

Chapter 5

Biodiversity conservation

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Biodiversity conservation

Introduction

Biodiversity exists everywhere — including in Canberra Nature Park, on rural properties and in urban Canberra. Legislation and legal agreements for biodiversity conservation are aimed at protecting and managing the diversity of our ecosystems, species, and genetic diversity—the components of biodiversity.

Many territory Acts affect biodiversity, including legislation for land use planning and development, tree protection, the keeping of native and introduced animals, wood collecting, and conservation generally. The two critical pieces of legislation are the ACT's *Nature Conservation Act 2014* ('*Nature Conservation Act*') and the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* ('*EPBC Act*').

Biodiversity can also be protected under various agreements between governments and stakeholders that are not expressed in legislation. Some regional and territory-wide initiatives, such as the 'Kosciuszko to Coast' project, may also benefit biodiversity, but are unlikely to involve any legislative endorsement. The first section of this chapter describes some of these non-legislative instruments which provides the policy context within which the legislation, summarised in later sections, operates.

Understanding the legislation, regulations, and processes that operate in the ACT enables citizens to monitor whether land owners and managers, including the ACT government, are fulfilling their legal obligations to protect the territory's biodiversity. Knowledge of biodiversity law and practice also enables citizens to participate constructively in public consultations and debates, and take other action that might lead to greater protection of our environment. Citizens should be aware of the limits that are imposed on domestic activities such as keeping animals, growing certain plants and tree removal. Public assistance in reporting activities such as illegal fishing, the taking of plants or wood from reserves and the keeping or trapping of native animals can help to protect biodiversity in the ACT. Informed advocacy may also lead to better education, policing, and prosecution where appropriate.

Mechanisms for protecting biodiversity

National policy development

Australia's first national biodiversity strategy, developed to fulfil Australia's obligations under the United Nations Convention on Biodiversity, was endorsed

by the Council of Australian Governments (COAG) in 1996. The current strategy, Australia's Biodiversity Conservation Strategy 2010-2030, establishes a long-term, national framework for biodiversity conservation. The Strategy focuses on three priorities for action to stop the decline in biodiversity: engaging all Australians; building ecosystem resilience in a changing climate; and getting measurable results. A review of the Strategy was undertaken in 2015.

Australia's Native Vegetation Framework was established by the COAG Standing Council on Environment and Water in 2012. The policy updates the 2001 National Framework for the Management and Monitoring of Australia's Native Vegetation, and is intended to guide the ecologically sustainable management of Australia's native vegetation. The framework is designed to complement Australia's Biodiversity Conservation Strategy 2010-2030 by setting out specific priorities for native vegetation based on the Strategy's principles and priorities. Key goals include increasing the national extent and connectivity of native vegetation; maintaining and improving its condition and function; and building capacity to understand, value and manage native vegetation.

In 2013, the Commonwealth announced a 'One-Stop Shop' policy designed to create a single environmental assessment and approval process for nationally significant environmental matters. The policy is to be implemented through approval bilateral agreements under the *EPBC Act*, whereby the Commonwealth can transfer its assessment and approval responsibilities to the State or Territory. At the time of writing, all of the states and self-governing territories had entered into bilateral agreements with the Commonwealth, covering assessment procedures only. Bilateral agreements covering environmental approvals are currently in draft form with the ACT, NSW, Queensland, Tasmania, South Australia and Western Australia. To date, no bilateral agreements covering approvals have been entered into; therefore all matters must still be referred to the Commonwealth minister for environmental approval (see Chapter 4 in this Handbook for more information on the bilateral agreements).

Regional scale conservation

A small part of the ACT falls within the Australian Alps sub-bioregion, while the remainder falls within the South-Eastern Highlands sub-bioregion. Environment ACT is a party to the Memorandum of Understanding on Cooperative Management of the Alps Parks (together with the NSW National Parks and Wildlife Service, Parks Victoria, and the Commonwealth Department of the Environment) and participates actively in the Alps Cooperative Management Program. The Alps bioregion is recognised by the World Conservation Union as one of the 167 world centres of biodiversity, and the Kosciuszko National Park was listed as a UNESCO Biosphere Reserve in 1997.

The ACT is part of the Murrumbidgee River Catchment within the Murray-Darling Basin. The Murray-Darling Basin Authority oversees the implementation of the Basin Plan under the *Water Act 2007* (Cth), which aims to enable the Commonwealth and

Basin States to manage water resources and protect biodiversity in the Murray-Darling Basin (see Chapter 8 in this Handbook for more information on water law).

The value of a regional planning approach is recognised in the [ACT Nature Conservation Strategy 2013-2023](#), particularly in relation to habitat linkages and wildlife corridors. Regional connectivity is also recognised in the [Australian Government's National Wildlife Corridors Plan 2012](#), which establishes a framework for landscape-scale conservation. The December 2011 [ACT-NSW Memorandum of Understanding for Regional Collaboration](#) also provides a framework for a regional approach to resource management.

