

2015

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

Nature Conservation Regulation 2015
SL2015-23

EXPLANATORY STATEMENT

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Overview of the regulation

The *Nature Conservation Act 2014* (NC Act) commenced on 11 June 2015. The Act is the primary ACT legislation for the protection and handling of native plants and animals, the identification and protection of threatened species and ecological communities, management of national parks and nature reserves and the conservation of the ACT's natural resources.

The Nature Conservation Regulation 2015 (NC Regulation) contributes to the aims of the NC Act, in particular ensuring:

- integrated management of our biodiversity, species and ecosystems at the ecosystem scale including through planning and management planning for reserves; and
- that conservation officers have sufficient powers to manage land appropriately.

The primary objectives of the NC Regulation are to:

- enhance management of areas for conservation by identifying additional areas, predominately Special Purpose Reserves managed by the Parks and Conservation Service, to be included as reserves for the purposes of planning and management; and
- to support administration of suitable nature conservation licences.

The NC Act included a range of specific regulation making powers which are referenced below as part of the detailed explanation of each section within the nature conservation regulation as well as a general regulation making power at s 370.

This statement must be read in conjunction with the Regulation. It is not, and is not meant to be, a comprehensive description of the Regulation. 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.

Climate change impacts

There are minimal climate change impacts from this regulation. The measures in the regulation are largely procedural, or supplementary to existing policy.

Costs and benefits

This Regulation has no significant revenue impacts or additional costs of administration. The provisions already largely exist in the Nature Conservation Regulation 1982 and in the Determination of licensing criteria, instrument no. 47 of 2001 a Disallowable Instrument made under the *Nature Conservation Act 1980*. Because the 1982 Regulation and 2001 Disallowable instrument are repealed by the commencement of the Nature Conservation Act 2014, it was necessary to make a new instrument. The provisions of the Disallowable Instrument have been incorporated into the Regulation as this was considered more appropriate. New provisions relating to the management of reserves additional to those specifically mentioned in the NC Act do not add any appreciable costs to reserve

management. The reserves are already managed by the Parks and Conservation Service, and there are already community expectations in place about how those reserves are managed as these expectations are identified in the Reserve Management Plans for these reserves or through other documentation (such as the Molonglo Strategic Assessment http://www.planning.act.gov.au/topics/significant_projects/planning_studies/molonglo_valley_stage_2_planning_project/molonglo_valley_environmental_assessments).

Cost benefit analysis

Reserve measure

Alternative options

Retain the current provisions

Benefits and constraints

Benefits

There are no benefits from retaining the current situation.

Constraints

The current situation is confusing for the public and enforcement officers. The lack of clarity can cause people to inadvertently break the law and/or reduce the effectiveness of law enforcement.

New provisions

Benefits

The regulation will increase clarity about areas managed as reserves and provide clear guidance to on ground operations by the Parks and Conservation Service and users of reserves.

Constraints

While there are additional areas to be legally managed as reserves, the activities and offences are in line with current operational management by the Parks and Conservation Service and reflect current community expectations.

Costs

There would be some administrative costs associated with ensuring that the community understands the reasons behind the areas included as reserves under the *Nature Conservation Act 2014* and the actions prohibited or restricted. However, the additional clarity facilitates more cost effective enforcement, in particular where boundaries between reserves and the additional area is unclear, for example the boundary is often not marked by a fence line or road. It is unlikely that any individuals would face direct costs through not being able to access resources.

Overall the benefits of the proposed reform outweigh the costs.

Licensing measure

Alternative options

Retain the current provisions

Benefits and constraints

Benefits

Some people will need to keep less records about wildlife than currently.

Constraints

Licences need to be consistent with the objects of the Act. Without these provisions it would be difficult to decide whether a licence was consistent.

People would be unsure about what licences are inappropriate, what suitability information will be required and what records will need to be collected.

This could lead to licences being refused.

New provisions

Benefits

The regulation will increase clarity requirements for licensing and ensure that licences are issued that are consistent with the objects of the Act.

Constraints

The provisions in the Regulation are largely consistent with those in place under existing instruments. Additional information will be provided on the Directorate's website to ensure people understand the requirements fully.

Costs

There would be some costs associated with ensuring that the community understands licensing provisions, however, these are likely to be minimal.

Overall the benefits of the proposed reform outweigh the costs.

Human rights issues

The proposed regulation is within the parameters of the authorising law and is not inconsistent with the policy objectives of another territory law. The proposed law is appropriately placed in subordinate legislation to the NC Act. The proposed law provides clarity about land management and enforcement but does not unduly trespass on existing rights, or, make rights unduly dependent upon non reviewable decisions.

The Regulation does not introduce any new offences or penalties within the Regulation itself. However, the regulation identifies areas, predominantly special purpose reserves managed by the Parks and Conservation Service to be managed as a reserve, for the purposes of reserve management planning (Chapter 8 Reserves—management planning), offences in reserves (Chapter 9 Reserves—offences) and management of these areas consistent with an Activities Declaration (Chapter 10 Reserves—prohibited and restricted

activities). This means that offences against Chapter 10 outlined in the NC Act will also apply to special purpose reserves. This was the intent of providing a regulation making power to bring special purpose reserves into the NC Act as outlined in the Explanatory Statement to the NC Act.

