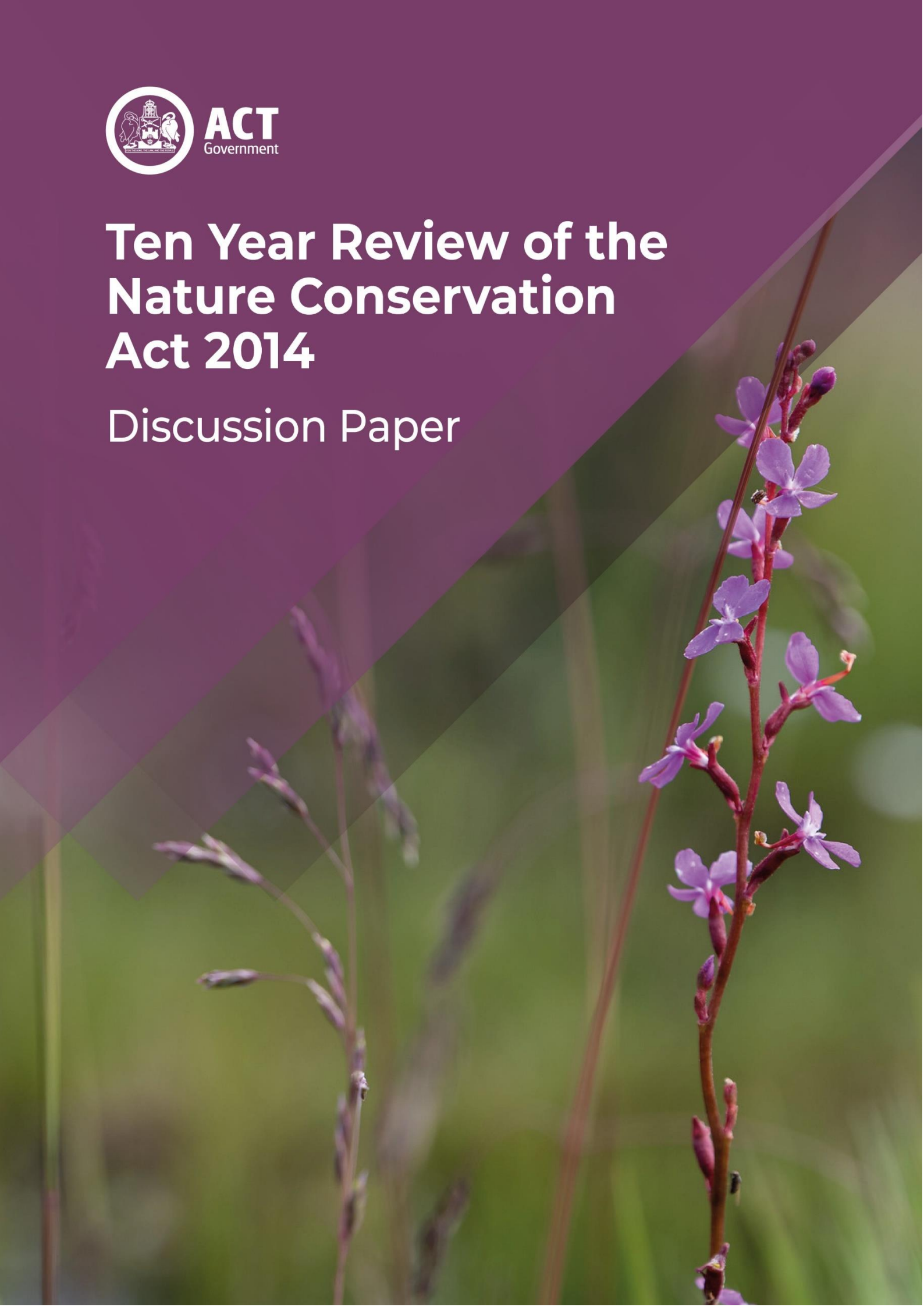
ACT Government

Ten Year Review of the Nature Conservation Act 2014

Discussion Paper



Acknowledgement of Country



We acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

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About the Nature Conservation Act Review

The *Nature Conservation Act 2014* (NC Act) is the primary legislation for biodiversity and nature conservation in the ACT. It provides the legal framework to protect and manage native species, habitats and ecological communities in a manner that supports ecologically sustainable development for the benefit of current and future generations. The NC Act commenced on 11 June 2015 and replaced the *Nature Conservation Act 1980*.

Section 371 of the NC Act states: "The Minister must review the operation of this Act and present a report of the review to the Legislative Assembly as soon as practicable after the end of the Act's 10th year of operation". This review consists of:

- initial consultation with key internal and external stakeholders to identify some key issues and opportunities for improved nature conservation legislation in the ACT (see Figure 1);
- development of this Discussion Paper based on this consultation;
- public consultation on this Discussion Paper;
- development of a review report for government to identify key issues and opportunities relating to the operation of the Act, in order to inform future amendments to the Act.

