

Nature Conservation (Listed Migratory Species) Action Plan 2018

Disallowable instrument DI2018–27

made under the

Nature Conservation Act 2014, s 104 (Draft action plan—revision) and s 105 (Draft action plan—final version and notification)

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Nature Conservation (Listed Migratory Species) Action Plan 2018* as presented to the Legislative Assembly. It has been prepared 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.

Section 101 of the Act requires the Conservator of Flora and Fauna (the Conservator) to prepare a draft action plan for each ‘relevant species’, ‘relevant ecological community’ or ‘key threatening process’.

Section 98 of the Act indicates that a ‘relevant species’ includes ‘a regular migratory species’ which means a listed migratory species that regularly occurs in the ACT. A ‘Listed migratory species’ is a species included in a list of migratory species established under section 209 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act) (see also section 528 of the EPBC Act).

Under section 101 of the Act, the Conservator of Flora and Fauna (the Conservator) is responsible for preparing a draft Action Plan for relevant listed species and communities.

Under section 100 of the Act, an Action Plan must set out proposals to ensure, as far as practicable, the identification, protection and survival of the species. It must identify known critical habitat and may propose management strategies to ensure the persistence of the species. Action Plans may also state requirements for monitoring the species and its habitats. Under section 101(3) of the Act, in preparing a draft Action Plan, the Conservator must consider the impact of climate change, specific threats to the species, any connectivity requirements and the critical habitat of the species.

Under section 103 of the Act, public consultation on an Action Plan is required before it is finalised. The draft Action Plan for Listed Migratory Species was released for public consultation from 12 July 2017 to 25 August 2017 inclusive. Six written submissions were received, in addition to two relevant comments on the YourSay website. The submissions and comments were considered, where appropriate, in revising the draft plan and preparing the final version of the Action Plan.

The conservation objective of this action plan is to maintain, conserve and enhance habitats in the ACT which are suitable for the listed migratory species that regularly visit Australia and the ACT. For the purposes of the plan, 'regularly visit' was considered to include species observed in more than 10 per cent of years. The plan does not, therefore, specifically relate to species considered vagrant by the Canberra Ornithologists Group.

Specific goals under the plan are to:

1. Protect, restore and enhance important wetland, wildlife corridors and breeding habitat.
2. Manage identified threats to important sites and habitat.
3. Improve knowledge about the occurrence and management of listed migratory species.
4. Raise community awareness, knowledge, and engagement in initiatives to survey and conserve listed migratory species.

Appendix 1 to the Action Plan includes information about all the listed migratory species that occur in the ACT (including vagrant species) and aims to improve the availability of information and knowledge of listed migratory species and their habitats within the ACT.

Under section 105 of the Act the final version of a draft action plan prepared by the Conservator is a disallowable instrument. Schedule 1 to the instrument is the final version of a draft Action Plan for Listed Migratory Species prepared under section 104.

Scrutiny of Bills Committee Principles

The disallowable instrument is in accordance with the Scrutiny of Bills Committee's scrutiny principles. The following addresses the Scrutiny of Bills Committee principles:

- (a) Is in accord with the general objects of the Act under which it is made;
 - The main object of the Act is to protect, conserve and enhance the biodiversity of the ACT. In particular, the objects are to be achieved by protecting, conserving, enhancing, restoring and improving nature conservation,

- including, inter alia, promoting and supporting the management, maintenance and enhancement of biodiversity of local, regional and national significance.
- The species in the instrument are of national significance as they are listed migratory species under EPBC Act and are also protected under international law through a range of international conventions (Convention on the Conservation of Migratory Species of Wild Animals (Bonn); China-Australia Migratory Bird Agreement; Japan-Australia Migratory Bird Agreement; Republic of Korea-Australia Migratory Bird Agreement). The Action Plan is in accord with the general objects of the Act.
- (b) Does not unduly trespasses on rights previously established by law;
- No rights, liberties or obligations are directly impacted by the Action Plan.
- (c) Make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
- The Action Plan does not affect rights, liberties or obligations because it provides guidance about management of threatened species/ecological community and does not directly impose liabilities on the community.
- (d) Contain matters which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly.
- It is appropriate that the matter be dealt with in a disallowable instrument rather than an Act of the Legislative Assembly. The preparation, consultation, approval and notification of such Action Plans are provided for in the Act.

Regulatory Impact Statement

No regulatory impact statement (RIS) has been prepared in accordance with section 34 of the *Legislation Act 2001* as the disallowable instrument is not likely to impose appreciable costs on the community, or part of the community.

Further, a RIS is not required, in accordance with section 36 (1) (b) of the *Legislation Act* as the matter does not operate to the disadvantage of anyone by adversely affecting a person's rights or imposing liabilities on a person. The Action Plan contain objectives and actions. These provide guidance but do not impose liabilities or create obligations on anyone other than the Conservator of Flora and Fauna, or adversely affect anyone's rights.

Human Rights

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

Outline of 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 – Listed migratory species action plan

This section provides that the Action Plan has been prepared. The Action Plan is scheduled to the instrument.