities being lost for the application of nature conservation imperatives are remedied.

#### **Protection of native plants and animals**

Controls are strengthened over activities that affect the conservation requirements of native plants. In particular, controls are introduced for the management of seed collection, and for increased protection of native timber.

Controls are strengthened over activities that affect the conservation and welfare requirements of native animals by providing for management plans to be prepared for animals kept for public display. Additional protection is provided for native animals in the wild that are subject to harm from incidental activities, by prohibiting the use of drum nets for fishing and amending criteria that determine offences associated with the release of an animal from captivity.

#### **Management of environmental threats**

The management of environmental threats to biological diversity is an important vehicle for the implementation of anticipatory conservation measures as well as recovery strategies. There is provision for enhanced management of plants and animals that pose a threat to nature conservation, by introducing a process for their declaration and the prescribing of controlled activities. The primary objective of this amendment is to contribute to the conservation of regional biological diversity by providing for control over the introduction and spread of alien species and genetically modified organisms, and management of the deliberate spread of native species outside their historical natural range.

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#### **Special protection status species**

Native species threatened with extinction or migratory species subject to international agreement for their conservation may be declared as "special protection status" and are subject to more stringent controls. The proposed amendments will allow for species that have been lawfully obtained prior to being declared "special protection status" to be accorded less stringent controls and to allow greater flexibility in administration of controlled activities without compromising conservation imperatives.

#### **Increased efficiencies in administration**

Several statutory processes in the Principal Act contribute little to nature conservation objectives and consequently their administration is an inefficient use of resources and in some cases an unnecessary impost on the community. Amendments are introduced to remedy the situation. In particular, controls over and administrative processes relating to the handling and movement of native animal products that have been lawfully obtained outside the Territory, and the growing and movement of native plants for commercial purposes are relaxed or removed. Where a species or activity is of nature conservation or animal welfare concern, authority remains to introduce specific controls.

A number of administrative processes prescribed in the Principal Act are unnecessarily cumbersome, are ineffective in achieving their intent, or are insufficiently flexible to accommodate changing circumstances. In the light of experience, a number of amendments are introduced to simplify, or enhance the effectiveness of, administration. In particular, there is an amendment to that part of the Principal Act that prescribes information that must accompany an application to conduct a controlled activity, the factors that the Conservator of Wildlife must consider when determining an application and the specifications to be included in an authority. Within prescribed guidelines, policy and criteria for the administration of controlled activities will now be developed as a disallowable instrument.

Other amendments that improve administrative efficiencies address time frames for compliance, introduction of a system of on-the-spot fines for prescribed offences of a routine nature and control of movement of vehicles in a reserved area.

A number of minor amendments are introduced to correct anomalies or clarify meaning and scope.

#### **Management agreements**

A provision has been introduced for management agreements to be developed between the Conservator and agencies or organisations that operate utilities on unleased land that is managed primarily for environmental conservation. The

objective is to allow essential activities to proceed with a minimum of conflict with land management objectives.

## **REVENUE/COST IMPLICATIONS**

This Bill has no revenue or cost implications. Associated costs are of an administrative nature and will be met from existing resources and budgetary allocations.

## **CLAUSE NOTES**

### **Clauses 1, 2 and 3**

Clauses 1, 2 and 3 are machinery provisions that specify the title of the Bill, provide for the commencement of the Bill and identify the Principal Act that is being amended.

### **Clause 4**

Clause 4 will amend section 5 of the Principal Act. Section 5 is an interpretation provision and clause 4 will amend a number of definitions and will insert additional definitions. In addition, the terms 'permit', 'pick', 'restricted animal wildlife', 'restricted plant wildlife', 'timber' and 'wildlife' will be omitted. The terms 'native animal', 'native plant' and 'native timber' will replace the term 'wildlife'.

### **Clause 5**

Clause 5 will amend section 16 of the Principal Act. Section 16 empowers the Conservator to declare species to have special protection status. Clause 5 will omit subsections 16(1) and 16(2) and substitute replacement subsections.

