

Australian Capital Territory

Nature Conservation (Aquatic and Riparian) Action Plans 2018

Disallowable instrument DI2018–240

made under the

Nature Conservation Act 2014, s 104 (Draft action plan—revision) and s 105 (Draft action plan—final version and notification)

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Nature Conservation (Aquatic and Riparian) Action Plans 2018* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the disallowable instrument and to help inform debate on it. 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. The Act establishes the Scientific Committee as an expert body to advise the Minister about the listing of threatened species in the ACT (s 31).

The species listed in the instrument were recommended for declaration as threatened by the former Flora and Fauna Committee, the expert committee established to advise the Minister under the former *Nature Conservation Act 1980* (repealed) (the *1980 Act*).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 is listed as threatened under the 2014 Act in the same category in which it was originally listed.

The exception to this is the Murray Cod (*Maccullochella peelii*). The Murray Cod is listed as threatened under the Commonwealth's *Environmental Protection and Biodiversity Conservation Act 1999*. As such it has "Special Protection Status" and is treated in the same way as a species listed under the *Nature Conservation Act 2014*.

The Commonwealth and ACT Governments are cooperating to align species listings to ensure that the lists include the same species, however, the Murray Cod has not yet been listed as part of that alignment process.

Under section 101 of the Act, the Conservator of Flora and Fauna (the Conservator) is responsible for preparing a draft Action Plan for relevant listed species and communities, unless the Minister decides that an Action Plan is not necessary (s 100A).

Pursuant to section 100 of the Act, an Action Plan must set out proposals to ensure, as far as practicable, the identification, protection and survival of the species. It should identify known critical habitat and propose management strategies to ensure the persistence of the species. Action Plans may state requirements for monitoring the species and its habitats. The Conservator must consider the impact of climate change, specific threats to the species and any connectivity requirements.

Under section 103 of the Act, public consultation on an Action Plan is required before it is finalised. The draft Action Plans for the aquatic and riparian species were released for public consultation from 12 January 2018 to 11 March 2018 inclusive.

Six written submissions were received. The draft plans were revised in response to the submissions and comments received. Additional consultation with the Aboriginal Community was undertaken and the need for ongoing consultation about the management of waterways and native fish was needed. The Conservator sought final comment on the revised final draft plan from the Scientific Committee.

Under section 105 of the Act the final version of a draft action plan prepared by the Conservator is a disallowable instrument. This instrument is the final version of draft Action Plans for the aquatic and riparian species prepared under s104.

The policy objective of the Action Plans is the conservation of the species. In order to achieve this goal the Action Plans contain management objectives. These objectives are supported by management actions. The Action Plans also contain information about the species including a description, conservation status, habitat and threats.

An overarching ACT Aquatic and Riparian Conservation Strategy has also been prepared and forms part of each action plan to the extent that it is relevant.

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 instrument

are of both regional and national significance as they are listed threatened species under either the Act and/or the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC). The Action Plans are in accord with the general objects of the Nature Conservation Act.

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

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

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

The Action Plans do not affect rights, liberties or obligations because they provide guidance about management of threatened species and does not directly impose liabilities on the community.

(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. The preparation, consultation, approval and notification of such Action Plans are provided for in the Act.

Regulatory Impact Statement

No regulatory impact statement (RIS) has been prepared in accordance with section 34 of the *Legislation Act 2001* as the disallowable instrument is not likely to impose appreciable 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 as the matter does not operate to the disadvantage of anyone by adversely affecting a person's rights or imposing liabilities on a person. The Action Plans contain objectives and actions. These provide guidance but do not impose liabilities on anyone or adversely affect anyone's rights.

Human Rights

The disallowable instrument does not affect any human rights contained in the *Human Rights Act 2004*.

Outline of provisions

Section 1 – Name of instrument

This section names the instrument.

Section 2 – Commencement

This section provides for the commencement of the instrument

Section 3 – Native grassland action plans

This section provides that the Action Plans have been prepared. The Action Plans are scheduled to the instrument.

Section 4 – Revocation

This section provides that earlier Actions Plans are revoked.