In parallel with the review of the NC Act, a broader review of nature conservation in the ACT is underway, including a review of the Nature Conservation Strategy (NC Strategy). The review aims to explore public perspectives on nature conservation and its implementation in the ACT and includes an assessment of the ACT's performance in achieving the outcomes set out in the NC Strategy. Most importantly, the review of the NC Strategy will provide the opportunity for the ACT to consider ways to strengthen nature conservation in the ACT.

Contributors to the review of the NC Act may wish to provide other feedback more generally on nature conservation.

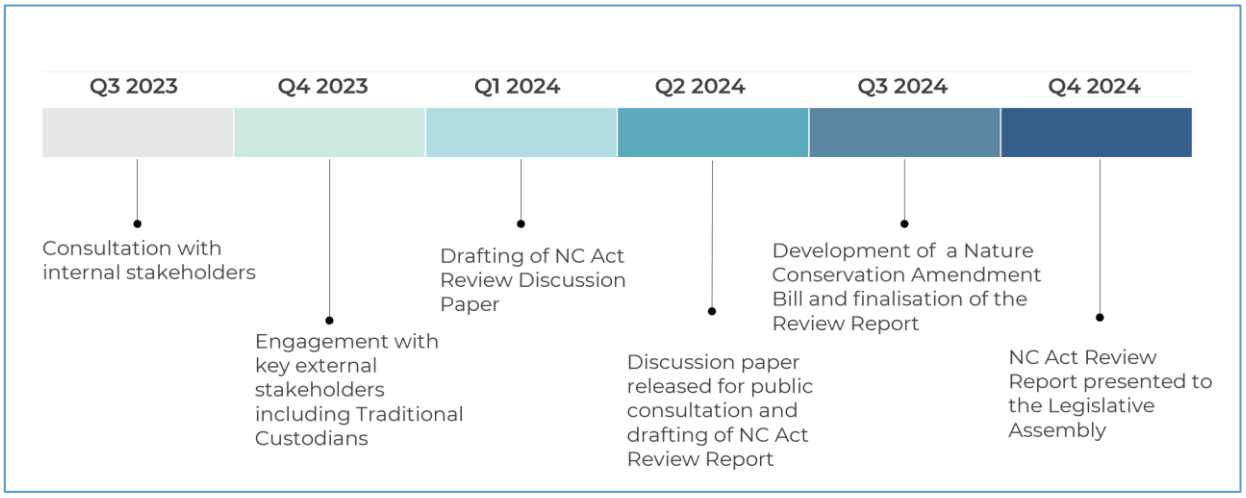


Figure 1. Components and timeline of the NC Act Review

Have Your Say

The review aims to seek feedback from the public on the operation of the NC Act: specifically, whether the NC Act has achieved its objectives over the past decade, whether the objectives are still valid and relevant, and whether the NC Act represents best practice nature conservation legislation. Broader questions about the effective delivery of nature conservation in the ACT are the subject of a related ongoing strategic review of Nature Conservation in the ACT (including a review of the NC Strategy), available concurrently for public consultation. The review will also include the identification of key issues, opportunities, and potential amendments to the Act.

Below are some questions to consider when making a submission:

Are the objects of the NC Act still valid and relevant?

Has the NC Act achieved its objectives in the past decade?

How could the NC Act best support national and international commitments, including in achieving climate change and nature positive goals?

What changes are needed to ensure the NC Act provides a best practice, evidence-based and science driven approach?