Proposed subsection 16(1) will empower the Conservator to declare a species of migratory animals to have special protection status if the protection of the species is the object of a Commonwealth Act or an international agreement entered into by the Commonwealth.

Proposed 16(2) will empower the Commonwealth to declare a species of native animal or native plant to have special protection status if the Conservator believes that the species is threatened with extinction or the Minister has made a declaration under section 21 that the species is endangered.

### **Clause 6**

Clause 6 will amend section 17 of the Principal Act. Section 17 empowers the Conservator to make certain declarations relating to the protection of native plants or native animals.

Clause 6 will make a number of editorial amendments to reflect the changed definitions, will omit paragraphs 17(2)(a) and (b) and will substitute proposed paragraphs 17(2)(a), (b) and (c). Proposed paragraphs 17(2)(a)(b) and (c) will require the Conservator, before making declarations, to consider: the need to conserve the significant ecosystems of the Territory, NSW and Australia and where appropriate, the specialised welfare and security requirements of the animal, plant, fish or invertebrate.

#### **Clause 7**

Clause 7 will amend the Principal Act by inserting proposed section 26A.

Proposed section 26A is an offence provision that prohibits a person from placing a drum net in public waters except in accordance with a licence. A 'drum net' is defined as meaning an enclosed trap, with one or more entrances, capable of being used to take live fish or crustaceans. The term 'public waters' is defined as meaning waters in the Territory which are not the property of a private person.

#### **Clause 8**

Clause 8 will amend the Principal Act by repealing sections 36, 37 and 38. These sections place restrictions on import and export and are now redundant.

#### **Clause 9**

Clause 9 will amend section 39 of the Principal Act. Section 39 prohibits a person from releasing an animal from captivity. The proposed amendments are editorial and reflect the changed definitions.

In addition, clause 9 will insert into section 39 proposed subsection 39(1BA) that will create an offence of releasing a live fish into waters of the Territory except in accordance with a licence or if the fish was initially taken from the part of the waters into which it is released.

#### **Clause 10**

Clause 10 will amend section 42 of the Principal Act. Section 42 is an offence provision that prohibits a person, except in accordance with a licence, from taking a native plant.

The proposed amendments will give effect to changed definitions. In addition, clause 10 will omit subsection 42(2) and will substitute proposed subsection 42(2) to list exemptions to the offence specified in subsection 42(1). These exemptions relate to an occupier cultivating a protected native plant, taking seeds for domestic use, taking protected native plants on land within the built-up area and where a conservation officer or a public servant takes a native plant in the performance of her or his functions.

Clause 10 will also omit subsection 42(5) and substitute proposed subsection 42(5) that will define certain terms for the purpose of section 42.

#### **Clause 11**

Clause 11 will amend the Principal Act by omitting subsections 43(1), (2), (3), (4) and (7) and substituting subsections 43(1), (2), (3), (4), (4A) and (7). Clause 11 will also make editorial amendments to subsection 43(5) to reflect the amendments to section 43.

Proposed subsection 43(1) will be an offence provision that will prohibit a person from, without reasonable excuse, felling, causing to be felled or damaging standing native timber except in accordance with a licence.

Proposed subsection 43(2) will provide that the offence specified in subsection 43(1) will not apply to timber planted by or on behalf of an occupier and felled or damaged by an occupier and where it was necessary to fell standing native timber to avoid an immediate danger of injury or damage to property.

Proposed subsection 43(3) will be an offence provision that prohibits a person from, without reasonable excuse, removing fallen native timber except in accordance with a licence.

Proposed subsection 43(4) will be an offence provision that will prohibit a person from, without reasonable excuse, causing or permitting damage to fallen native timber on unleased land, except in accordance with a licence or if the timber has a diameter of less than 10 centimetres.

Proposed subsection 43(4A) will provide that subsections (1), (3) and (4) do not apply to the felling, removal or damage of native timber by a conservation officer or a public servant when performing her or his functions or where the Conservator has given approval.

Proposed subsection 43(7) will define the term 'removal' for the purposes of section 43.