The ACT has interests in regional and continental-scale wildlife corridor projects such as the Bush Heritage Australia initiated '[Kosciuszko to Coast](#)' project, which involves a broad partnership of government agencies, catchment authorities and large and small conservation groups. Kosciuszko to Coast has received funding from the 'Great Eastern Ranges Initiative' since 2008. The Initiative funds community-based habitat restoration projects to promote the connectivity of landscapes across the Great Dividing Range and Great Eastern Escarpment.

As noted in Table 1 (located at the end of this chapter) high quality box woodlands are critically endangered nationally, and are endangered in the ACT. The largest and best surviving stands of these woodlands occur primarily in the ACT/Queanbeyan/Goulburn region. Similarly, there are some surviving patches of the endangered natural temperate grasslands of south-eastern Australia, and their associated flora and fauna, in the ACT and New South Wales.

Territory scale conservation

More than half of the territory is in designated protected areas and is managed to maintain and protect its biodiversity and associated natural and cultural resources and values. But biodiversity in the territory is also under pressure—already two



ecological communities and at least 18 plant and animal species are endangered, and over 15 species are vulnerable, as listed in Table 1. Extreme weather events such as drought, heavy rains, dust storms and bushfires, have a negative impact on biodiversity. These may be related to longer term climate change. Urban expansion, habitat fragmentation, and pest plants and animals also threaten biodiversity and agriculture in the territory.

Both the Territory Plan (TP) and the National Capital Plan (NCP) seek to protect biodiversity by establishing significant wilderness areas, parks and reserves, hills and ridges, urban open space, river corridors and wildlife corridors (see Chapters 2 and 3 in this Handbook for more information on planning and development in the ACT and Chapter 4 for information on environmental assessment at both the strategic and individual development levels).

A number of conservation strategies are in place to guide the protection and management of the territory environment. The Nature Conservation Strategy 2013-2023, mentioned above, provides a long-term framework for conservation in the ACT (see further below). The ACT Weeds Strategy 2009-2019 and ACT Pest Animal Management Strategy 2012-2022 seek to reduce the damaging impact of weeds and pest animals on native plants and animals in the ACT.

The ACT Natural Resource Management Councils' 2009 Bush Capital Legacy is a strategic document which sets out a road map for addressing challenge such as improving land and water quality, maintaining and improving environmental flows or rivers, reducing the rate of biodiversity loss and reducing the ACT's ecological footprint. The vision for biodiversity is that biodiversity decline is halted, then sustainably managed to ensure resilient ecosystem functioning. The document sets targets for biodiversity conservation and identifies actions and monitoring that needs to be done. Funding to implement the Council's strategy will be drawn from the National Landcare Programme.

The ACT government's sustainability policy, People Place Prosperity, last revised in 2009, includes as a guiding principle 'valuing and conserving biodiversity and ecological integrity' (p 4).

The ACT government has also introduced legislation and policies to address climate change and its impact on biodiversity. The *Climate Change and Greenhouse Gas Reduction Act 2010* establishes emissions reduction targets. The strategy for meeting the 2020 targets is set out in AP2: A New Climate Change Strategy and Action Plan for the ACT (2012) (see Chapter 11 in this Handbook for more information on climate change law in the ACT). At the time of writing, the ACT government is preparing the ACT Climate Change Adaptation Strategy. The Strategy will build on the Nature Conservation Strategy 2013-2023 to enhance the resilience of the natural environment.

The Conservation Council ACT Region, the peak non-government environment organisation for the Canberra region, argues that in addition to current TP and NCP corridors, additional and enhanced woodland, grassland and riparian corridors

should be created through urban Canberra. Lobbying will continue for such corridors to be recognised as a conservation overlay in both plans (see Chapter 2 in this Handbook for more information on the ACT planning strategy).

The ACT has a commendable record of community participation in all aspects of biodiversity conservation, such as on-ground work, public education, research, and advocacy. The territory has several sub-catchment community organisations involved in prioritising the implementation of agreed sub-catchment plans, for example, for Tuggeranong-Tharwa, Weston-Woden, south-west rural ACT, and the upper Murrumbidgee. Volunteers in community groups such as Landcare, Park Care, Waterwatch and Frogwatch actively contribute to conservation in the territory. The Conservation Council ACT Region, and many of its member groups have a strong history of advocacy, education, research and on-ground work and generally improving community understanding of flora and fauna issues. This work is complemented by that of national organisations such as Greening Australia and Conservation Volunteers Australia.

While some environmental groups are sometimes dissatisfied with the lack of policy responsiveness to the often expert submissions they have made and views they have expressed during consultation processes, so too are industry and other stakeholders sometimes critical of various planning and development decisions that the ACT government has taken. Some of these concerns have been taken up by the ACT Commissioner for Sustainability and the Environment, and some have been pursued through the courts, with mixed success (see Chapter 12 in this Handbook for more information on taking action and the Contacts list at the back of this book for contact details for the groups mentioned above).