Context

Objectives of the NC Act

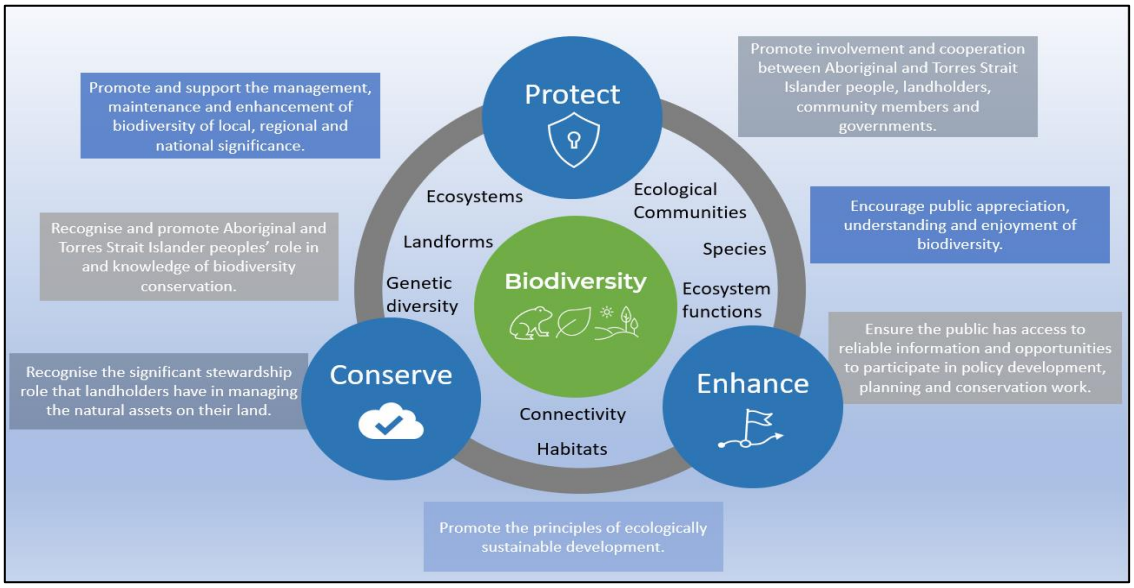


Figure 2. Graphical representation of the objects of the NC Act and means it establishes to achieve biodiversity conservation in the ACT.

The main object of the Act is to protect, conserve and enhance the biodiversity of the ACT. The Act aims to achieve this objective through the following:

- protecting, conserving, enhancing, restoring and improving nature conservation, including native species of animals, plants and their habitats, ecological communities, biological diversity, ecosystems, and ecosystem processes functions, ecological connectivity and landforms of national significance;
- promoting and supporting the management, maintenance and enhancement of biodiversity of local, regional and national significance;
- promoting the involvement of, and cooperation between, Aboriginal and Torres Strait Islander people, landholders, other community members and governments in conserving, protecting, enhancing, restoring and improving biodiversity;
- encouraging public appreciation, understanding and enjoyment of biodiversity;
- recognising and promoting Aboriginal and Torres Strait Islander peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity;

- recognising the significant stewardship role that landholders have in managing the natural assets on their land;
- ensuring that members of the public have (i) access to reliable and relevant information in appropriate forms to facilitate a good understanding of nature conservation issues; and (ii) opportunities to participate in policy development, nature conservation planning and conservation work;
- promoting the principles of ecologically sustainable development.

National and International Commitments

Australia's Strategy for Nature 2019-2030

The review of the NC Act considers Australia's *Strategy for Nature 2019-2030,* which provides the overarching framework for all national, state and territory and local strategies, legislation, policies and actions that target nature. Australia's Strategy for Nature recognises the international agreements that Australia is party to, and includes three priority focus areas, or goals, underpinned by twelve objectives. Figure 3 shows the three goals and how they link with each other.

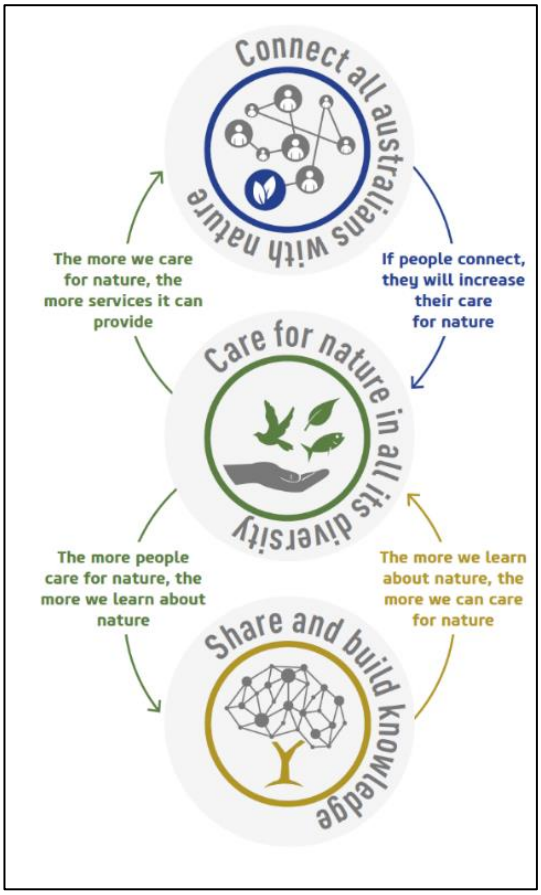


Figure 3. Goals of Australia's Strategy for Nature

Kunming- Montreal Global Biodiversity Framework

In December 2022, 196 nations including Australia signed the historic Kunming-Montréal Global Biodiversity Framework (Framework). The mission of the Framework is to take urgent action to halt and reverse biodiversity loss to put nature on a path to recovery for the benefit of people and planet. This is

accomplished through conservation and sustainable use of biodiversity and by ensuring fair and equitable sharing of benefits from the use of genetic resources, while providing the necessary means of implementation. A graphical representation of the Framework is in Figure 4.

