

**2024**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**TENTH ASSEMBLY**

**Nature Conservation Amendment Bill 2024**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004, s 37*)**

**Presented by  
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## NATURE CONSERVATION AMENDMENT BILL 2024

The Bill is **not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to the Nature Conservation Amendment Bill 2024 (the **bill**) as presented to the Legislative Assembly. It has been prepared to assist the reader of the bill and to help inform debate. It does not form part of the bill and has not been endorsed by the Legislative Assembly.

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

### OVERVIEW OF THE BILL

The purpose of the bill is to amend the *Nature Conservation Act 2014* in order to improve clarity and enhance operability and regulatory responses, and correct previous drafting errors or omissions.

The amendments in the bill:

- Amend offences in sections 213 (enter reserve without paying entry fee) and 214 (offence – animal in reserve) to clarify that the act of remaining in a reserve (without paying the entry fee or allowing an animal to remain in a reserve), not only the act of entering a reserve, is an offence.
- Clarify that the offence to take an animal into a reserve does not apply when animals are confined inside a motor vehicle that is passing through that reserve.
- Amend the offence for feeding native animals in a reserve to include an offence for feeding non-native animals in a reserve (with exceptions for animals otherwise allowed to be in that reserve).
- Amend section 325 (direction to leave reserve) to enable conservation officers to specify the name of the reserve and the length of time until a person can re-enter the reserve after issuing a leave reserve direction. Unless a reserve closure is in place, a maximum exclusion period of 24 hours will apply.

- Amend section 327 (direction to stop vehicle containing animal or plant) to enable conservation officers to issue a stop vehicle direction if they suspect on reasonable grounds that a vehicle or something in the vehicle (not limited to plants and animals, i.e., Aboriginal artefacts, stones, rocks, soil, traps, etc.) is connected with an offence against the NC Act.
- Enable the Conservator to disallow, using activities declarations, activities that may have a negative impact either on the reserve or on reserve users.
- Make technical amendments to correct previous drafting errors.

## **CONSULTATION ON THE PROPOSED APPROACH**

Consultation on the bill was undertaken with staff across EPSDD including the Environment, Heritage and Water division, ACT Parks and Conservation Service, the Office of Nature Conservation, and the legal policy team. The Environment Protection Authority (EPA) was consulted on potential interactions with environmental nuisance provisions under the *Environment Protection Act 1997*. Comments were received from Chief Minister, Treasury and Economic Development Directorate (CMTEDD) and the ACT Human Rights Commission during the exposure draft and have been addressed in the final bill.

## **CLIMATE IMPACT**

The Bill will not have an impact on climate change as it includes minor amendments to enforcement provisions and technical amendments to correct errors in the NC Act. Biodiversity conservation is broadly impacted by climate-related risks and changes to our local climate, however the amendments in this Bill are not likely to have a material impact on climate change.

## **CONSISTENCY WITH HUMAN RIGHTS**

During the development of the bill due regard was given to its compatibility with the rights set out in the *Human Right Act 2004* (the HR Act), noting the bill is not a Significant Bill and does not engage human rights to a significant extent.

### ***Rights engaged***

The Bill engages the following rights under the Human Rights Act 2004:

- Section 22 – Rights in criminal proceedings (limited)
- Section 13 – Right to freedom of movement (limited)
- Section 12 – Right to privacy and reputation (limited)

### ***Rights Limited***

The preamble to the HRA notes that few rights are absolute and that they may be subject to reasonable limits in law that can be demonstrably justified in a free and democratic society.

Section 28 of the HRA requires that any limitation on a human right may only be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

The Bill engages and may limit the rights in criminal proceedings, the right to freedom of movement and the right to privacy and reputation.

### **Section 22 – Rights in criminal proceedings**

#### ***1. Nature of the right and the limitation (s28(a) and (c))***

Section 22 of the HR Act provides the right to be presumed innocent of a criminal offence until proven guilty by law. This means the prosecution has the burden of proving all the elements of the offence and disproving any exceptions or defences raised by the accused.

