

**2014**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**NATURE CONSERVATION BILL 2014**

**Amendments to be moved by the Minister for the Environment**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

Presented by  
Mr Simon Corbell MLA  
Minister for the Environment

## Overview

This supplementary explanatory statement relates to the Government amendment to the Nature Conservation Bill 2014. The amendments proposed arise in consequence to:

1. the Scrutiny of Bills Committee Report which recommended some changes to strict liability clauses in the Nature Conservation Bill 2014. These amendments either:
  - remove the strict liability nature from certain offences; or
  - insert specific defences.
2. the passage or presentation of other legislation namely:
  - *Heritage Legislation Amendment Act 2014*;
  - *Planning and Development (Bilateral Agreement) Amendment Act 2014*; and
  - Emergencies Amendment Bill 2014.

### **Amendment 1, refers to Clause 2, page 2, line 5.**

This provision amends the provision for the Commencement date to allow for parts of the Nature Conservation Act 2014 that arise from the passage of the *Planning and Development (Bilateral Agreement) Amendment Act 2014* (the Bilateral Amendment Act) to be commenced consistent with that Bill's commencement provisions rather than the provisions outlined in the Nature Conservation Bill 2014. The new arrangements allow for changes made to the Nature Conservation Act as a result of the Bilateral Amendment Act to commence separately to the other provisions of the Nature Conservation Bill.

### **Amendment 2, refers to clause 126 (3), page 84, line 1**

This amendment relates to the offence of interfering with nest of native animal. This amendment removes strict liability from this offence in response to the Scrutiny of Bills Committee Report. Issues raised by the Committee include that people may inadvertently disturb a nest and therefore it is not appropriate to have as strict liability. Measures to reduce or remove inadvertent non-compliance are difficult for this offence and this amendment removes strict liability from both offences in this clause.

**Amendment 3, refers to clause 129 (2), page 88, line 7**

This amendment relates to the offence of injuring or endangering a native animal. This amendment removes strict liability from this offence in response to the Scrutiny of Bills Committee Report. Issues raised by the Committee include that people may inadvertently injure a native animal and therefore it is not appropriate to have as strict liability.

Measures to further reduce or remove inadvertent non-compliance are difficult for this offence so this amendment removes strict liability from the offence of injuring a native animal.

**Amendment 4, refers to clause 136 (3A), page 94, line 20**

This amendment relates to the offence of releasing an animal from captivity. This amendment adds an additional defence to this offence in response to the Scrutiny of Bills Committee Report. A due diligence defence sub-clause has been added to address the concerns raised by the Committee about inadvertent non-compliance. The offence will remain strict liability.

**Amendment 5, refers to Clause 138 (2), Page 96, line 19**

This amendment relates to the offence of taking a native plant from unleased land. This amendment removes strict liability from this offence in response to the Scrutiny of Bills Committee Report. Issues raised by the Committee include that people may inadvertently take a plant from public land and therefore it is not appropriate to have as strict liability. Measures to further reduce or remove inadvertent non-compliance are difficult for this offence so this amendment removes strict liability from the offence.

**Amendment 6, refers to Clause 140 (2), page 98, line 8**

This amendment relates to the offence of taking a native plant which is a protected native species. This amendment removes strict liability from this offence in response to the Scrutiny of Bills Committee Report. Issues raised by the Committee include that people may inadvertently take a protected native plant and therefore it is not appropriate to have as strict liability. Measures to further reduce or remove inadvertent non-compliance are difficult for this offence so this amendment removes strict liability from the offence.

**Amendment 7, refers to Clause 144 (3) page 102, line22**

This amendment relates to the offence of taking fallen native timber from unleased land. This amendment removes strict liability from this offence in response to the Scrutiny of Bills Committee Report. Issues raised by the Committee include that people may inadvertently take native timber and therefore it is not appropriate to have as strict liability. Measures to further reduce or remove inadvertent non-compliance are difficult for this offence so this amendment removes strict liability from the offence.

**Amendment 8, refers to Clause 228 (3), page 159 line 6**

This amendment relates to the offence of failing to comply with repair damage direction. This amendment adds an additional defence at clause 228(3) to this offence in response to the Scrutiny of Bills Committee Report. The Scrutiny of Bills Committee Report advised that although the offence in clause 228(1) was similar to offences in clause 225(1) it did not include similar defences. This amendment corrects that.