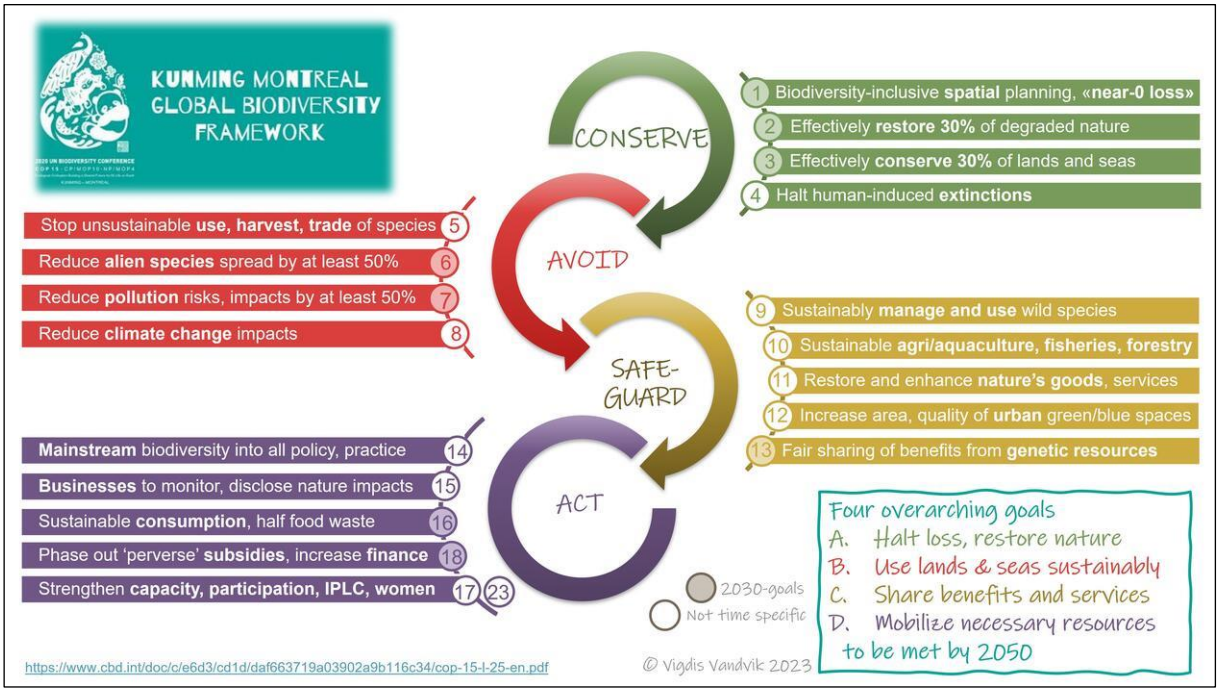


Figure 4. Kunming-Montreal Biodiversity Framework

Commonwealth Government's Nature Positive Plan

The Commonwealth Government's Nature Positive Plan (NPP) was produced in response to the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The NPP defines nature positive as "a term used to describe circumstances where nature – species and ecosystems – is being repaired and is regenerating rather than being in decline". The NPP and related new Nature Positive legislation will focus on protecting more of what's precious, managing nature better and repairing more of what is damaged.

The three major aims of the Nature Positive Plan and legislation will be:

- Better environmental and heritage outcomes;
- Faster, better decision making and clear priorities; and
- More accountability and trust.

The NC Act Review will consider how the NC Act supports nature positive outcomes for the ACT and the achievement of the Commonwealth Government's Nature Positive goals.

Key objectives of the *Nature Conservation Act 2014*

This section looks at the key objectives of the NC Act (**to protect, conserve and enhance biodiversity**) and identifies the key issues and opportunities we have heard to date. We welcome your input on these matters and have included questions to guide consultation for each objective.

Protect

The NC Act protects nature in the ACT through several mechanisms, including through the listing of threatened species, ecological communities and key threatening processes. Further provisions to protect nature include the appointment of conservation officers to administer the Act and to enforce offence provisions, and the prohibition of certain activities in reserves using activity declarations.

We heard that the processes for listing species and communities works well, but that the Act can be improved in some areas, including providing a stronger framework for enforcement and in the designation and management of reserves.