Amended sections 213, 214 and 215 limit the right to presumption of innocence as they are strict liability offences, placing the burden of proving innocence on the defendant.

#### ***2. Legitimate purpose (s28(b))***

The legitimate purpose is to protect ACT nature reserves from damage or undue interference.

#### ***3. Rational connection between the limitation and the purpose (s28(d))***

The inclusion of strict liability offences in the Bill is to ensure offences are available and can be effectively enforced to deter and punish conduct which may be harmful to reserves.

S213 provides that it is an offence to enter, and remain in, a nature reserve without paying the entry fee. This amendment extends the offence to remaining in the reserve along with entry without paying the entry fee as an offence.

S214 provides that it is an offence to take or allow a non-native animal into a reserve, it also introduces the offence of allowing an animal to remain in the reserve. Reserves provide refuge for native wildlife and non-native animals such as dogs or cats can threaten native wildlife through potential introduction of disease, increasing the spreads of weeds, or stressing native animals with their presence or scent. Non-native animals are prohibited from entering or remaining in some reserves due to the potential threat they pose to native wildlife. The amendment clarifies the intent of the original provision for both regulators and reserve users through including that it is an offence to both enter and remain in a reserve, adding that the offence applies to the keeper of the animal and excepting animals taken through reserves within a motor vehicle.

S215 amends the existing provision (feed a native animal in a reserve) to provide that it is an offence to feed any animal, native or non-native, in a reserve. This amendment captures the intent of the original Nature Conservation Act 2014 by expanding the offence to cover feeding of both native and non-native animals. Irrespective of animals being native or non-native, feeding of wild animals carries risks towards the people feeding the animals (e.g. bites, injuries, transfer of disease) and the animals being fed. The strict liability offence is critical to promote compliance and responsible conduct in the face of risks to both human and animals.

#### **4. *Proportionality (s28 (e))***

The application of strict liability to these offences in the Bill is considered the least restrictive means of effectively enforcing the offences and achieving the legitimate purpose. Safeguards are in place, as outlined below.

S213 - At reserves where payment of an entry fee is required, signages indicate to reserve visitors the need to pay a fee, the cost of the fee, and the fact that entry without paying a fee is an offence under the NC Act. The application of strict liability to this offence is reasonable because, due to this signage and other information publicly available (for example, on government websites), all people who enter a relevant reserve should be aware of their obligations under the law.

S214 - This offence includes an exception to the offence if a person travels through a reserve with an animal confined to a motor vehicle while within the reserve. S214 (1)(b) states that an offence is committed when a person take an animal or allows it to remain in a reserve **and** if the person is the animal's keeper. This provides a safeguard because conservation officers would need to prove a person's connection to an animal first before issuing an infringement for the offence. Conservation Officers also follow procedural guidelines for compliance and enforcement which emphasises education as the foundation of voluntary compliance to the law and that education may sometimes be the most appropriate response to non-compliance. In addition, reserves are also signposted to indicate whether non-native animals are allowed to enter, so it can be expected that a person would be aware of their obligations under this law. An offence is not committed under this provision if a person is accompanied by an assistance animal.

S215 - This amendment will serve to reduce the risks brought about by feeding wildlife, such as encouraging non-desired invasive species and causing harm to native animals through consumption of inappropriate food. The amendment includes an exception to the offence if the animal is allowed to be in the reserve under the NC Act (some reserves allow dogs and horses for example) or another law applying in the ACT (allowing assistance animals for example) and the person is the animal's keeper or allowed by the keeper to feed the animal.

### Section 13 – Right to freedom of movement

#### **1. Nature of the right and the limitation (s28(a) and (c))**

The right to freedom of movement entitles everyone to move freely within the ACT. New section 325(2A) limits this right by preventing a person from entering a reserve after they are provided with a leave reserve direction.

## **2. *Legitimate purpose (s28(b))***

The legitimate purpose is to protect ACT nature reserves from damage or undue interference.