Local scale biodiversity conservation

Local scale biodiversity conservation can concern small areas of vegetation or even individual trees, and can involve various land uses. Local scale ecological connectivity can reduce the environmental pressures created by urban development. For example, indigenous trees that are retained in ecological communities, native grasslands and grassy woodland paddocks, and remnant indigenous trees that have been retained in the urban landscape, all serve a biodiversity purpose. Other introduced trees, such as arboreta for research and other purposes, and trees in rural areas, public landscapes, street trees and home gardens, while generally not serving a biodiversity function (except in the case of certain native trees) often have an amenity and heritage value and perform a range of ecological services. Debate continues amongst ecologists, landscape architects and heritage stakeholders, amongst others, about how the territory should change the exotic/indigenous balance in its urban forest. The ACT government has an ambitious long-term tree replacement program, and also replaces trees that have died as a result of drought, old age or other causes (see Chapter 6 in this Handbook for more information on tree preservation).

Local scale biodiversity conservation can be protected under territory planning and implementation processes. For example, management plans for public lands, master plans, and neighbourhood plans usually address local-scale environmental protection. So too can development application assessments, and lease management. The territory's Design Standards for Urban Infrastructure such as 'Plant Species for Urban Landscape Projects' apply to all infrastructure works constructed by, or to be managed by, the Territory and Municipal Services Directorate of the ACT Government (TAMS). The Design Standards recognise that high quality landscape development, enhancement and protection should be pursued as an integral part of the development of Canberra.

Nature Conservation Act 2014

Introduction

The recently enacted *Nature Conservation Act 2014* ('*Nature Conservation Act*') aims to 'protect, conserve and enhance the biodiversity of the ACT' (s 6). The Act replaces the *Nature Conservation Act 1980*, and seeks to strengthen the existing ACT nature conservation framework.

The *Nature Conservation Act* expands the role of the Conservator of Flora and Fauna in managing and monitoring nature conservation in the ACT (part 2.1) and aligns the ACT process for listing threatened species and ecological communities with the Commonwealth *EPBC Act*.

The Act provides for the ACT Parks and Conservation Service (part 2.2) and the Scientific Committee (part 2.4). The Act requires a Nature Conservation Strategy for the ACT (ch 3) (mentioned above) and provides special protection measures for threatened native species and ecological communities (ch 4), including action plans (part 4.5), conservation plans (ch 5) and management plans (ch 7 and 8). The Act and its subordinate legislation also provide for monitoring, compliance and enforcement activities.

The Conservator and the Parks and Conservation Service

The Conservator of Flora and Fauna (the conservator), or the person exercising the conservator's duties, is a public servant appointed under the *Nature Conservation Act* (s 20). At the time of writing the conservator was the Executive Director of Policy at the Environment and Planning Directorate. The conservator has statutory powers under the *Nature Conservation Act*, the *Planning and Development Act 2007* (ACT), the *Tree Protection Act 2005* (ACT), and the *Fisheries Act 2000* (ACT).

Under the *Nature Conservation Act*, the conservator has the following functions:

- developing and overseeing a range of policies, programs and plans for the effective management of nature conservation in the ACT

- monitoring the state of nature conservation in the ACT, including through the preparation and implementation of a biodiversity research and monitoring program (ss 24-26)
- providing information to the Commissioner for Sustainability and the Environment for inclusion in the state of the environment report (s 21).

The conservator also has a role in managing the nature reserve system in the ACT (ch 10), including advising the minister on whether to declare Resource Protection Areas within reserves, and making declarations restricting or prohibiting activities that may have a negative impact if carried out in reserves, or closing reserves for public safety or reserve management purposes (ch 10) (for further detail about public land see Chapter 7 in this Handbook). Further, the conservator has a role in granting nature conservation licences for the sustainable use of biodiversity (ch 11); entering into management agreements with agencies who manage land, such as utility suppliers and land developers (ch 12) (for further detail on Land Management Agreements see Chapter 7 in this Handbook); and giving advice about the adverse environmental impacts of proposed developments, and ways to minimise those impacts and suitable offsets (ch 13) (for further information on development applications see Chapter 3 in this Handbook).

The Act also establishes the ACT Parks and Conservation Service (the ‘Service’) (s 27). The Service comprises conservation officers, including the rangers we see in parks and reserves (s 27). The role of the Service is to assist the conservator in the exercise of his or her functions under the Act (s 27). The conservator may delegate any of his or her functions under the Act to conservation officers (s 22), who also have specified investigation and enforcement powers (ch 14).

A conservation officer can direct a person to leave a reserved area if they are acting in an offensive manner, or are reasonably suspected of having acted in an offensive manner; or if they are creating a public nuisance or committing an offence against the Act (s 325). Conservation officers can also direct persons to provide certain information or stop certain activities, and have powers of inspection, search and seizure in relation to land, premises, vehicles and vessels for enforcement purposes (ch 14). Offences under the *Nature Conservation Act* are described further below.

The Service also conducts research and monitoring work, and assists the many volunteer environment and conservation organisations that contribute to biodiversity conservation in the ACT, including organisations in the Parkcare network.