Nature Conservation Act compliance and enforcement

The NC Act includes offences to protect native animals and plants and offences for certain activity in reserves. It also provides exceptions to these offences in certain circumstances. Generally, the enforcement of offence provisions is undertaken by Conservation Officers. Conservation Officers can be appointed by the director-general and may exercise powers under the NC Act (Part 2.3). Conservation Officers include the Conservator, scientific staff in Office of Nature Conservation, and staff in the Parks and Conservation Service, such as rangers, among others.

What we've heard:

- The NC Act requires a thorough review of compliance and enforcement provisions. This includes offence provisions and associated penalties, powers of conservation officers and other authorised persons, and how we prohibit activities in our reserves/national parks.
- We should align penalties with other jurisdictions and ensure that penalties are commensurate with the offence.
- Review Chapter 6 offences and provide infringements for breaches under this section of the NC Act.

Have Your Say:

- How can the NC Act best support the protection of biodiversity in the ACT?

The ACT's reserve system

The ACT has an extensive area of parks and reserves that cover 60% of the Territory. The designation of reserves in the ACT is under the *Planning Act 2023,* however, section 384 of the *Planning Act 2023* provides that the custodian of the area or the Conservator of Flora and Fauna (Conservator) may recommend to the Territory Planning Authority that the territory plan be amended to designate an area as public land and reserve it for a purpose identified in section 385. The NC Act also provides for the drafting and the review of reserve management plans.

Issues including the representativeness of the ACT's reserve system, the lack of guidelines and formal processes in the designation and revocation of reserve status, and problems with definitions and reserve boundaries have been brought up during initial stakeholder consultation. The need for protection of areas with no threatened/protected native species or communities but that are important for connectivity and conservation from a landscape perspective has also been raised.

What we've heard:

- Designation of reserves maybe more appropriate under the NC Act rather than under the *Planning Act 2023*.
- There is a need to undertake ground-truthing of reserve overlays.
- Some reserve types are defined under the NC Act, but some are not (e.g. definition of rural reserves).
- The current process in the NC Act for the drafting and approval of reserve management plans is lengthy.
- Reserve management through activity declarations is slow and labour intensive. This process needs review.
- The ACT does not have a formal process for declaring, naming or revoking reserves. The process for revocation or recategorisation of nature reserves must be clear and should be decided via Cabinet to enable better protection of land from development.
- Native invertebrates and fish are not protected in reserves, unless they are threatened or have special protection status.

Have your Say:

- How can provisions and processes for reserve declaration and management be improved?

Environmental Offsets

Currently, offsets and offset policy are governed under Chapter 9 of the *Planning Act 2023*. This is because the creation of environmental offsets is required directly as a result of the planning and development processes. The purpose of an offset is to provide environmental compensation for a significant environmental impact arising from a development. Once a site is identified as an environmental offset, it is managed in line with its approval conditions, which may include protecting, maintaining and/or enhancing environmental values.

The ACT Offsets Policy was introduced in 2015 but has not been fully implemented, as its implementation is tied to a bilateral agreement with the Commonwealth. Thus, the ACT is currently operating its environmental offsets under the Commonwealth's EPBC Act. The Nature Positive Plan

states that current offset arrangements at a Commonwealth level are failing to prevent environmental decline and do not fully compensate for the loss of environmental values. Commonwealth environmental reforms will include a focus on ensuring offsets provide gains for the environment (Commonwealth of Australia, 2022). The review of the NC Act provides an opportunity to look at the performance of environmental offsets in the ACT.

What we've heard:

- Although the ACT's Parks and Conservation Service (PCS) manage environmental offsets, PCS does not have the power under the NC Act to enforce offset conditions. This is problematic because breaches occur and undermine environment outcomes and jeopardise the ACT's commitments to the Commonwealth.
- Because the ACT operates its environmental offsets under the Commonwealth, only matters of national environmental significance are given emphasis, not ACT protected matters, meaning these matters can continue to decline without compensation via offsets.
- Reviewing how offsets policy and management is aligned under the NC Act and the *Planning Act 2023* would assist in strengthening the legal framework legitimising environmental offsets and incentivising offset managers and proponents to improve biodiversity.

Have Your Say:

- How can we best ensure environmental offsets achieve gains for the environment, in line with Nature Positive Goals?
- Should the ACT Offset Policy sit under the NC Act or the *Planning Act 2023*?

Conserve

The review process so far has highlighted concerns around the importance of the NC Strategy in attaining and evaluating conservation outcomes, the conservation of nature on private lands, the meaning of conservation in the context of climate change, and conservation at landscape scale rather than at species level.

The Conservator and the Nature Conservation Strategy

In the NC Act, the definition of **nature** includes all aspects of nature including ecosystems, natural and physical resources, natural processes and the characteristics of places that contribute to their biological diversity and integrity or intrinsic or scientific values. **Conservation** means "the protection and maintenance of nature while allowing for its ecologically sustainable use." The NC Act provides for the appointment of the Conservator of Flora and Fauna (the Conservator), whose role is to develop and oversee policies and programs for the effective management of nature conservation in the ACT. The ACT government is considering the reporting arrangements for the Conservator as part of its response to the independent review of planning system governance and the ACT State of the Environment Report 2023.

