

AUSTRALIAN CAPITAL TERRITORY
NATURE CONSERVATION (AMENDMENT) ORDINANCE 1982

ORDINANCE NO. 22 OF 1982

EXPLANATORY STATEMENT

The Nature Conservation Ordinance 1980 makes provision for the protection of native fauna and flora and the management of declared reserves in the A.C.T. and Jervis Bay Territory. It sets up a permit and licence system for the killing and taking of native animals, the keeping, sale, import and export of live fish, the picking of plants, and the felling, removal, damage and destruction of native timber. The Ordinance provides for the declaration of reserved areas in respect of which the Conservator has certain powers and prohibits various activities in those areas.

The Senate Standing Committee on Regulations and Ordinances expressed concern that a number of the powers afforded the Conservator and conservation officers were to be exercised on subjective criteria rather than on an objective basis, with review by the courts. An undertaking was given that these provisions would be amended before the Ordinance was brought into operation and the Nature Conservation (Amendment) Ordinance 1982 will accomplish these amendments. The opportunity has also been taken to make two other minor amendments to the Principal Ordinance before it is brought into operation. Details of the Ordinance are set out below:

Section 1 cites the short title of the Ordinance as the Nature Conservation (Amendment) Ordinance 1982.

Section 2 provides that the Ordinance will come into effect on a date to be fixed by the Minister for the Capital Territory.

Section 3 defines 'Principal Ordinance' for the purposes of the Ordinance as the Nature Conservation Ordinance 1980.

Section 4 amends section 13 of the Principal Ordinance by substituting for the subjective phrase 'such assistance as he considers necessary' the objective phrase 'such assistance as is necessary'.

Section 5 amends section 27 of the Principal Ordinance in order to close a loophole whereby persons could have kept animals suffering from a disease, illness or injury for longer than 48 hours without seeking a permit or licence and so informing the Conservator.

Section 6 substitutes for the subjective test 'is of the opinion that' in two places in sub-section 41(1) of the Principal Ordinance the objective tests 'has reasonable cause to believe that' and 'believes on reasonable grounds that'.

Section 7 amends sub-section 48(1) of the Principal Ordinance by replacing the subjective phrase 'is of opinion that' by the objective phrase 'has reasonable cause to believe that' and by rewording the remainder of the sub-section to clarify its effect.

Section 8 substitutes for the subjective discretion 'where the Conservator is satisfied' in sub-section 49(2) of the Principal Ordinance the objective test 'where the Conservator has reasonable cause to believe'.

Section 9 amends sub-section 52(4) of the Principal Ordinance by replacing the subjective phrase 'in his opinion, necessary for management' with the objective phrase 'necessary and reasonable for the proper management'.

Section 10 substitutes for the subjective phrase 'is of the opinion' in sub-section 53(1) of the Principal Ordinance the objective phrase 'has reasonable cause to believe'.

Section 11 amends section 74 of the Principal Ordinance consequential upon the rewording of section 48 and 49 accomplished by sections 7 and 8 of the Ordinance.

Section 12 amends section 77 of the Principal Ordinance in order to restrict the entry and search power under the Ordinance to the purposes of the Ordinance.

Section 13 replaces the provision for automatic forfeiture of an animal or plant the subject of an offence or a substance or thing used in the commission of an offence in section 79 of the Principal Ordinance with a provision for court-ordered forfeiture of such an animal, plant, substance or thing.

Section 14 amends Schedule 2 to the Principal Ordinance, the Schedule of Restricted Animal Wildlife, by the addition of *Canis familiaris dingo*, the Dingo, in order to avoid any confusion that might be caused about the status of the Dingo under the Ordinance by the presence of *Canis familiaris*, the Dog, in Schedule 6, the Schedule of Exempt Animals.

Section 15 amends Schedules 5 and 6 to the Principal Ordinance, the Schedules of Exempt Animals - i.e. animals in respect of the keeping of which a permit is not necessary - to add several further species of birds and reptiles commonly kept in the Territory.

Ord. No. 56/81