The Scientific Committee

The Scientific Committee (the ‘Committee’) established under the *Nature Conservation Act* (s 31) is responsible for advising the minister and the conservator about nature conservation and exercising any other functions given to it under the Act or another ACT law (s 32). The Committee is required to provide the minister with a report on its activities each year, and to make the report publicly available (s 33). The minister can give the Committee written directions to provide advice about a conservation matter (s 34). The conservator has to include a copy of any directions,

and information about the actions taken to implement them, in his or her annual report (s 34) (see Contacts list at the back of this book.)

The appointees to the Committee must have scientific expertise in biology, ecology or conservation, and at least four must not be public servants (s 36). Seven members are appointed by the minister on a part time basis and hold office for up to 3 years, but can be reappointed.

The minister may also set up additional advisory committees (s 46).

Nature Conservation Strategy

The Nature Conservation Strategy, discussed above, is a policy document required by the *Nature Conservation Act* (ch 3). The Strategy is developed by the conservator and approved by the minister. In developing the Strategy, the conservator must consult with the Committee, the Commissioner for Sustainability and the Environment and the public. The conservator is responsible for implementing, monitoring the effectiveness of the Strategy (with a report to the minister every 5 years), and reviewing the Strategy (every 10 years).

The current Nature Conservation Strategy is the Nature Conservation Strategy 2013-2023. The document builds on the original 1997 strategy and aims to enhance the resilience of natural areas at wider 'landscape scales' including by better integrating and extending conservation efforts beyond reserves to include natural areas across a range of land uses and tenures, and cross-border, to ensure ecosystems remain healthy and well-managed (p 2). Its vision is for 'biodiversity rich, resilient landscapes stretching from the inner city to the mountains, where well-functioning ecosystems can meet the needs of people and the environment' (p 3).

It sets out strategies and actions for:

- enhancing habitat connectivity and ecosystem function
- managing threats to biodiversity
- protecting species and ecological communities
- enhancing the biodiversity value of urban areas
- strengthening community engagement
- implementing the strategy and monitoring and reviewing its effectiveness.

Identifying species and communities at risk

Threatened native species, ecological communities and key threatening processes

Part 4.1 of the *Nature Conservation Act* requires the minister to make a threatened native species list divided into several categories (s 63), which are intended to align

with the categories used in the *EPBC Act* and largely reflect IUCN categories. A species may be listed as:

- extinct – if there is no reasonable doubt that the last member of the species has died
- extinct in the wild – if members of the species exist, for example in cultivation or captivity, or outside their native range, but are no longer found in their natural habitat
- critically endangered – if it is facing an extremely high risk of extinction in the wild in the immediate future
- endangered – if it is not critically endangered, but it is facing a very high risk of extinction in the wild in the near future
- vulnerable – if it is not critically endangered or endangered, but it is facing a high risk of extinction in the wild in the medium-term future
- conservation dependent – if it is the subject of a native species conservation plan and the ending of the plan may result in the species becoming vulnerable, endangered or critically endangered
- provisional – if there is a strong decline in species numbers in the ACT and surrounding region, or the species occurs or is likely to occur in the ACT and is listed as a threatened native species under a law of another jurisdiction (e.g. Cth, NSW), or the species was listed in the extinct category, but has been located in nature. Provisional listings only last for 18 months. The species is then either moved to another category or removed.

The minister must also make a threatened ecological communities list divided into the categories of critically endangered, endangered, vulnerable and provisional, which are defined similarly to the categories for threatened native species above (part 4.2), and a key threatening process list of processes that threaten a native species or ecological community (part 4.3).

The minister is required to develop criteria to be used in deciding whether a species, ecological community, or process should be listed, in consultation with the conservator and the Committee. These criteria are disallowable instruments, which must be notified, and presented to the Legislative Assembly under the *Legislation Act 2001*. At the time of publication, no criteria had been notified under the *Nature Conservation Act*.

Any person may nominate an item to be included in a list, transferred to another category within a list, or omitted from a list. The nomination must comply with any requirements prescribed by regulation for the nomination and be given to the Committee (s 81). Individuals making a nomination for the inclusion in a list of particular species or ecological communities not listed as threatened in the ACT might use as evidence their status in other jurisdictions (such as NSW, Victoria and/or the Commonwealth) (see Contacts list at the back of this book for information on locating threatened species and communities listings, such as, the [Commonwealth listing of threatened flora and fauna](#); the [NSW threatened species profile search](#); and the

Victorian list of threatened flora and fauna.

The Committee may also make nominations (s 83). The Committee may consult the public about any nomination (s 84) and must carry out a listing assessment of a nominated item that considers whether the item meets the eligibility criteria (s 85). If the Committee considers that the item is eligible to be included, transferred, or omitted from a list, it prepares a listing advice for the minister setting out the grounds for the committee's view (s 86).

The minister is required to take into account the Committee's advice, the eligibility criteria, and the effect that the decision will have on the survival of the item in determining whether to include, transfer or omit an item (ss 88-90). If the minister decides to include, transfer or omit an item, the minister must revise and prepare a final version of the list (s 87). The minister's decision must be taken within 3 months of receiving the listing advice.

The threatened native species list, threatened ecological communities list and key threatening processes list are legislative instruments, accessible on the web through the ACT legislation register (see Contacts list at the back of this book).