The Nature Conservation Strategy is the overarching policy for nature conservation in the ACT. The Conservator is tasked with the preparation of the NC Strategy which is about the protection, management and conservation of native species and significant ecosystems, and strategies to address the impacts of climate change. The Strategy provides a vision for nature and identifies goals and targets to guide the collective efforts of the ACT Government and the community.

Have Your Say:

- How can the Nature Conservation Strategy best enable the government to achieve the stated outcomes of the Act?

Conservation on rural, private or leased lands

The NC Act does not currently contain provisions for private land conservation or a biodiversity stewardship program. For rural lands, there is potentially an opportunity through the NC Act to maximise the benefits of Land Management Agreements (LMA) under the *Planning Act 2023*. LMAs provide a basis for a co-operative land management between lessees of rural land and ACT Government agencies responsible for managing non-urban land on behalf of the Territory. The principal objective of LMAs is to maintain the ecological and cultural values of the land and protect the environment from harm. The Conservator may make guidelines setting out the requirements for LMAs (section 350 of the *Planning Act 2023*) and a lease cannot be granted without an LMA first being approved by the Conservator.

What we've heard:

- Rural sites are inspected for ecological values and information about the values is provided to land holders. However, better guidance and clarity can be provided to landholders on how to conserve and improve these assets.
- It's important to provide appropriate incentives in the context of the leasehold system. Short term leases discourage investment in conservation measures.
- Strengthen the requirement for rural lessees to protect/conserve ACT protected matters. The provisions allowing enforcement and compliance of LMAs also need to be strengthened.
- Legislative mechanisms to support environmental, biodiversity and/or stewardship markets in the ACT may assist in delivering guidance and clarity on how to manage for conservation purposes and strengthen commitment to biodiversity conservation on rural lands.

Have your Say:

- How can the NC Act encourage and increase private sector investment and participation in delivering biodiversity outcomes?

Landscape-scale Conservation and Connectivity

Landscape conservation and connectivity are embedded in the object of the NC Act. Section 6 of the NC Act provides that the object of the Act is to protect, conserve and enhance the biodiversity of the ACT, and it lists the ways on how to achieve this object. Section 6 (2) of the NC Act states that the object is to be achieved by conserving, enhancing, restoring and improving ecosystems, ecosystem processes and functions, and ecological connectivity. Section 49 of the NC Act also states that landscape scale approaches and landscape connectivity must be considered in the drafting of the NC Strategy. However, the NC Act does not currently have a mechanism to support protection of habitats that do not have threatened or protected species, or any mechanism for conserving areas important for landscape level connectivity or ecosystem processes and functions.

What we've heard:

- Areas important for landscape connectivity **whether threatened species occur or not** should be protected in some way (not necessarily in the same way as current reserves). This should include blue (e.g. rivers, ponds) and green (e.g. parks) spaces in urban areas that are important for dispersal and in maintaining urban biodiversity.
- The NC Act does not currently have a mechanism to support landscape-scale conservation for ecosystems that are not currently important to threatened species.
- The current focus of the NC Act and EPBC Act is on the protection of threatened species and ecosystems and threatening processes.
- A complementary focus is required on biodiversity and ecosystem function more broadly with the goal of maintaining the health, diversity and function of ecosystems, recognising that climate change is driving movements of species and ecological communities and will both stress and transform our natural environment.
- The NC Act needs stronger provisions to strengthen landscape resilience and functionality.
- It is important to get a stocktake of endangered ecological communities in the ACT, including within rural leases.
- Cumulative impact of development projects must be accounted for.

Have your say:

- How can the NC Act better support landscape scale conservation and restoration for all important ecosystems, whether threatened or not, and in preparation for significant climate change?

Enhance

Enhancing biodiversity through the nature-positive approach

Enhancing biodiversity is an object of the current NC Act and is expected to be achieved through improvement of biodiversity of local, regional and national significance. Apart from section 6, there are no provisions in the NC Act directly relating to the enhancement of nature or biodiversity.

