

Australian Capital Territory

Nature Conservation (Scarlet Robin) Action Plan 2016

Disallowable instrument DI2016–210

made under the

Nature Conservation Act 2014, s 105 (Draft Action plan-final version and notification)

EXPLANATORY STATEMENT

Overview

Introduction

This explanatory statement relates to the *Nature Conservation (Scarlet Robin) Action Plan 2016* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the disallowable instrument and to help inform debate on it. It does not form part of the disallowable instrument and has not been endorsed by the Assembly.

The statement must be read in conjunction with the disallowable instrument. It is not, and is not meant to be, a comprehensive description of the disallowable instrument. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Background

The *Nature Conservation Act 2014* (the Act) is the primary ACT legislation for the protection of native plants and animals. The Act establishes the Scientific Committee as an expert body to advise the Minister, including recommending to the Minister that species be declared threatened, for example, ‘vulnerable’, ‘endangered’, or as may be determined under the Act.

In this case, the Scarlet Robin (*Petroica multicolor*) was recommended for declaration as a vulnerable species by the former Flora and Fauna Committee, the expert committee established to advise the Minister under the former *Nature Conservation Act 1980* (NC Act1980) and guided by criteria formerly set out in the *Nature Conservation (Criteria and Guidelines for Declaring Threatened Species and Communities) Determination 2008 (No 1)* DI2008-170.

The Minister, following the Flora and Fauna Committee’s recommendation, declared the Scarlet Robin (*P. multicolor*) to be a vulnerable species on 20 May 2015 (*Nature Conservation (Species and Ecological Communities) Declaration 2015 (No 1)* DI2105-88). On 3 June 2015, the Committee recommended the scientific name for the Scarlet Robin be changed to *P. boodang* following the published findings of a

molecular study and revision of the taxonomy of Australian passerine bird species. The former NC Act 1980 was repealed and replaced with the Act on 11 June 2015. Part 2.4 of the Act establishes the Scientific Committee to replace the Flora and Fauna Committee. On 29 July 2015 (as a result of the *Nature Conservation Threatened Native Species List 2015 (No 1)* NI2015-438) listings of threatened species as declared under the former NC Act 1980, including the declared vulnerable species, the Scarlet Robin, were listed under the current Act. The scientific name of the Scarlet Robin, listed as vulnerable under the current Act, was changed from *P. multicolor* to *P. boodang* on 30 May 2016.

Action Plans

Under subsection 100(a)(i) of the Act an Action Plan:

- A. sets out proposals to ensure, as far as practicable, the identification, protection and survival of the species;
- B. if there is a known critical habitat for the species, identifies the critical habitat;
- C. for regular migratory species may include maps of potential habitat of the species¹;
- D. may propose management strategies to ensure the persistence of the species, and;
- E. may state requirements for monitoring the species and its habitats.

Under section 101 of the Act, the Conservator of Flora and Fauna must prepare an Action Plan for each applicable species, including a species that has been declared a vulnerable species, provided the Minister has decided to not prepare such a plan based on advice sought from the Scientific Committee under section 100A. In the case of the Scarlet Robin, no such advice from the Scientific Committee was sought.

And further, in preparing a draft action plan for a species, under subsection 101(3) the Conservator must consider:

- (a) the impact of climate change;
- (b) threats;
- (c) connectivity requirements; and
- (d) critical habitat of the species.

Under section 102, in preparing a draft action plan, the Conservator must consult with the Scientific Committee.

The Disallowable Instrument

Under section 103 of the Act, public consultation on an Action Plan is required before it is finalised. A draft of the Scarlet Robin Action Plan was released for public consultation for six weeks from 4 April 2016 until 18 May 2016. Five written submissions from respondents in the Canberra community were received. Final comment on the revised final draft plan was sought from the Scientific Committee. The draft plan was revised in response to the submissions and comments received. Under section 105 of the Act the final version of a draft action plan prepared by the

¹ The Scarlet Robin is not a listed migratory species under s. 528 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth.), so it does not fall within the meaning of a 'regular migratory species' for subsection 100(a)(i) of the Act.

Conservator is an action plan and is a disallowable instrument. This instrument is the final version of draft action plan for the Scarlet Robin. It is the result of changes which were made following public consultation.

The policy objective of the action plan is the conservation of the scarlet robin. In order to achieve this goal the action plan contains management objectives. These objectives are supported by management actions. The action plan also contains information about the Scarlet Robin including a description, conservation status, habitat and threats. While the legal authority of the Action Plan is confined to the ACT, management issues and actions are addressed in a regional context.

The disallowable instrument does not affect any human rights contained in the *Human Rights Act 2004*.

The disallowable instrument is in accordance with the Scrutiny of Bills Committee's scrutiny principles. The action plan is in accordance with the objects of the Act because the purpose of the instrument is to protect, conserve and enhance biodiversity, in this case a native species. It does not contain matters which should be dealt with in an Act. The level of detail in management actions is appropriate to be contained in a legislative instrument. The action plan does not affect rights liberties or obligations because it provides guidance to the conservator and does not impose liabilities on the community.

Regulatory Impact Statement

No regulatory impact statement has been prepared. This is because the action plan falls within the exception established by s 36(1)(b) of the *Legislation Act 2001*. The action plan does not operate to the disadvantage of anyone. It contains management objectives and management actions. These provide guidance to the conservator but do not impose liabilities on anyone or adversely affect anyone's rights.

Notes on Provisions

Section 1 – Name of instrument

This section names the instrument.

Section 2 – Commencement

This section provides for the commencement of the instrument.

Section 3 – Preparation of an action plan

This section provides that the action plan has been prepared.