

2024

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

TENTH ASSEMBLY

NATURE CONSERVATION AMENDMENT BILL 2024

REVISED EXPLANATORY STATEMENT

**Presented by
Rebecca Vassarotti MLA
Minister for the Environment, Parks and Land Management
August 2024**

NATURE CONSERVATION AMENDMENT BILL 2024

This revised explanatory statement relates to the Government response to comments made by the Scrutiny Committee on Justice and Community Safety (Legislative Scrutiny Role) (the **Committee**) in its Scrutiny Report 41 (the **Report**) about a possible limitation to the right to freedom of expression (under section 16 of the *Human Rights Act 2024* (the **HR Act**)) which was not expressed in the tabled explanatory statement for the Nature Conservation Amendment Bill 2024 (the **Bill**).

It has been prepared to assist the reader of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The statement must be read in conjunction with the Bill and the explanatory statement prepared in support of the Bill, as introduced in the Legislative Assembly on 11 April 2024. It is not, and is not meant to be, a comprehensive description of the Bill. 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.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Bill, due regard was given to its compatibility with the rights set out in the HR Act, noting the Bill is not a Significant Bill and does not engage human rights to a significant extent.

Right engaged

The Bill also engages the right to freedom of expression (limited), under section 16 of the HR Act.

Right Limited

The preamble to the HR Act notes that few rights are absolute and that they may be subject to reasonable limits in law that can be demonstrably justified in a free and democratic society.

Section 28 of the HR Act requires that any limitation on a human right may only be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

In addition to the discussion of the human rights in the explanatory statement prepared in support of the Bill and tabled on 11 April 2024, the amendment to section 256 of the *Nature Conservation Act 2014* (the **Act**) may limit the right to freedom of expression under section 16 of the HR Act.

Section 16 – Right to freedom of expression

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

The right to freedom of expression provides that everyone has the right to hold opinions and express them without interference. This right includes the freedom

to seek, receive and impart information and ideas of all kinds, in any way chosen by the person, including language, art, orally or in writing etc. This right protects political expression and speech. The amendment to section 256 of the Act, may limit this right by restricting or prohibiting activities within reserves that may impact other users of the reserve.

2. *Legitimate purpose (s 28 (2) (b))*

The legitimate purpose of this amendment is to protect the ability for visitors to ACT nature reserves to enjoy the reserve. This is consistent with the objects of the Act, including section 2 (d) encouraging public appreciation, understanding and enjoyment of biodiversity. It is also consistent with the objectives of reserve management plans, including to provide a venue for activities and experiences that improve community physical, emotional and social well-being (Canberra Nature Park Reserve Plan of Management 2021).

3. *Rational connection between the limitation and the purpose (s 28 (2) (d))*

Section 256 of the Act allows the Conservator of Flora and Fauna to make an activities declaration which restricts or prohibits activities on a reserve if they believe the activity may have a negative impact on the reserve. The Bill will extend the power to make an activities declaration to include activities that may have a negative impact on a person in the reserve. For example, the use of a loudspeaker or an amplifier to play loud music or otherwise over a long period of time may not have a negative impact on the reserve, but it would clearly negatively affect the enjoyment of the space for other visitors to the reserve.

4. *Proportionality (s 28 (2) (e))*

Any limitation on the right to freedom of expression must be justified as necessary, reasonable, and proportionate to a legitimate aim. Reasonable limitations on the right to freedom of expression include the protection of public order, public health, and public morality. An activities declaration is the most effective means to restrict activities within nature reserves and limits the Conservator to only declaring activities they reasonably believe may have a negative impact on other users.

Offences against this provision are strict liability. This is considered to be the most effective compliance measure available to allow conservation officers to deal with an offence when it occurs. The most practical way to deal with offences that involve undertaking prohibited or restricted activities within reserves is to enable a conservation officer to issue an immediate infringement notice. As such, another mechanism would be ineffective. Conservation officers follow procedural guidelines for compliance and enforcement which emphasises education as the foundation of voluntary compliance to the law and that education may sometimes be the most appropriate response to non-compliance.

An activities declaration is a notifiable instrument and if the Conservator makes an activities declaration for a reserve, they are required to give additional public notice about the declaration; and display a notice about the declaration in a conspicuous place at the reserve, so it can be expected that a person will be aware of their obligations. This will ensure that the Conservator remains accountable, and that the discretion to prohibit or restrict activities is used

properly, rather than to target activities that do not have significant impact. The Conservator is also required to consider the reserve management plan for the reserve, this will provide guidance around activities that may or may not be suitable for each individual reserve.