## **3. *Rational connection between the limitation and the purpose (s28(d))***

A leave reserve direction may be provided to a person who is undertaking activities in the reserve that are damaging to the reserve, and/or dangerous to themselves or other reserve visitors. For example, damaging infrastructure or plants within a reserve or being present in a reserve that is the subject of a reserve closure notice under s259. Reserve closures usually take place to protect visitors from hazards such as high fire danger.

The provision provides the power to direct a person to leave a particular reserve as a consequence of offensive behaviour or because impending action could be an offence under the Act. Leave directions are intended to protect the nature reserve from harm.

## **4. *Proportionality (s28 (e))***

Any limitation on the right to freedom of movement must be justified as necessary, reasonable, and proportionate to a legitimate aim. A leave reserve direction is the most effective means for a conservation officer to deal with a situation where a person in a reserve is undertaking damaging or dangerous activity, it does not include a fine and allows an officer to diffuse a situation quickly.

The provision provides that, if no reserve closure is in place, a maximum exclusion period of 24 hours will apply. A conservation officer must advise of the exclusion period when directing a person to leave a reserve and this period can be less than 24hrs if appropriate but will not exceed 24hrs unless a closed reserve declaration is in place. A maximum 24-hour exclusion period (where a reserve closure notice is not in place) is a short and reasonable time period for a leave

reserve direction and is an important safeguard to prevent undue limitation on a person's right to freedom of movement.

Rangers are required to comply with operational policies governing how they use their powers. Individuals can make a complaint to the Directorate if they have concerns about a leave reserve direction issued to them.

### Section 12 – Right to privacy and reputation

#### ***Nature of the right and the limitation (s28(a) and (c))***

Section 12 of the *Human Rights Act* protects individuals from unlawful or arbitrary interference with privacy, family, home or correspondence. New section 327(1) will limit the right to privacy by expanding a conservation officer's power to stop a vehicle if they suspect, on reasonable grounds that a vehicle, or something in a vehicle, is connected with an offence against the Act.

#### ***Legitimate purpose (s28(b))***

The legitimate purpose is to protect ACT nature reserves from damage or undue interference.

#### ***Rational connection between the limitation and the purpose (s28(d))***

The existing provision gives power to conservation officers to issue a stop vehicle direction if they suspect that an animal or plant in a vehicle is in contravention of the Act. The purpose of this amendment is to allow conservation officers to issue a stop vehicle direction in a circumstance related to an offence not involving carriage of an animal or plant.

New s327(1) will expand this provision to include that an officer may stop a vehicle if they suspect on reasonable grounds that 'a vehicle, or something in a vehicle' is connected to an offence under the Act. This is necessary and connected with the legitimate purpose as offences under the Act involving vehicles, or where vehicles contain evidence relating to an offence, may not involve the carriage of an animal or plant. They may relate to another matter protected under the NC Act which could cause harm to the environment including artefacts, soil or rocks, or evidence of an offence such as a weapon, traps or tools for cutting trees.



***Proportionality (s28 (e))***

Expanding the provision in this way will enable our conservation officers to protect our natural reserves more fully.

As a safeguard to prevent arbitrary interference with an individual's vehicle, the amendment requires the conservation officer to suspect on reasonable grounds that a vehicle, or something in a vehicle, is connected with an offence against the Act. This means that mere suspicion is not sufficient and conservation officers cannot arbitrarily stop vehicles.

## Nature Conservation Amendment Bill 2024

### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Nature Conservation Amendment Bill 2024**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA  
Attorney-General

## CLAUSE NOTES

### **Clause 1     Name of Act**

This clause provides that the name of the Act is the *Nature Conservation Amendment Act 2024*.

### **Clause 2     Commencement**

This clause provides that the Act commences on the day after its notification day.

### **Clause 3     Legislation amended**

This clause provides that the legislation amended by the Act is the *Nature Conservation Act 2014*.

### **Clause 4     Chapter 6 exceptions Section 153 (2) (a) (ii) and note**

This clause removes the note under s153 (2) (a) (ii) and amends the section to apply the definition of management agreement to that section. The existing note is insufficient as the term management agreement is only currently defined for chapter 12, including in the dictionary of the Act.