**Amendment 9, refers to Clause 259 (3), page 187, line 1**

This amendment relates to the part 10.2 exceptions. The exceptions should have related to the Part rather than to the sections. This was an error as was noted in the Scrutiny of Bills Committee Report. This amendment corrects that error.

**Amendment 10, refers to New Chapter 12A Land Development Applications, Page 229, line 15**

These provisions are required as a consequence to the *Planning and Development (Bilateral Agreement) Amendment Act 2014* (Bilateral Agreement Amendment Act) being passed. The Bilateral Agreement Amendment Act provides a new part 8A to the Nature Conservation Act 1980. The provisions at Clause 10 will transfer those provisions in Chapter 8A to a new Chapter 12A of the Nature Conservation Act 2014.

The purpose of the new chapter was to clarify, through notes, the Conservator's role in the *Planning and Development Act 2007*, as a result of the amendments. The amendments state the requirements for the Conservator's advice, including what should be included, and what information should be considered.

Conservator advice must be based on relevant policy, plan or guideline documents that relate to protected matters or matters of national environmental significance. Conservator advice in this context is advisory in nature; not regulatory. This amendment aims to establish the statutory basis for that advisory role within the primary legislation that creates the position of the Conservator.

**Amendment 11, refers to proposed new clause 313 (5), page 231, line 5**

Clause 313 responds to the Scrutiny of Bills Committee’s concerns about the strict liability offence at clause 314 which relates to an offence if someone does not provide a name and address. Conservation Officers need to establish the identity of a person to be able to enforce the Act. However, to reduce or remove the chance of inadvertent non-compliance, this clause proposes to insert a requirement that the direction to provide a name and address needs to be provided in a way that a person is able to understand. This aims to address the Scrutiny of Bills Committee’s concerns about the strict liability offence at clause 314, while still allowing Conservation Officers to be able to seek names and addresses.

**Amendment 12, refers to clause 326 (3), page 242, line 13**

This amendment relates to the offence of failing to comply with Conservator’s Direction. This amendment removes strict liability from this offence in response to the Scrutiny of Bills Committee Report. Strict liability has been removed from this offence because the directions may include a direction to perform an action as well as to cease and desist performing an action.

**Amendment 13, refers to clause 328 (2), page 243, line 23**

This amendment relates to the offence of failing to comply with treatment direction. This amendment removes strict liability from this offence in response to the Scrutiny of Bills Committee Report. Strict liability has been removed from this offence because the directions may include a direction to perform an action as well as to cease and desist performing an action.

**Amendment 14, refers to schedule 2, part 2.3, proposed new amendment 2.7A, page 289, line 1**

This is a consequential amendment arising from the amendments included in the Emergencies Amendment Bill 2014 (presented on 25/9/2014). This consequential amendment updates references to Land Management Plans in that Bill, in line with the Nature Conservation Bill and consequential changes to the Planning and Development Act.

**Amendment 15, refers to schedule 2, part 2.3, amendment 2.8, page 289, line 2**

This clause is omitted because there is a new proposed section 77A of the Emergencies Act (as amended by the Emergencies Amendment Bill, which gives precedence to the Strategic Bushfire Management Plan over the Public Land Management Plan (previously termed a Plan of Management)).

**Amendment 16, refers to schedule 2, part 2.3, proposed new amendment 2.8A, page 289, line 9**

This clause proposes to amend new section 77A of the Emergencies Act, which gives precedence to the Strategic Bushfire Management Plan over the public land management plan (previously termed a Plan of Management). The consequential change is required to update the name from a Plan of Management to a Public Land Management Plan.

**Amendment 17, refers to Schedule 2, part 2.8, Proposed new amendments 2.27A to 2.27D, page 295, line 1**

The consequential amendments update names and terms referred to in the *Heritage Act 2004*. The *Heritage Legislation Amendment Act 2014* established roles for the Flora and Fauna Committee under the Heritage Act. The provisions below update references from the Flora and Fauna Committee. Other changes arise because of changes to the threatened species and ecological community declaration procedures.

