

Australian Capital Territory

Nature Conservation (Canberra Spider Orchid) Action Plan Revocation 2024

Disallowable instrument DI2024–1

made under the

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

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Nature Conservation (Canberra Spider Orchid) Action Plan Revocation 2024*. It has been prepared to assist the reader of the disallowable instrument. 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 31 of the Act establishes the Scientific Committee as an expert body to advise the Minister and the Conservator of Flora and Fauna (the *conservator*) about nature conservation in the ACT (s 32).

The species listed in the revoked instrument, the Canberra Spider Orchid (*Arachnorchis actensis*) was recommended for declaration as threatened by the former Flora and Fauna Committee, the expert committee established to advise the Minister under the *Nature Conservation Act 1980* (repealed) (the *1980 Act*). The then Minister for the Environment, Water and Climate Change (or their predecessors) declared the species as threatened in various categories of threat at various times. Transitional arrangements ensured that a native species or ecological community declared under the 1980 Act was listed as threatened under the 2014 Act in the same category in which it was originally listed.

The species was transferred from the Endangered category to the Critically Endangered category of the *Nature Conservation Threatened Native Species List* on 11 May 2019 to align with the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (the *EPBC Act*).

Under section 101 of the Act, the conservator is responsible for preparing a draft action plan for relevant listed species and ecological communities, unless the Minister decides that an action plan is not necessary (s 100A).

In 2013, the Canberra Spider Orchid had a stand-alone action plan contained in the *Nature Conservation (Threatened Ecological Communities and Species) Action Plan 2013 (No 1)* (DI2013-277) (the **2013 action plan**). The 2013 action plan was revised in 2019 and brought under the umbrella of the ACT Native Woodlands Strategy in the *Nature Conservation (Native Woodland) Action Plans 2019* (DI2019-255) (the **2019 action plan**).

The 2019 action plan should have revoked the Canberra Spider Orchid Action Plan No 31 in the 2013 action plan. However, the 2019 instrument did not include a revocation clause for Action No. 31 for the Canberra Spider Orchid.

This disallowable instrument revokes Action Plan No. 31 in the 2013 action plan to clarify that the Action Plan for the Canberra Spider Orchid (*Arachnorchis actensis*), as detailed in the 2019 action plan, is in force.

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 disallowable instrument is of both regional and national significance being a listed threatened species under the Act and the EPBC Act. The action plan for the species is in accord with the general objects of the Act.

(b) unduly trespasses on rights previously established by law;

No rights, liberties or obligations are directly impacted by the revocation.

(c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;

The revocation does not affect rights, liberties or obligations because it is an administrative correction of a previous oversight.

(d) contains matter 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.

Regulatory impact statement

No regulatory impact statement (*RIS*) has been prepared in accordance with section 34 of the *Legislation Act 2001* as this disallowable instrument is not likely to impose any 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 2001* as the matter does not operate to the disadvantage of anyone by adversely affecting a person's rights or imposing liabilities on a person.

Human rights

The disallowable instrument does not engage any human rights contained in the *Human Rights Act 2004* and merely corrects an administrative oversight.