

1994

**AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY**

NATURE CONSERVATION (AMENDMENT) BILL 1994

EXPLANATORY MEMORANDUM

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

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Nature Conservation (Amendment) Bill 1994

Outline

This Bill proposes amendments to the Nature Conservation Act 1980 which is the primary ACT legislation for protection and handling of native plants and animals and management of national parks and nature reserves.

The primary objective of the Bill is to provide for the identification and protection of native plant and animal species and ecological communities of the ACT whose survival in the wild is at risk. It proposes to introduce a process for assessment of the conservation status of native plant and animal species and ecological communities by an expert committee. The conservation status of a species or community is an indication of its ability to survive, flourish and evolve in the wild throughout its natural range. Where the expert committee concludes that the conservation status of a species or community is one of threatened, that is, extinction is foreseen if the circumstances threatening its well-being in the wild continue to prevail, then it would advise the Minister accordingly and recommend that this condition be formally recognised by declaration.

A species could be declared as either vulnerable or endangered, depending on the degree of threat. A community could be declared as endangered. Species declared as endangered, that is, in immediate danger of extinction, would have the more stringent protective provisions of the Nature Conservation Act applied by also being declared to have special protection status.

Declaration of a species or community would initiate a statutory requirement for the Conservator of Wildlife to develop conservation measures for the declared item.

A similar process is proposed to apply to the identification and management of processes that threaten or may threaten the survival in the wild of native species and communities. Such processes are typically human-induced and may include things like the effects of a pest plant or animal species, and degradation or destruction of habitats critical to the well-being of native species.

In recognition that preventative conservation is cheaper and more effective than having to implement recovery programs for plants and animals already at risk, it is proposed in the Bill that a nature conservation strategy for the ACT be developed by the Conservator of Wildlife. A nature conservation strategy would contain proposals for ensuring, as far as practicable, the continuing survival in the wild of the native flora and fauna of the ACT, with particular attention being given to the management of potentially threatening processes and the development of community programs (including education programs) to promote nature conservation in the ACT.

It is proposed that there would be opportunities for community participation in implementation of the Bill's provisions. Public comment would be sought during the development of scientific criteria and administrative guidelines for operations of the expert committee. The Conservator would seek public comment on management proposals for declared items and development of the proposed nature conservation strategy would involve public consultation.

CLAUSE NOTES

Clauses 1-3

Clauses 1 to 3 are mechanical clauses that specify the short title, commencement of the Act and identify the Principal Act.

Clause 4 - Interpretation

Clause 4 amends section 5 of the Principal Act. Section 5 defines terms that are used in the Principal Act. Clause 4 amends section 5 by inserting additional terms, including "ecological community", "endangered", "species" and "threatening process".

Clause 5 - Insertion

Clause 5 amends the Principal Act by inserting a heading after section 6.

Clause 6 - Insertion

Clause 6 amends the Principal Act by inserting provisions after section 15 of the Principal Act.

Section 15A - Establishment

Section 15A establishes the Flora and Fauna Committee.

Section 15B - Functions

Section 15B sets out the functions of the Committee. The Committee shall provide advice to the Minister in relation to nature conservation and to exercise such powers as are provided for under the Act.

Section 15C - Directions to the Committee

Section 15C provides that the Minister may give the Committee directions, in writing, in relation to the conservation of wildlife in the Territory. The Minister shall give a copy of any direction to the Conservator who shall place a copy of the direction in the annual report [subsections 15C(2) and (3)].

Section 15D - Powers of the Committee

Section 15D specifies that the Committee has the power to do all things necessary or convenient to be done in connection with the performance of its functions.

Sections 15E to 15R

Sections 15E to 15R provide for the constitution of the Committee and establish procedures for the conduct of its meetings.

The seven members of the Committee are to appointed by the Minister, two of which shall not be public servants. The Minister shall not appoint a person unless the person has appropriate expertise in bio-diversity or ecology. The Chairperson and Deputy Chairperson shall not be public servants.

PART II - NATURE CONSERVATION STRATEGY ETC.

Division 1 - Nature Conservation Strategy

Section 15S - Draft Nature Conservation Strategy

Section 15S provides that the Conservator shall as soon as practicable after the commencement of the Act prepare a draft nature conservation strategy. The strategy shall include proposals on the protection, management and conservation of flora and fauna indigenous to the Territory [subsection 15S(2)].

Section 15T - Variation

Section 15T provides that the Conservator can prepare a draft variation of nature conservation strategy. It shall be done in the same manner as a draft nature conservation strategy.

Section 15U - Public notification of draft conservation strategy or variations

Section 15U provides that the Conservator shall publish in the Gazette and newspaper a notice which will state that a draft strategy, including a strategy revised under subsections 15(1), is available for public comment. The period of public comment shall not be less than 21 days. The notice will also ask that written comments be sent to the Conservator at a specified address. The Conservator shall make the draft strategy available for public inspection [subsection 15T(2)].

Section 15V - Revision, deferral or withdrawal of draft strategy or variations

Section 15V provides that after the period of public comment, and after consideration of the comments received, the Conservator can confirm, revise or withdraw the draft strategy, or defer, until a certain date or specified event, the submission of the draft strategy to the Minister. Where a draft strategy is withdrawn or deferred a notice has to be placed in the Gazette.

A notice also has to be placed in the Gazette stating that a deferred draft strategy is revised [subclause 15V(3)].

Section 15W - Submission etc of draft strategy or variations to Minister

Section 15W provides that the Conservator shall submit the draft strategy to the Minister where it is confirmed or revised. The Conservator is to submit a report on the public comments received on the strategy.