Enhancement of biodiversity must be seen in the context of the nature-positive approach which is defined as the global societal goal to halt and reverse nature loss by 2030. This means ensuring more nature in the world by 2030, as compared to the 2020 baseline, through measurable improvements in the health, abundance, diversity and resilience of species, ecosystems, and natural processes. The goal has been embedded in the mission of the Kunming-Montreal Global Biodiversity Framework and adopted under the UN Convention on Biological Diversity, to which Australia is a signatory (World Resources Institute, 2023)

The Commonwealth's Nature Positive Plan focuses on national environmental law reform to halt extinctions and ensure that nature is protected, repaired and left in a better state than baseline (Commonwealth of Australia, 2022). Key reforms planned include the establishment of a new federal Environmental Protection Agency (EPA), national environmental standards (NES), strengthened environmental offsets and a nature repair market. The NC Act's review examines the necessary changes to ACT legislation to align with the federal government's nature positive reforms.

What we've heard:

- The NC Act does not currently have provisions to support restoration of landscapes and ecosystems to enable nature positive outcomes.
- The Act can best support national and international commitments, including nature positive and climate change goals, by aligning with these commitments and goals, and providing mechanisms to resource nature positive outcomes (e.g. through establishment of environmental markets or stewardship programs).
- The revision of the NC Act needs to consider any changes to national legislation moving towards a Nature Positive Act and determine if equivalent changes are possible for the Act.

Have your Say:

- How can the NC Act support restoration at scale?
- What are the most important steps to take to align our Act with nature positive outcomes?

Other key issues

During key stakeholder consultation, some issues were identified that do not sit easily within the key objectives of **protect, conserve** and **enhance**. They may sit across all objectives or may not be represented in the current structure of the NC Act. This section outlines these issues, why they are important to nature conservation in the ACT and asks how we can best incorporate them into nature conservation legislation.

Nature Conservation through the lens of climate change

Provisions in the NC Act in relation to climate change include a mandate to address actual and potential impacts of climate change under the NC Strategy and to consider the impact of climate change on listed species or ecological communities when preparing an action plan. In addition, the

NC Act's object to "enhance" biodiversity, can be used as a basis to enhance resilience by improving or restoring landscapes for climate adaptation.

Climate change is listed as a key threatening process in other states and by the Commonwealth, but not in the ACT. There is potential to increase actions to address the impacts of climate change on biodiversity if climate change is listed as a key threatening process in the ACT. Listing may trigger the development of an action plan which the Conservator must take reasonable steps to implement (section 107 of the NC Act).

What we've heard:

- Provide a climate context to the NC Act and the NC Strategy and embed the need to be actively preparing for and adapting to climate change throughout. For example, a forward-looking Act and Strategy must enable preventative climate impacts such as cool burning or a program to collect seeds for preservation.
- The current focus on maintaining the existing composition and state of nature (rather than living well with change) ignores the changes that have already started, and will accelerate, in our ecosystems. These are already beginning to be detected in high country areas.
- Consider including components of emission reduction in the Act and Strategy (e.g., revegetation for biodiversity enhancement can sequester/remove GHG from the atmosphere).
- Enable flexibility in the Act for the purpose of climate adaptation (e.g., ensuring mechanisms to authorise actions carried out for adaptation purposes are available).
- The Act needs to consider novel approaches to climate adaptation, e.g. a climate triage approach where resource allocation is prioritised based on risk (immediate risk, in need of immediate attention or beyond help).

Have your say:

- Can the NC Act effectively achieve its objects under a changing climate?
- How can the NC Act best enable flexibility to allow for novel approaches to climate adaptation?

Traditional Custodians in Nature Conservation

The NC Act currently represents Aboriginal and Torres Strait Islander people through two actions (associated with the object) focussing on; promoting involvement and cooperation in conserving, protecting, enhancing, restoring and improving biodiversity; and recognising and promoting Aboriginal peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity. The NC Act also provides for the development of a Cultural Resource Management Plan (Chapter 7A). This is the only part of the NC Act that requires that traditional custodians are partners in its development and directly considers access to land and resources for traditional custodians.

In agreeing to implement the Kunming-Montréal Global Biodiversity Framework, Australia is committed to ensuring that indigenous people have full and effective participation in decision-making and in this process, their rights, knowledge, including traditional knowledge associated with biodiversity, innovations, worldviews, values and practices are respected, documented and preserved (Convention on Biological Diversity, 2022). The implementation of Australia's Strategy for Nature also recognises the importance of working with indigenous communities and recognising indigenous people's ecological knowledge and practices in nature conservation (Commonwealth of Australia, 2019).

In recent years, engagement with traditional custodians has been prioritised in the development of action plans and strategies, but we have heard that the review of the NC Act is a good opportunity to examine how we can better enable effective co-design and implementation of nature conservation policy. Ongoing conversation is needed with the traditional custodians of the ACT and region to determine how the NC Act can best represent their aspirations for nature conservation in the ACT.