The regulation will increase clarity about areas managed as reserves and provide clear guidance to on ground operations by the Parks and Conservation Service and users of reserves. While there are additional areas to be legally managed as reserves, the activities and offences are in line with current community expectations identified in the Reserve Management Plans for these reserves or through other documentation (such as the Molonglo Strategic Assessment http://www.planning.act.gov.au/topics/significant_projects/planning_studies/molonglo_valley_stage_2_planning_project/molonglo_valley_environmental_assessments).

Including some additional areas in reserve management plans promotes consistency and adoption of a landscape approach to managing for conservation and other purposes such as recreation. Consistency in management will also overcome operational issues such as borders of special purpose reserves and nature reserves not being clearly marked on the ground.

Additionally, the Regulation does not affect any existing appeal or review rights.

Part 1 Preliminary

1 Name of regulation

This section indicates the name of the Regulation.

2 Commencement

This Section indicates the time of commencement of the regulation.

3 Dictionary

This section indicates that the dictionary is part of the Act.

4 Notes

This section indicates that notes are explanatory and not part of the Act.

Part 2 Reserves – management planning

5 What is a reserve? Act s 169 (1), definition of *reserve*, par (b) (ii)

Provisions relating to reserve management and operations within the NC Act s 169 apply to wilderness areas, national parks, nature reserves and catchment areas (an area of land reserve in the territory plan for the protection of water supply under the *Planning and Development Act 2007 [PD Act]*).

The NC Act includes a regulation making power s 169 (1) (b) to extend the definition of reserves to any area of public land reserved under the PD Act. This allows areas of public land that are closely associated with the management of nature reserves to be managed consistently and sympathetically with the adjoining nature reserve or national park. For example there are many Special Purpose Reserves that, together with a nature reserve or national park, make up a unit of management for the Parks and Conservation Service. Often the boundaries between the Special Purpose Reserve and the nature conservation reserve are not obvious (for example, there is often no road or a fence on the boundary). This has caused a significant problem for operation of the NC Act, in particular the management of offences, because it was not always clear if a person was in the nature reserve or outside of it in a Special Purpose Reserve (and different offences provisions applied).

This regulation allows more consistent management and operations to apply across the management unit, while still allowing management for the purpose for which the reserve was established. Schedule 1 identifies the areas of public land that are to be managed under the NC Act, for the purposes of reserve management planning (Chapter 8 Reserves—management planning), offenses in reserves (Chapter 9 Reserves—offences) and management of these areas consistent with an Activities Declaration (Chapter 10 Reserves—prohibited and restricted activities).

Part 3 Nature Conservation Licences

6 Suitability information about a person s – Act, s 266, definition of *suitability information*, par (e)

The NC Act includes a regulation making power s 266 (e) to prescribe suitability information about a person. This Section indicates that suitability information includes the person's qualifications, training, knowledge and experience in carrying out the activity for the licence. This aims to ensure, for example, that a person who applies for a licence to keep native animals has the appropriate skills and experience to care for that animal. In regards to native plants, the suitability information may need to consider that the person has suitable skills to enable them to identify and distinguish native plants from introduced weed species.

In relation to a native species that is a protected native species or a native species that has special protection status and the purpose of the activity is scientific research, education, or propagation of the species, suitability information must included the person's association with relevant scientific research organisations.

In relation to a native species that is a protected native species or a native species that has special protection status and the purpose of the activity is practice of Aboriginal tradition, suitability information must include information about the person's membership of the Aboriginal community in the ACT or surrounding region.

These provisions are similar to those included in s 3 and s 5 (1) the Determination of licensing criteria, instrument no. 47 of 2001 a Disallowable Instrument under the *Nature Conservation Act 1980*.

7 Unsuitable activities for a licence, s 268 (1) (b)

The NC Act includes a regulation making power s 268 (1) (b) to prescribe activities for which the Conservator of Flora and Fauna (the Conservator) cannot issue a licence. The Regulation prescribes the following activities in wilderness areas to be activities, for which a licence cannot be issued, to:

- damage a native tree
- damage or take fallen native timber
- make a road
- use a motor vehicle off road, or
- excavate in wilderness area if the excavation is for a purpose other than archaeological investigation.

Wilderness areas are large areas sets aside to allow natural processes to continue without human intervention. Minimal human activities occur, and where they do they are low impact. Motorised access and taking of timber in wilderness areas is contrary to the purpose of wilderness. Management of wilderness areas by Conservation Officers is an exception to the offences under the NC Act and Conservation Officers therefore do not require a licence to undertake any necessary management (however management is generally minimal). These provisions are similar to those included in s 4 (1) (2) and 15 (1) of the Determination of licensing criteria, instrument no. 47 of 2001 a Disallowable Instrument under the *Nature Conservation Act 1980*.

The Conservator is also unable to issue a licence to sell or export a native plant that is a protected native species or which has special protection status without a plant tag. The purpose of plant tags for protected and specially protected native species is to track numbers of these species being sold or exported. If the Conservator was able to issue a licence for sale of export of these plants without a plant tag it would undermine the purpose of requiring a plant tag. For this reason, sale of export without a plant tag has been declared as an unsuitable activity.