#### **Clause 12**

Clause 12 will amend section 44 of the Principal Act. Section 44 is concerned with dealing in native plants and the amendments are editorial to reflect the new term 'protected native plant'. In addition proposed new paragraph 44(1)(d) will be an offence provision that prohibits a person from importing into, or exporting from, the Territory a protected native plant for the purpose of sale or trade.

**Clause 13**

Clause 13 will amend the Principal Act by inserting Part IVA. Part IVA will consist of sections 45AA, 45AB and 45AC and will deal with prohibited and controlled organisms.

Proposed section 45AA will empower the Conservator to declare organisms of a particular kind to be either a prohibited organism or a controlled organism. The declaration is to be a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Proposed section 45AB will be an offence provision that prohibits a person from processing a prohibited organism except in accordance with a licence.

Proposed section 45AC will be an offence provision that prohibits a person from performing an action prescribed by regulation in relation to a controlled organism except in accordance with a licence.

**Clause 14**

Clause 14 will amend the Principal Act by repealing sections 47 and 48 and substituting proposed section 47.

Proposed section 47 will provide that the Conservator may give the occupier of land directions for the protection or conservation of native animals, native timber and native plants. The directions shall specify a period in which the directions are to be carried out and shall be in accordance with criteria determined under section 50. Proposed section 47 will also specify that an occupier shall not, without reasonable excuse, fail to comply with the directions within the time specified in the direction.

**Clause 15**

Clause 15 will amend section 49 of the Principal Act. Section 49 deals with diseased native animals and plants. The proposed amendments are editorial and relate to the adoption of the terms native animal or native plant.

**Clause 16**

Clause 16 will amend the Principal Act by repealing section 50 and substituting a new section 50.

Proposed section 50 will specify that the Conservator may by instrument determine criteria for the purposes of paragraph 47(2)(b) and subsection 49(2A) and such a determination shall be a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**Clause 17**

Clause 17 will amend the Principal Act by inserting proposed section 53A. Proposed section 53A(1) will specify that if at the request of a conservation officer a person fails to pay the entry fee then that person shall not enter a reserved area.

**Clause 18**

Clause 18 amends section 56 of the Principal Act by inserting a new subsection 56(3A). Section 56 provides for the prohibition of activities in reserved areas without the consent of the Conservator. Proposed new subsection 56(3A) specifies that the driving or parking of a motor vehicle is not to be taken to be permitted on or adjacent to a road to which access is barred by a gate or a barrier.

**Clause 19**

Clause 19 will amend the Principal Act by inserting Part VIA. Part VIA will consist of sections 60AA, 60AB, 60AC, 60AD and 60AE and will provide for management agreements. A management agreement is an agreement between the Conservator and an agency. The purpose of a management agreement is to ensure protection of public land or unleased Territory Land where development is being undertaken.

Proposed section 60AA defines certain terms for the purpose of Part VIA.

Proposed section 60AB empowers the Conservator to propose a management agreement to an agency if the activities of the agency affect or may affect public land or unleased Territory Land. A management agreement shall set out standards and conditions for avoiding or minimising any conflict with any land management objective. Proposed section 62AB also specifies the matters that a management agreement may include.

Proposed section 60AC deals with the formulation of agreements and specifies the procedure for entering into an agreement.

Proposed section 60AD specifies that where an agency refuses to enter into an agreement then the Territory may recover from the agency any costs reasonably incurred by the Territory in connection with the repair of any damage to public land or unleased Territory Land caused by the Agency's activities.

Proposed section 60AE will enable the Territory to recover any cost reasonably incurred by the Territory in connection with the repair of any damage to public land or unleased Territory Land caused by activities of the agency that are inconsistent with the agreement.



**Clause 20**

Clause 20 will amend the Principal Act by repealing sections 61 to 66 (inclusive) and substituting proposed section 61 to 66 (inclusive). The purpose of the amendment is to replace the dual licence or permit system with a licensing system.

Proposed section 61 deals with the making of an application for a licence.

Proposed section 62 empowers the Conservator to grant a licence in accordance with proposed section 64.