What we've heard:

- The current actions relating to Aboriginal and Torres Strait Islander people are too broad and should more directly represent traditional custodians of the ACT and region.
- There is no formal mechanism for the knowledge of the traditional custodians to be recognised alongside formal scientific knowledge in determining our plans and strategies.
- Engagement between the Scientific Committee and Aboriginal communities of the ACT and region has been very limited.
- Recommendations have been made to consult with traditional custodians in the preparation of action plans, and the ACT has made progress in this in recent years, however, much more needs to be done, especially in actively engaging traditional custodians in on-ground works arising from those action plans.
- There are some aspects of cultural heritage with natural values that may benefit from protection under the NC Act, such as culturally important species and geological sites.
- Stronger linkages between the *Heritage Act 2004* and the NC Act around cultural values and objects may benefit their protection and management.
- Nature conservation legislation and policy needs to have a more holistic view of nature – nature is land, water, plants and animals and separating management of those is not the best way to go about it.
- We should look to form partnerships in all aspects of nature conservation between government and traditional custodians.

Have your Say:

- How can the NC Act best ensure that cultural issues and indigenous knowledge are reflected in decision-making and in the design and implementation of action plans/management plans?

Data Management and Mapping

Data collection and management is important in nature conservation. In the administration of the NC Act, reliable data is particularly important to provide an understanding of the status of local species and ecological communities to enable correct listing and management.

The NC Act includes at section 25 (2) (c) that the Biodiversity Research and Monitoring Program (BRAMP) consider arrangements for sharing and transferring monitoring data with other entities. Other than this provision, the NC Act is silent on the collection and management of biodiversity data.

The recent reviews of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) and the NSW *Biodiversity Act 2016* found that the collection of data is fragmented and often not fit for purpose and that there is room for improving – and resourcing the improvement of - environmental data systems that enable greater accessibility to data by decision makers and the community. We have heard similar sentiments during our internal review process.

What we've heard:

- There is a need for better quantitative targets in action plans and improved methods for capturing quantitative information to better track and commit to conservation outcomes as well as allow for robust statistical assessment of trends.
- Prioritise the development of adequate models for assessing and predicting trends under climate change and ensure appropriate data are collected to calibrate and validate those models.
- Align data and targets to national and international reporting commitments to embed conservation ambition in ACT actions and enable robust, streamlined reporting with global visibility.
- There is tremendous value in the sharing of environmental information and environmental protection data. As a small jurisdiction with limited resources, it would make sense if Directorates with shared nature conservation interests (such as the Environment Protection Agency under Chief Minister, Treasury and Economic Development Directorate, the Environmental Protection and Sustainable Development Directorate and Transport Canberra and City Services) share the same information system to facilitate data sharing and consolidation of spatial information.
- Clear and purposeful two-way sharing of environment and development data will enhance conservation outcomes by informing sustainable and sensitive environmental and development planning activities.
- Environmental data custodianship in the ACT is an issue affecting accountability and

Have your Say:

- How can the NC Act facilitate better data management and sharing?

Investing in Nature Conservation

The NC Act recognises the significant stewardship role that landholders have in managing the natural assets on their land. However, it does not contain provisions related to financing biodiversity protection or conservation projects. We have heard during consultation that the provision of financial incentives for nature conservation on private land, and ongoing resources to implement action and management plans and strategies would significantly contribute to achieving the objects of the NC Act.

With Australia's commitment to nature positive goals, it is expected that there will be a substantial increase in the resources needed to improve biodiversity outcomes, including for restoration, pest animal management and long term environmental monitoring (Convention on Biological Diversity, 2019). This and the recent passage of the *Nature Repair Bill 2023* through the Commonwealth Parliament highlights the increased expectation for nature conservation legislation to provide for biodiversity investment and financing.

Have your Say:

- What financial mechanisms could be included in the NC Act to help fund biodiversity projects in the ACT?

Future proofing nature conservation legislation

The review of the current NC Act will consider if the objects and provisions of the Act are able to achieve desired nature conservation outcomes over the next decade and beyond. This includes being able to adapt to climate change, but more broadly, it is about being adaptable so we can face conservation challenges that are different to those we have ever faced before.

What we've heard:

- The ability to be flexible is important. Plans, strategies, policies and the NC Act itself should be easily reviewed and reviewed more frequently so we do not fall behind best practice conservation.
- The NC Act must enable novel approaches to nature conservation as we are facing challenges that are different to any issues we have dealt with before.
- Futureproofing includes ensuring infrastructure exists to support non-government parties in implementing conservation goals.
- We must recognise the importance of ecosystem function and build our understanding of how landscapes and ecosystems will function into the future.
- Comprehensive planning of priority sites for conservation is needed.

Have Your Say:

- How can nature conservation legislation be more adaptable to address changing conservation triggers and priorities?
- What is an appropriate timeframe for review of legislation and the plans, strategies etc. that sit beneath it?

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