Threatened native species

The most recent list of species is in the *Nature Conservation Threatened Native Species List 2015 (No 1)* (NI 2015-438) (s 63). A comparison of listings under this instrument and protective listings by the New South Wales and Commonwealth governments can be seen in Table 1 at the end of this chapter.

In its various conservation strategies, particularly the woodland, grassland and riparian action plans (see below), the ACT government gives special attention to species that are listed in jurisdictions found outside the ACT. In the action plans, these species are described as uncommon and or rare. Mention is also made in the action plans of lists of other uncommon and or rare species in the ACT which receive special management attention (see Table 1).



Threatened ecological communities

Under the *Nature Conservation Threatened Ecological Communities List (No 1)* (NI 2015—437), two threatened ecological communities are listed as endangered in the ACT: Natural Temperate Grasslands, and Yellow Box/Red Gum Grassy Woodland (s 69). Both are also listed under the Commonwealth *EPBC Act*, and box woodland is also listed in New South Wales (see Table 1). However, the definitions used in the different jurisdictions vary. For example, natural temperate grasslands defined under the *EPBC Act* include the ACT's montane grasslands, whereas the ACT listed ecological community does not. Natural temperate grasslands are afforded some protection under New South Wales native vegetation legislation.

Recovery teams consisting of government agencies, experts, non-government organisations and community representatives, may be established to identify, protect, manage and recover threatened ecological communities and species. One successful recovery team is the Natural Temperate Grasslands of the Southern Tablelands of NSW and the ACT Recovery Team, which has representatives from the ACT and New South Wales governments, catchment management authorities, the New South Wales Farmers Federation, and community groups such as Friends of Grasslands and Greening Australia. This team not only provides expert advice, but uses funding to employ a project officer to map potential grasslands remnants, to identify new sites, and to bring new sites under conservation management.

Protected Native Species

Part 5.2 of the *Nature Conservation Act* requires the minister to make a protected native species list divided into the following categories:

- restricted trade – if unrestricted trade in the species is likely to have a negative impact on populations of species in the wild
- rare – if it is not a threatened native species, does not have special protection status and is rare in the ACT
- data deficient – if there is insufficient information about the species in the ACT for the species to be listed as a threatened native species or in any other category of protected native species
- any other category prescribed by regulation.

The minister is required to develop criteria to be used in deciding whether a species should be listed as a protected native species, in consultation with the conservator and the scientific committee. The protected native species list criteria is a disallowable instrument. At the time of publication, no criteria had been notified under the *Nature Conservation Act*.

The protected native species list is a notifiable instrument, accessible on the web through the ACT legislation register (see Contacts list at the back of this book). The list contains species eligible under the protected native species list criteria. The most recent list of protected native species is the *Nature Conservation Protected Native Species 2015* (NI 2015—317).

Special protection status

Special protection status is the highest level of statutory protection that can be given to flora and fauna under the Act, and there are increased penalties for unauthorised activities affecting species with special protection status to recognise the greater environmental consequences of such offences, as well as tighter licensing constraints for activities affecting species with special protection status (i.e. licences may only be provided for research or management purposes or ex situ conservation).

A native species has special protection status if it is a threatened native species under the Act; or if it is a listed threatened species or listed migratory species under the Commonwealth *EPBC Act* (s 109). See also Table 1 at the end of this chapter.

Exempt animals

The conservator may declare a stated animal to be an exempt animal under section 155 of the *Nature Conservation Act*. Exempt animal declarations are disallowable instruments. In making such a declaration, the conservator must consider the need to protect native species in the ACT, and the need to conserve the significant ecosystems of the ACT, NSW and Australia.

Many of the offence provisions in the Act, described further below, do not apply to exempt animals. For example it is not unlawful to keep or sell exempt animals in the ACT, or to import or export them from the ACT. Further, no license is required to do so.

The most recent declaration of exempt animals is the *Native Conservation (Exempt Animals) Declaration 2015* (DI2015—118). The exempt animal declaration is in place to protect native species in the ACT and conserve the significant ecosystems of the ACT, NSW and Australia by preventing certain species from being kept in the ACT (ss 133, 155). The list of exempt animals includes native animals that are often household pets and which pose no known threat to wildlife, for example, Galahs, Sulphur Crested Cockatoos and the Eastern Blue-tongued Lizard. The list also includes those exotic animals which are considered unlikely to become established in the wild, to exacerbate existing pest populations, or introduce a disease to wild populations.

Controlled native species

The minister may declare a native species to be a controlled native species under section 157 of the *Nature Conservation Act* if the minister is satisfied that the species is having an unacceptable impact on an environmental, social or economic asset. Examples of the types of unacceptable impacts that native species can have include: the impact of large eastern grey kangaroo populations on endangered ecological communities; the transmission of diseases by camps of grey-headed flying-foxes; aggressive behavior by individual magpies; and invasion of local native vegetation by Cootamundra wattle. Controlled native species declarations are disallowable

instruments. Controlled native species may be the subject of controlled native species management plans (discussed further below).

