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Ten Year Review of the Nature Conservation Act 2014 – Discussion Paper

The Canberra Ornithologists Group (COG), also known as Canberra Birds, is responding to the invitation to comment on the ten-year review of this legislation.

This submission covers the matters COG considers are important in reviewing the current Act, and the changes that need to be reflected in a revised Nature Conservation Act. COG also supports the main points of the submission from the Conservation Council ACT.

The Canberra Ornithologists Group (COG) is a volunteer-based community group with around 370 members, and a mission that includes the conservation of native birds and their habitats. COG plays an active role in advocating for the protection of native vegetation and bird habitats, and for the mitigation of threats to and impacts on native birds.

COG has conducted a long-term bird monitoring program at 15 locations in ACT woodlands for almost 25 years, and has been active in bird monitoring across various habitats in the ACT for around 60 years. COG studies show that many woodland-dependent bird species have declined in abundance, especially in woodlands on the peri-urban interface¹. This is likely due to various factors such as land clearance (for urban housing and infrastructure), land degradation, fragmentation, impacts from poor land management practices (overgrazing by domestic and native animals, including kangaroos), and invasive weeds. Additionally, there has been a significant increase in the native Noisy Miner, an aggressive honeyeater, which is contributing to declines in populations of small birds; the Noisy Miner adapts better to altered and fragmented landscapes.

The COG response to a Review of the Nature Conservation Act 1980, in 2011, made several comments:

- The Act had proven inadequate to protect important native vegetation and bird habitat essential to the survival of woodland-dependent bird species.
- Mechanisms such as Action Plans for threatened species had not delivered improvements for most species for which plans are written (through lack of implementation and monitoring, and inadequate resourcing).

¹ Long-term Trends in ACT Woodland Birds 1998-2019, Bounds et al

<https://canberrabirds.org.au/conservation/woodland-birds/cog-woodland-bird-monitoring-project/>

These matters remain of concern, and recommendations that COG made in its 2011 response are still relevant for the effective delivery of conservation of birds and wider biodiversity.

In terms of the current Review, there are three important matters that need to be addressed in a revised Nature Conservation Act:

1. The focus and an explicit objective of the legislation should be to achieve effective, landscape-scale conservation and connectivity.
2. Lands outside the reserve system (rural, private, leasehold) need to be included in the Nature Conservation Act, as part of a biodiversity conservation network approach.
3. The current system and policy of environmental 'offsets' is seriously flawed, and needs to be re-evaluated and changes made, with any provisions for 'offsets' and requirements for their management included in the Nature Conservation Act.

It is pleasing that the Discussion Paper broadly acknowledges concerns around these matters, from the feedback received in various prior consultations with key internal and external stakeholders.

Landscape-Scale Conservation and Connectivity

The Nature Conservation Act should have a framework to achieve landscape-scale conservation in the ACT, across all land tenures, and to take account of ecological connectivity issues and cumulative impacts on biodiversity.

The current legislation has a species-based framework, with a system and mechanisms that deal with the impacts from urban and infrastructure developments etc in a piecemeal process, and are not achieving effective biodiversity outcomes at the landscape scale.

Decisions that impact on native vegetation and bird habitat require an ecosystem approach. There should be a shift to reflect an ecosystem approach for all lands and other habitats which support biodiversity.

COG supports the Nature Conservation Act having powers affecting biodiversity conservation, including the designation of reserves. (Discussion Paper, p 12 refers.)

Conservation on Rural, Private or Leased Land

The Discussion Paper (p 15) acknowledges the Nature Conservation Act does not currently have provisions for private land conservation. The provisions in the Nature Conservation Act need to be strengthened to better protect off-reserve lands on all tenures that have critical or important habitats. COG considers these are priority matters:

- Protection or biodiversity-friendly management for all lands of endangered ecological communities and habitats for listed threatened species.
- Important areas such as connectivity corridors, areas of medium to high ecological value, habitats of species of concern (e.g. declining woodland-dependent birds) and habitats poorly represented in the reserve system should be protected or managed

- for biodiversity, even if they are not a listed ecological community or habitat for a listed threatened species.
- A process established to consider restoration potential for lands of currently low ecological value.

The legislation should, therefore, provide for a Biodiversity Conservation Network to be established and implemented. COG supports the recommendations of the Conservation Council ACT concerning the Biodiversity Conservation Network concept proposed by the CCACT and Friends of Grasslands, to achieve conservation on lands across a range of land tenures, and improved management for ecological values.²

The reserve system does not protect all areas of importance to biodiversity conservation. Many of these important unreserved areas are being lost, fragmented and degraded through expansion of the city and associated infrastructure onto existing leasehold land, as well as through inappropriate or inconsistent management. Currently, outside the reserve system, the requirement for considering conservation as a primary land use objective is limited, and off-reserve protection needs to be significantly strengthened.

Effective protection and conservation management for biodiversity should be across all land tenures, under one legislative instrument. Lands outside the reserve system (rural, private, leasehold) should be within the scope of the Nature Conservation Act, in a whole of landscape conservation approach.