Proposed section 63 specifies that the Conservator may impose conditions requiring compliance with an approved management plan and different conditions relating to the differing specifics.

Proposed section 64 will prohibit the Conservator from granting a licence except in accordance with criteria determined by a disallowable instrument.

Proposed section 65 specifies that a licence shall remain in force for the period specified in the licence.

Proposed section 66 provides that a licence may be surrendered.

**Clause 21**

Clause 21 will repeal section 68 of the Principal Act.

**Clause 22**

Clause 22 will amend section 69 of the Principal Act. Section 69 deals with the cancellation of a licence and the amendments omit references to the term 'permit'.

**Clause 23**

Clause 23 will amend the Principal Act by omitting section 74 and substituting a new section 74. Proposed section 74 will list those administrative decisions made under the Act that will attract merit review by the Administrative Appeals Tribunal.

**Clause 24**

Clause 24 will amend the Principal Act by inserting a new Part VIIIA. Part VIIIA will consist of proposed section 74AA, 74AB, 74AC, 74AD, 74AE, 74AF, 74AG, 74AH, 74AI, 74AJ and 74AK and will provide for on-the-spot fines. The offences that could attract an on-the-spot fine are listed in Schedule 1 to the Bill. Schedule 1 also specifies the amount of the fine.

Proposed section 74AA will define certain terms for the purpose of Part VIIIA.

Proposed section 74AB empowers a conservation officer to serve an infringement notice. Proposed section 74AB also specifies the particulars that are to be included in an infringement notice.

Proposed section 74AC empowers a conservation officer to serve a final infringement notice where the on-the-spot fine has not been paid and there has been no application for the withdrawal of the initial notice.

Proposed section 74AD provides that where an infringement notice or a final infringement notice has been served and the fine is paid, or the relevant notice is withdrawn, within the relevant period then liability is discharged and the person concerned shall not be regarded as having been convicted of an offence.

Proposed section 74AE specifies that a person may apply to the Conservator for the withdrawal of an infringement notice.

Proposed section 74AF empowers the Conservator to withdraw an infringement notice if satisfied, based on reasonable grounds that any of the grounds specified in proposed paragraph 74AF (1) (a),(b) or (c) have been made out. If the Conservator decides not to withdraw an infringement notice the Conservator shall give the person notice of the decision and extend the period for the payment of the fine. Where a fine was paid and the Conservator decides to withdraw the notice then the Conservator may refund the amount paid.

Proposed section 74AG provides for extended time for the payment of an on-the-spot fine and for payment in installments for pensioners.

Proposed section 74AH prohibits the Conservator from instituting a prosecution for an offence where an infringement notice has been served and the time in which payment may be made has not expired.

Proposed section 74AI prohibits a court from having regard to the alleged commission of any infringement notice offence, the circumstances surrounding any infringement notice offence or any investigation of any infringement notice offence when sentencing.

Proposed section 74AJ specifies the procedure for the service of an infringement notice.

Proposed section 74AK will provide for the presentation of a certificate by the Conservator in relation to an infringement notice issued where a prosecution is commenced.

**Clause 25**

Clause 25 will amend section 79 of the Principal Act. Section 79 relates to seizure of animals and plants and the amendment inserts the term 'native plant' and also extends the period under which a prosecution may be initiated to 6 months.

**Clause 26**

Clause 26 amends section 80 of the Principal Act. Section 80 relates to the release of animals following a court order and clause 26 will insert a new subsection 80(2A) to provide that the Conservator may only apply to the Magistrates Court for an order for the release of an animal before a prosecution is initiated.

**Clause 27**

Clause 27 will amend the Principal Act by incorporating Schedule 1 in the Principal Act. Schedule 1 lists the offences that may attract an on-the-spot fine.

**Clause 28**

Clause 28 will further amend the Principal Act and the Nature Conservation Regulations as set out in Schedule 2. These further amendments are editorial and reflect the changed definitions.

**Clause 29**

Clause 29 is a saving provision and relates to declarations, permits or licences made before the commencement of the Bill.