Exotic pest plants and animals are managed under the *Pest Plants and Animals Act 2005* which is discussed further below.

Protecting biodiversity

The *Nature Conservation Act* requires a number of plans to be prepared to assist with the protection of biodiversity, as well as creating a number of offences, a licensing regime for certain activities, and requiring certain users of public or unleased land to enter into management agreements with the conservator.

Action plans

Part 4.5 of the *Nature Conservation Act* requires the conservator to prepare action plans for each:

- relevant species –critically endangered, endangered or vulnerable species; and migratory species listed under the *EPBC Act* that regularly occur in the ACT
- relevant ecological community – critically endangered, endangered or vulnerable ecological communities, and
- key threatening process (s 101)

unless the conservator reasonably believes that the species or ecological community does not occur in the ACT; or for vulnerable species or communities, the conservation advice for the species or community provides adequate guidance for the appropriate management of the species or community; or the species is the subject of a native species conservation plan.

A plan must set out proposals to ensure as far as practicable the identification, protection and survival of threatened species and ecological communities; and to minimise the effect of key threatening processes.

The known critical habitat for the species or community must be, and management strategies to ensure the persistence of the species or community and monitoring requirements may be, included in an action plan (s 100).

In preparing a draft action plan, the conservator must consider the impact of climate change on the species or community; threats to the species or community; the connectivity requirements and critical habitat of the species or community (s 101); and consult with the Committee (s 102).

Each action plan is first released as a draft for public comment. The conservator has to publish the draft action plan and a notice inviting written submissions about the draft action plan as a notifiable instrument under the *Legislation Act 2001*. The public consultation period must be at least 6 weeks (s 103).

The conservator then prepares the final action plan, taking into account any submissions. Action plans are disallowable instruments and are available on the ACT legislation register.

The Act imposes a duty on the conservator to take reasonable steps to implement action plans that are in force (s 107) and to monitor and report on their effectiveness to both the public and to the minister at least once every 5 years (s 108). Action plans are reviewed by the Committee every 10 years or at the conservator's request and recommendations can be made to amend the plans.

On transition from the *Nature Conservation Act* 1980 to the *Nature Conservation Act* 2014, all action plans in force under section 42 of the former Act were taken to be action plans under the new Act.

Several current action plans cover a threatened ecological community and the threatened native species that inhabit it, or multiple threatened native species with similar habitat requirements, in one plan, including:

- Woodlands for Wildlife: ACT Lowland Woodland Conservation Strategy (Action Plan No.27) (DI2004-52)
- ACT Lowland Native Grassland Conservation Strategy (Action Plan No.28) (DI2005-84)
- ACT Aquatic Species and Riparian Zone Conservation Strategy (Action Plan No.29) (DI2007-84).

In addition, action plans are in force for the Northern Corroboree Frog, the Brush-Tailed Rock Wallaby, the Spotted-tailed Quoll, the Glossy Black-Cockatoo, the Little Eagle, the Smoky Mouse, the Canberra Spider Orchid, the Brindabella Midge Orchid, a subalpine herb *Gentiana baeuerlenii* and the Murrumbidgee Bossiaea.

Action plans are important strategic and reference documents for sustainable development. They are implemented by government working in partnership with stakeholders, through the mechanisms appropriate for the land tenures to which the strategy document applies. Action plans inform the development of management plans for public land and urban planning policy development and decision-making. They have also been cited in evidence by stakeholders in legal challenges to government planning decisions, for example, in *Thornbrook Pty Ltd and Cowper Pty Ltd v Commissioner for Land & Planning and Ors* [2002] ACTAAT 7.

Native species conservation plans

Part 5.3 of the *Nature Conservation Act* empowers the conservator to prepare native species conservation plans for native species that have special protection status or other native species if the conservator considers this to be appropriate (s 117).

A native species conservation plan details how the native species may be appropriately managed and may apply across the ACT or to discrete areas within the ACT. A native species conservation plan may apply, adopt or incorporate other instruments as

in force from time to time such as fisheries management plans under the *Fisheries Management Act 2000* or conservation agreements under the *EPBC Act* (s 116).

In preparing a draft native species conservation plan, the conservator must consult the Committee and the lessee of the land (if the land is leased land) or the custodian of the land (if the land is unleased land or public land). Similarly to action plans, each draft native species conservation plan must also be released for public comment (s 120).

The conservator then prepares the native species conservation plan, taking into account any public submissions. Native species conservation plans are disallowable instruments and are available on the ACT legislation register (ss 163 and 165).

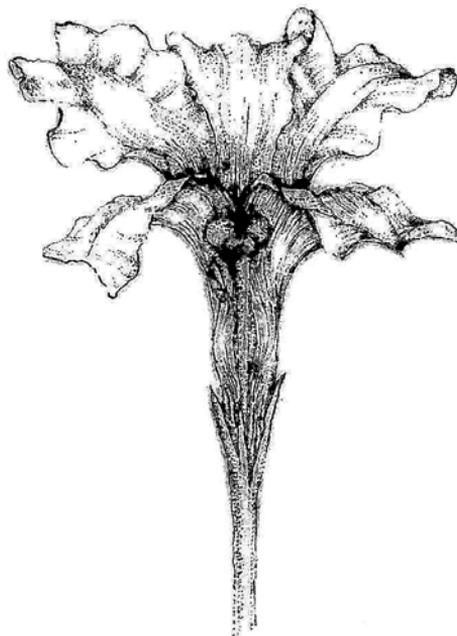
The Act imposes a duty on the conservator, the lessee of the land or the custodian of the land to take reasonable steps to implement the plan (s 124). The conservator must also monitor and publicly report on the effectiveness of a native species conservation plan and may ask the Committee to review it (s 125).