### **Clause 5     Section 153 (2) (a) (v), note**

This clause corrects a note incorrectly referring to a *fisheries resource management plan* to read *fisheries management plan*.

### **Clause 6     Section 213 to 215**

#### **213            Offence – entry fee for reserve not paid**

This clause amends existing section 213 (enter reserve without paying entry fee) to include that it is an offence to enter **or remain in** a reserve. This amendment clarifies the intention of the provision, that it is an offence both to enter a reserve, and to remain in the reserve, if an entry fee has not been paid.

#### **214            Offence – take or allow non-native animal into a reserve**

This clause amends existing section 214 (take animal into reserve) to take or allow a non-native animal to enter or remain in a reserve (with the exception of assistance animals). The amendment introduces at s214(1) (b) that the person must be the animal's keeper to have committed the offence. The amendment also introduces an exception to the offence (s214(3)(a) and (b)) that the section does not apply if the person is travelling through the reserve and the animal is confined within the motor vehicle.

#### **215            Offence – feed animal in reserve**

This clause amends existing s215 to provide that it is an offence to feed both native and non-native animals within a reserve except for circumstances wherein an animal is in the care of a person and the animal is allowed to be in the reserve (e.g., dogs and horses are allowed in some reserves).

#### **Clause 7      Chapter 9 exceptions Section 252 (2) (a) (ii) and note**

This clause substitutes s252 (2) (a) (ii) to apply the definition of management agreement to that section. The existing note is insufficient as the term management agreement is only currently defined for chapter 12, including in the dictionary of the Act.

#### **Clause 8      Section 252(2)(a)(iv), note**

This clause omits the note at s252 (2) (a) (iv) and inserts a new section 252 (3) to include a signpost definition for minor public works.

#### **Clause 9      New section 252 (3)**

This clause inserts a new section 252 (3) to include a referral to the definition for minor public works in the *Planning (General) Regulation 2023*.

#### **Clause 10     Chapter 10 note**

This clause corrects the note at chapter 10 so that it no longer conveys the assumption that all reserves in the ACT are public unleased lands. Some ACT nature reserves are on leased lands.

#### **Clause 11     Section 265 (1) – Conservator may make activities declarations**

This clause amends s256(1) to include that the Conservator may make an activities declaration for an activity that may have a negative impact on a person in the reserve, as well as the reserve itself. This may include activities that have an adverse social impact on reserve users such as activities that create excessive noise (use of loud generators for example), dust, offensive odours, etc.

**Clause 12 Offence- enter closed reserve Section 260 (1) (b)**

This clause amends s260 to include that it is an offence to both enter, and remain in, a reserve that is subject to a closed reserve declaration under s259.

**Clause 13 Part 10.2 exceptions Section 261 (2) (c), except note**

This clause amends s261 (2) (c) to include an exception for activities undertaken in accordance with a management agreement under chapter 12 or, for minor public works on a reserve, in accordance with a minor public works code.

**Clause 14 New section 261 (4)**

This clause inserts new section 261 (4) to include a signpost definition for minor public works.

**Clause 15 Direction to leave reserve New Section 325 (2A)**

This clause inserts new section 325 (2A) to enable conservation officers to specify the name of the reserve and the length of time until a person can re-enter the reserve after issuance of a leave reserve direction. The proposed amendment will provide a maximum exclusion period of 24h hours unless a reserve closure is in place. In that circumstance, they may issue a notice stating that a person may not return until the reserve closure notice is no longer in place.

**Clause 16 Section 327 heading**

This clause removes the term “containing animal or plant” from the current heading to align with the amendment in s327.

**Clause 17 Section 327 (1), except note**

This clause amends existing s327 (direction to stop vehicle containing animal or plant) to enable conservation officers to issue a stop vehicle direction if they suspect

on reasonable grounds that a vehicle or something in the vehicle (not limited to plants and animals) is connected with an offence against the NC Act. This may include soil, rocks, Aboriginal artefacts etc.

**Clause 18 New section 327 (6)**

This clause inserts the definitions for the words *connected* and *offence* at s327(6).