Land managed off-reserve (rural, private, leasehold tenures) with biodiversity conservation and/or connectivity values should be able to be managed for biodiversity through a covenanting program (for more formal protection), and a biodiversity stewardship program (for biodiversity-friendly management), both with appropriate incentives. These programs would provide for effective management, monitoring and reporting. The Discussion Paper (p 15) refers to incentive schemes as part of Land Management Agreements.

Environmental Offsets

The current policy and system for the use of environmental 'offsets' as part of land planning and development in the ACT is widely known to be greatly flawed, and not genuinely compensating for land development impacts. Further, these arrangements are provided under planning legislation, not the Nature Conservation Act, with inherent conflicts of interest concerning development of land and revenue to Government.

Along these lines, the Discussion Paper (p 13) refers to current 'offsets' arrangements at Commonwealth level as failing to prevent environmental decline and not compensating for the loss of environmental values. The ACT's recent (2023) *State of the Environment Report* also indicates it is unclear whether 'offsets' are truly compensating for the loss of biodiversity permitted under Commonwealth and ACT environmental laws and policy.³

² Conservation Council ACT Region and Friends of Grasslands, 2022. *Building a Biodiversity Network Across the ACT*. https://conservationcouncil.org.au/wp-content/uploads/BRIEFING_BIODIVERSITY-NETWORK-Final_Version_December.pdf

³ Office of the Commissioner for Sustainability and the Environment (ACT), *State of the Environment Report*, 2023.

Finally, the Discussion Paper identifies that the Review gives an “opportunity to look at the performance of environmental offsets in the ACT”.

COG agrees the current ‘offsets’ policy and system is not delivering improved outcomes for birds or more widely for biodiversity conservation, and is failing to prevent environmental decline. There are a number of local case studies that can be cited to illustrate this (e.g. in the Molonglo Valley), and that highlight failures and inappropriate practices in the current policies. This includes the failure to recognise and take account of the cumulative impacts of land development.

COG strongly supports a review and evaluation of outcomes from the current ‘offsets’ policies and practices as part of the wider Review of the Nature Conservation Act. A workshop or forum with community stakeholders would contribute to developing a more limited, but more effective system that achieves improvement and gain for biodiversity (not net loss as currently occurs).

Lastly, and importantly, if ‘offsets’ arrangements are to continue in some form, their principles and governance mechanisms could more appropriately be incorporated in, and designated under, the Nature Conservation Act. Matters concerning biodiversity conservation and management should be in legislation that primarily protects biodiversity and prioritises biodiversity values and conservation.

Additional Matters

Role of the Conservator

In order to achieve the object of the Nature Conservation Act (to protect, conserve and enhance biodiversity in the ACT), the role of the Conservator needs to be strengthened significantly, and their advice and views given much more prominence and weight.

The role of the Conservator should therefore be an independent role, an independent decision-maker.

The Conservator’s assessment and advice in relation to biodiversity conservation-related matters should not be able to be routinely overridden by delegates (or the Planning Minister) in relation to land planning and development applications.

The role of the Conservator could be expanded to direct land management or restoration actions on sites where ecological and conservation values have deteriorated, including on lands of threatened ecosystems or threatened species habitats.

The Nature Conservation Strategy

COG supports a simpler, streamlined and outcomes-focussed Nature Conservation Strategy, consistent with a revised Nature Conservation Act. This strategy should include clearly defined, measurable and achievable targets that are outcomes-related, with effective reporting arrangements.

Action Plans and Conservation Plans for threatened species and ecological communities

The Nature Conservation Act should provide regulatory weight for the implementation of all Action Plans and Conservation Plans, together with sufficient resourcing to deliver on those plans. Importantly, obligations and actions outlined in Action Plans and Conservation Plans should be binding, and decision-making (including under other legislation or regulation) should not be inconsistent with these obligations and actions.

The ACT Reserve System

The Discussion Paper (p 11-12) refers to feedback about the reserve system, the designation of reserves and reserve management.

The Nature Conservation Act should have powers for declaration of nature reserves; such declaration should not be able to be delayed awaiting development decisions under planning legislation on adjacent or other areas of land.

- An example is Bluetts Block adjacent to the new suburb of Denman-Prospect, land with very significant environmental values but where decisions on reserve status have been deferred inappropriately until conclusion of work on the Western Investigation Area.
- There should also be priority for conservation management actions on lands of this nature pending declaration as reserve, otherwise biodiversity values can be compromised through inappropriate management.

Compliance & Enforcement

The Discussion Paper (p 10-11) makes reference to feedback that suggested the Nature Conservation Act requires a thorough review of compliance and enforcement provisions.

COG supports a review of the effectiveness of compliance and enforcement mechanisms, and their implementation. In particular, enforcement provisions could be strengthened, such as powers for Rangers to give on-the-spot fines for infringements (e.g. dogs in nature reserves, dogs off-leash, cycling off designated cycling tracks, trail bikes in prohibited areas or reserves).

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Yours sincerely



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