Controlled native species management plans

Chapter 7 of the *Nature Conservation Act* empowers the conservator to prepare controlled native species management plans for controlled native species (s 160).

A controlled native species management plan details how the native species may be appropriately managed and may apply across the ACT or to discrete areas within the ACT. Appropriate management might include prohibitions on feeding an animal species or prohibitions on the propagation of a plant species. A controlled native species management plan may apply, adopt or incorporate other instruments as in force from time to time such as conservation agreements under the *EPBC Act* (s 159).

The intention is that by dealing with controlled native species in the *Nature Conservation Act* rather than in the *Pest Plants and Animals Act 2005*, broader environmental issues can be considered such as the species' conservation status in the ACT or the ecological role of the species in the ecosystem.



In preparing a draft native species conservation plan, the conservator must consult the lessee (if the land is leased land) or the custodian of the land (if the land is unleased land or public land). Except in emergency situations, each draft native species conservation plan must also be released for public comment (ss 161, 162 and 164).

The conservator then prepares the final action plan, taking into account any public submissions. Action plans are notifiable instruments and are available on the ACT legislation register (ss 163 and 122).

The Act imposes a duty on the conservator and, if the land is unleased land or public land, the custodian of the land to take reasonable steps to implement the plan (s 167). The conservator must also monitor the effectiveness of a native species conservation plan and review each plan at least once every 5 years (s 125).

Offences

Division 6.1.2 of Chapter 6 of the *Nature Conservation Act* protects native animals by setting up a range of offence provisions. For example, a person must not, except in accordance with a licence or pursuant to a valid defence:

- interfere with the nest of a native animal, or with anything in the immediate environment of such a nest (ss 128-129)
- kill, injure or endanger, or take (whether dead or alive) a native animal (ss 130-132)
- keep, sell, import or export an animal (other than an exempt animal) (ss 133-137)
- release an animal from captivity (s 138) (see section on Licences below).

Offence provisions also apply for the protection of plants (div 6.1.3). For example, a person must not, except in accordance with a licence or in certain offence specific excepted circumstances (such as where the taking is incidental to an approved development or the maintenance of public areas):

- take a native plant growing on unleased land. There are higher penalties where the taking is for a commercial purpose (ss 140-141)
- take a native plant that is a protected native species or has special protection status growing on any land (ss 142-143)
- damage a native tree on leased or unleased land, or damage or take native fallen timber on unleased land or leased land outside a built-up urban area (ss 144-146)
- sell, or import into or export from the ACT, a native plant that is a protected native species or has special protection status (ss 147-152).

As noted above, the penalty applicable to these offences is higher where the animal or plant species involved has special protection status.

Exceptions and/or defences to prosecution are available under the Act. For example, it is a defence to a prosecution for interfering with a nest of a native animal if the defendant believed, on reasonable grounds, that the danger of death or not being able to breed did not exist, or that the nest alleged to have been interfered with was not a nest, or was not in the immediate environment of a nest (s 129(3)). It is not an offence to kill an animal if it is endangering a person, or if the death or the animal occurred by an accidental collision with a motor vehicle (s 130(3)). It is not an offence to take a protected native species if an occupier takes a plant growing on their land which they have planted or if the occupier of land in a built-up urban area takes a plant from that land.

The Environment and Planning Directorate's 2013-2014 Annual Report, which relates to a period when the former *Nature Conservation Act 1980* was in force, states that 32 matters were investigated during that period. No matters were referred to the Director of Public Prosecutions. One offender was issued with a formal caution under the former Act, and nine offenders were issued with eleven infringement notices. Three offenders were issued with formal cautions under the *Tree Protection Act* and five investigations remained active in relation to the former Act. Minor offences, such as walking a dog off a lead in a reserve area were reported during this period. The report also noted regular liaison between Parks and Conservation Service rangers and the Australian Federal Police Rural Patrol.

Penalties

The *Nature Conservation Act* includes various offence and penalty provisions. Penalties under the Act can be substantial. For example, the maximum penalty for interference with a nest that endangers the life of the animal or its progeny, or places the animal in danger of not being able to breed, can be up to 200 penalty units, or imprisonment for two years, or both, if the animal has special protection status. If the animal does not have special protection status, the maximum penalty can be up to 100 penalty units, imprisonment for one year or both. Under the *Legislation Act 2001* (ACT), a penalty unit is currently \$150 for an individual and \$750 for a corporation.