Section 15X - Draft strategy or variations - powers of Minister

Section 15X specifies what the Minister shall do with a draft strategy that is submitted or resubmitted for approval by the Conservator. The Minister shall either approve, or return the draft strategy directing the Conservator to take further action. A draft strategy that is approved by the Minister is a disallowable instrument [section 23E].

Section 15Y - Notice of rejection of draft strategy

Section 15Y provides that where the Minister rejects a draft strategy a notice to that effect is to be placed in the Gazette and in a newspaper.

Section 15Z - Commencement of nature conservation strategy or variations

Section 15Z provides for the commencement of a nature conservation strategy or variations. To the extent that they have not been disallowed or deemed to be disallowed the provisions of the strategy [subsection 15S(1)] or the variation [subsection 15T(1)] become the text of the strategy or the variation [subsection 15Z(1)].

The Minister is to publish a notice in the Gazette as soon as practicable after the provisions of instrument become the text of the strategy or a variation of a strategy. The notice will specify the date on which the strategy or variation is to commence and where copies can be obtained [subsection 15Z(2)].

Division 2 - Declarations of special protection status etc.

Clause 7 - Declaration of special protection status

Clause 7 amends section 16 of the Principal Act. Section 16 provides in certain circumstances that the Conservator shall declare the members of a species of wildlife to have special protection status.

Section 16 is amended by inserting an additional paragraph, being the Minister making a declaration under

section 21 that a species is endangered and has not been declared to have special protection status. The Conservator shall then declare that the species has special protection status.

Clause 8 - Substitution

Clause 8 repeals section 18 of the Principal Act and inserts other provisions.

Division 3 - Declaration of species, community or process

Subdivision A - Criteria and guidelines for declaration

Section 18 - Criteria for making declaration

Section 18 provides that within six months of it being established the Committee is to specify criteria which will be used in assessing whether a recommendation should be made to make a declaration under section 21. That is, a species is vulnerable or endangered, an ecological community is endangered, or a process is a threatening process.

In preparing the criteria the Committee shall only have regard to factors relevant to the conservation of the species or community or the ecological significance of the threatening process, in relation to the Territory and surrounding region [subsection 18(2)].

Section 19 - Guidelines for making declarations

Section 19 provides that within six months of it being established the Committee is to specify procedures to be followed when making a declaration that a species is vulnerable or endangered and an ecological community is endangered.

Section 20 - Public consultation on preparation of relevant criteria and guidelines

Section 20 provides that the Committee is to seek, and consider, public comment on the criteria to be used when assessing whether a declaration should be made (section 18) and the procedures to be used in making a declaration (section 19) before those criteria or procedures shall be specified.

Subdivision B - Making of declarations

Section 21 - Declaration of species, community or process

Section 21 provides that where having regard to the specified criteria (section 18), the Committee believes a species is vulnerable or endangered it shall advise the

Minister of that opinion and recommend that the species be declared vulnerable or endangered.

Subsection 21(2) provides that where having regard to the specified criteria the Committee has reasonable grounds for believing that an ecological community is endangered the Committee shall advise the Minister of that opinion and recommend that the community be declared an endangered community.

Subsection 21(3) provides that where having regard to the specified criteria and the significance of the process within the Territory and the surrounding region the Committee believes a process is a threatening process it shall advise the Minister of that opinion and recommend that the process be declared a threatening process.

Subsection 21(4) provides that where the Minister accepts a declaration of the Committee the Minister shall make the declaration sought. The Minister shall make the declaration by instrument, which shall be a disallowable instrument.

Section 22 - Request to Committee to recommend making of a declaration

Section 22 provides that a person can request the Committee to recommend the making of a declaration. The request shall be in writing, in a form approved by the Committee and shall state why the declaration should be made [subsection 22(2)].

The Committee, after considering the relevant criteria, may make or refuse to make the recommendation sought. If the Committee refuses to make the recommendation sought the applicant is to be advised of the reasons for the decisions [subsections 22(3) and (4)].

Division 4 - Action plans

Section 23 - Draft Action Plan

Section 23 provides that the Conservator shall prepare a draft Action Plan in respect of each species, ecological community or process that has been the subject of a declaration under section 21.

The draft Action Plan shall set out proposals that will ensure, as far as is practicable, the protection, survival and identification of the species or ecological community [subsection 23(2)] or which will minimise the effect of any process which threatens any species or ecological community.

Section 23 A - Variation

Section 23A provides that the Conservator may vary an Action Plan in the same manner as an Action Plan. A

variation to an Action Plan will be subject to public notification, revision and then given effect.

Section 23B - Public notification of draft Action Plan

Section 23B provides that the Conservator shall publish in the Gazette and in a newspaper a notice that a draft Action Plan, including a revised draft Action Plan, is available for inspection and public comment for a period of not less than 21 days. The notice will also ask that comments be sent to the Conservator at a specified address. The Conservator is to consider any comments made [subsection 23B(3)].

Section 23C - Action Plan

After considering any comments made, Section 23 provides that the Conservator may prepare an Action Plan.

Section 23D - Public notification of Action Plan

Section 23D provides that after making an Action Plan the Conservator shall publish a notice in the Gazette and a newspaper stating that copies of the Action Plan are available for inspection.

Division 5 - Tabling and disallowance

Section 23E - Instruments to be disallowable instruments

Section 23E specifies that a draft strategy and a draft variation under section 15X and an instrument made under sections 16,17 or 23C is a disallowable instrument.

Clause 9 - Further amendments

Clause 9 makes further amendments to the Principal Act to make it gender neutral.