**[2.27A] Section 19A**

This clause updates references from the Flora and Fauna Committee to the Scientific Committee.

[2.27B] Section 31A

This clause updates references from the Flora and Fauna Committee to the Scientific Committee.

[2.27C] Division 6.3

The text of the recent amendments to the Heritage Act indicated “The council may register a place or object that has native flora, native fauna or a process, that is, or is likely to be, the subject of a declaration in force under the *Nature Conservation Act 1980*, section 38”

The Nature Conservation Bill repeals the Nature Conservation Act 1980, and a consequential amendment is required to update the references from section 38 of the 1980 Act (referring to threatened species, ecological communities and threatening processes) to the new terms for threatened species ecological communities and key threatening processes.

[2.27 D] Section 45 A

This clause updates references from the Flora and Fauna Committee to the Scientific Committee.

**Amendment 18, refers to Schedule 2, part 2.8 , Proposed new amendments 2.28A and 2.28B**

[2.28A] Dictionary, definition of Flora and Fauna Committee

This clause omits references to the Flora and Fauna Committee as it will no longer exist.

[2.28B] Dictionary, new definition of scientific committee

This clause includes a definition of the Scientific Committee which replaces the Flora and Fauna Committee.

**Amendment 19, refers to Schedule 2, Part 2.11, Proposed new amendment 2.31A, page 286, line 7**

These provisions are required as a consequence of the *Planning and Development (Bilateral Agreement) Amendment Act 2014* being passed. Section 111D provided a responsibility under the Planning and Development Act regarding offsets to the Minister administering the Nature Conservation Act 1980. These amendments ensure that the references to the 1980 Act are updated to the Nature Conservation Act 2014.

**Amendment 20, Schedule 2, part 2.11, Proposed new amendments 2.32A and 2.32B**

These provisions are required as a consequence of the Bilateral Agreement Amendment Act being passed. These changes refer to the new Part 8A of the 1980 Act which will become part 12A of the Nature Conservation Act 2014.

[2.32A] Section 128 (1)(b) note 5

This clause updates references from the Nature Conservation Act 1980 to the Nature Conservation Act 2014.

[2.32B] Section 128 (1A) note 3

This clause updates references from the Nature Conservation Act 1980 to the Nature Conservation Act 2014.

**Amendment 21 refers to Schedule 2, part 2.11 Proposed new amendments 2.33A and 2.33B Page 296, line 17—**

These provisions are required as a consequence of the Bilateral Agreement Amendment Act being passed. These changes refer to the new Part 8A of the 1980 Act which will become part 12A of the Nature Conservation Act 2014.

[2.33A] Section 147A, note 1

This clause updates references from the Nature Conservation Act 1980 to the Nature Conservation Act 2014.

[2.33B] Section 165B (3) (b) and note

This clause updates references to Plans of Management to Public Land Management Plans which is the terminology used for plans of management under consequential changes to the Planning and Development Act.

**Amendment 22 refers to Schedule 2, part 2.11 Proposed new amendment 2.53A Page 315, line 2—**

These provisions are required as a consequence of the Bilateral Agreement Amendment Act being passed. These are changes to Schedule 4 of the Planning and Development Act, which identifies when an environmental impact statement (EIS) is required. This amendment



ensures that the schedule reflects the new protected matter ‘any other protected matter’ agreed through the *Planning and Development (Bilateral Agreement) Act 2014*.

[2.53A] Schedule 4, part 4.3, item 1, column 2, new paragraph (j)

This provision transfers a recently made provision to the Nature Conservation Act 1980 through the Bilateral Agreement Act, to the Nature Conservation Act 2014.

**Amendment 23 refers to Schedule 2, part 2.11 Proposed new amendment 2.74A Page 321, line 2—**

These provisions are required as a consequence of the Bilateral Agreement Amendment Act being passed.

[2.74A] Section 26 (1) (c), note

This change refers to the new Part 8A of the 1980 Act which will become part 12A of the Nature Conservation Act 2014.

**Amendment 24 refers to Dictionary Proposed new definition of development Page 329, line 17—**

These provisions are required as a consequence to the Bilateral Agreement Amendment Act being passed.

This clause updates the definition of development and updates references to chapter 12A (Land Development Applications).