The Conservator is not able to issue a licence to divulge protected information. The ability to licence the divulging of protected information about a person is contrary to the purpose of this Section in the Act. As such it has been made an unsuitable activity for a licence.

8 Suitability information about an activity—Act, s 269, definition of suitability information, par (e)

The NC Act includes a regulation making power to prescribe suitability information about an activity s 269 (e).

There are some activities that require the Conservator to consider additional information before making a decision on whether a licence is appropriate. The Regulation prescribes that if the activity involves killing a native animal, suitability information must include information on how the animal is to be killed, and how the carcass is to be disposed of. The killing of any native animal needs to meet animal welfare standards and also be undertaken as humanely as possible. This provision allows consideration by the Conservator of those matters. Similarly, the catching and taking of native animals can cause stress to those animals. The requirement for suitability information about the taking of native animals aims to reduce stress and/or injury to the animals by the activity.

The regulation prescribes that for an activity that involves keeping a native animal, suitability information about the activity must include information about the facilities and care procedures at the place where the animal is to be kept. This aims to ensure that native species are kept in appropriate premises and that they have appropriate care and handling.

The regulation prescribes that for an activity that involves excavating in a wilderness area for archaeological investigation; suitability information must include information about the objectives of the investigation and the expected contribution of the investigation to the understanding of Aboriginal prehistory or Australian history in general.

The regulation prescribes that for an activity that relates to scientific research, the suitability information must include details of the scientific research.

These provisions are similar to those included in s 5 (1), s 7 (2), s 7 (9) and 16 (2) of the Determination of licensing criteria, instrument no. 47 of 2001 a Disallowable Instrument under the *Nature Conservation Act 1980*.

9 Conditions—clearing native vegetation in a reserve—Act, s 274 (a)

The NC Act includes a regulation making power to prescribe conditions that must apply to a licence. A licence authorising the clearing of native vegetation in a reserve is subject to the following conditions:

- a. that the licensee must tell the Conservator before starting to clear the native vegetation; and
- b. that the licensee must restore the native vegetation in the cleared area as closely as possible to its condition before the clearing.

Note a licence is not required if the relevant activity is authorised by a development approval granted under the *Planning and Development Act 2007* (s 252 (2) (b) (iii) of the NC Act).

10 Conditions—damaging land in a reserve—Act, s 272 (a)

The NC Act includes a regulation making power to prescribe conditions that must apply to a licence. A licence authorising the damaging of land in a reserve is subject to the following conditions:

- a. that the licensee must tell the Conservator before starting to damage the land; and
- b. that the licensee must rehabilitate land as closely as possible to its condition before the damage.

Note a licence is not required if the relevant activity is authorised by a development approval granted under the *Planning and Development Act 2007* (s 252 (2) (b) (iii) of the NC Act).

11 Conditions—keeping an animal for public display—Act, s 274 (a)

The NC Act includes a regulation making power to prescribe conditions that must apply to a licence. The Regulation prescribes that a licence that authorises the keeping of an animal for public display is subject to the condition that the licensee comply with a licence management plan approved by the Conservator for the licence.

12 Records—licence to keep animals—Act, s 306 (1) (c) and (2) (c)

The NC Act includes a regulation making power to require records to be kept animals. The regulation prescribes a number of details that must be kept for each animal subject to the licence.

These provisions are similar to those included in s 3 of the Nature Conservation Regulation 1982 made under the *Nature Conservation Act 1980*.

13 Records—licence to keep live fish—Act, s 304 (1) (c) and (2) (c)

The NC Act includes a regulation making power to require records to be kept about live fish. The regulation prescribes a number of details that must be kept for each live fish subject to the licence.

These provisions are similar to those included in s 4 of the Nature Conservation Regulation 1982 made under the *Nature Conservation Act 1980*.

14 Records—licence to sell or export native plant—Act, s 306 (1) (c) and (2) (c)

The NC Act includes a regulation making power to require records to be kept about selling and exporting plants. The regulation prescribes a number of details that must be kept for each plant subject to the licence.

These provisions are similar to those included in s 5 of the Nature Conservation Regulation 1982 made under the *Nature Conservation Act 1980*.

15 Records—licence to sell or export protected invertebrate—Act, s 306 (1) (c) and (2) (c)

The NC Act includes a regulation making power to require records to be kept about selling and exporting protected and specially protected invertebrates. The regulation prescribes a number of details that must be kept for each protected or specially protected invertebrate subject to the licence.

Protected invertebrates and specially protected invertebrates are similar to protected plants and fish. This regulation provides similar standards of record keeping to licences for protected invertebrates as to those of protected plants and fish.

Schedule 1 - Reserves

The Schedule provides a list of Special Purpose Reserves that are to be managed as reserves for the purpose of the NC Act. The Special Purpose Reserves listed in Schedule 1 largely occur in the Murrumbidgee and Molonglo River Corridors which are managed for both conservation and recreation.

Dictionary

The Dictionary defines terms used in this regulation.