Different penalties apply depending on the level of fault for some offences. For example, the maximum penalties for clearing native vegetation in a reserve which causes serious harm vary. For example, if the offence was:

- deliberate, the penalty can be up to 2,500 penalty units, imprisonment for seven years or both
- reckless, the penalty can be up to 2,000 penalty units, imprisonment for five years or both
- negligent, the penalty can be up to 1,500 penalty units, imprisonment for three years or both (s 234).

If charged with a strict liability offence, the maximum penalty can be 50 penalty units. Strict liability means that there are no fault elements for the physical elements

of the offence (*Criminal Code 2002* (ACT), s 23(a)). In other words, for a strict liability offence, the prosecution need only to prove that the accused's conduct was in contravention of the Act. The prosecution does not need to prove that the accused intended to contravene the Act. However, for strict liability offences, the accused may raise the defence that they made an honest and reasonable mistake as to the facts in relation to the physical elements (s 23(b)).

Licences

Chapter 11 of the *Nature Conservation Act* enables the conservator to licence various activities, which would otherwise be prohibited under the Act, by granting a nature conservation licence (s 262). The conservator may only issue a nature conservation licence if reasonably satisfied that the applicant, each influential person for the applicant where the applicant is a corporation, and any person who will have management or control of the activity, is a suitable person to hold the licence and that the activity is a suitable activity for the licence (s 273).

In deciding whether a person is suitable to hold a nature conservation licence, the conservator must consider a range of 'suitability information' which is listed in section 266 of the Act and includes:

- any conviction of, or finding of guilt against, the person for an offence against a range of ACT and State or Commonwealth environmental and animal protection Acts
- any other non-compliance with such Acts
- any prior refusal of a licence, permit or other authority under such Acts
- other matters prescribed by regulation,

and may consider further requested personal information about the person, and each influential person for the applicant if the applicant is a corporation (s 267).

Under section 268, certain activities may be prescribed by regulation as unsuitable activities (see Part 3 of the *Nature Conservation Regulation 2015*). Outside of these activities, the conservator may decide under section 268 whether an activity is suitable, but in doing so must consider:

- suitability information about the activity, which includes information about the impact of the activity on the animal, plant or land, information about the purposes of the activity (e.g. scientific, education, commercial), the place where the activity is to be carried out, the number and species of each native species involved in the activity and any other matters prescribed by regulation (s 269)
- any further information requested by and given to the conservator (s 270)
- a risk management plan addressing risks to people and property, if the conservator requires the applicant to prepare one (s 271)
- the results of any inspection of a place where an animal is to be kept, if required by the conservator (s 272)

- if the activity involves a species, ecological community or key threatening process covered by an action plan, a native species conservation plan, or a controlled native species management plan – the applicable plan (s 268(2)(e)-(g))
- if the activity is to be carried out in a reserve – the planning and development management objectives for the reserve and any applicable IUCN reserve management objectives (s 268(2)(h)) (see Chapter 7 in this Handbook for more information on the ACT reserve system)
- if the activity is to be carried out in a resource protection area – the purpose of the resource protection area declaration (s 268(2)(i)).

If the activity being considered for a nature conservation licence is to be carried out in a reserve, the conservator must also consult with the custodian of the reserve. A nature conservation licence is subject to conditions prescribed by the Act, by regulation or that the conservator reasonably believes are necessary to meet the objects of the Act (for example, requiring compliance with a native species conservation plan, limiting the season when an activity can be carried on or the purpose for which an activity can be carried on, or requiring that a financial assurance be given where there is a likelihood that the licensed activity will cause serious or material environmental damage) (s 274). A licence can be issued for a maximum of 5 years (s 276) and provision is made for their amendment, transfer and renewal (see pt 11.5).

It is an offence to fail to comply with any licence condition (s 263). Further if a licensee has contravened, or is contravening, a provision of the *Nature Conservation Act*, regulatory action can be taken. Regulatory action includes imposing a condition on, or amending a condition on a licence, suspending a licence, cancelling a licence, and disqualifying a person from applying for a licence for a specified period (see pt 11.6). The Act also provides the minister with the power to determine fees (s 368). The current fees are prescribed under the *Nature Conservation (Fees) Determination 2015 (No 1)* DI2015-119. In addition, if a licence authorises a licensee to take a native animal, a native plant, or native timber, and the licensee sells or otherwise disposes of that animal, plant or timber, the licensee must pay a royalty, prescribed by regulation, to the ACT.

Under the *Nature Conservation Act*, persons are required to hold a licence for keeping any parts of animals or whole animals, dead or alive, unless the animals are exempt, or suffering from a disease, illness or injury and being kept for up to 48 hours to be given to a conservation officer, veterinary surgeon or someone licensed to keep the animal (s 134). A licence is also required to take from the wild any native animal, dead or alive, or part of an animal (including exempt animals). A licence is not required to keep, sell, import or export exempt animals. However, the animals must come from a legal source. Licensees authorised to carry on activities involving animals or plants must keep prescribed records (s 306).

If a person applies for a nature conservation licence that authorises the person to access biological resources for commercial purposes in a reserve, that person must generally enter into a benefit-sharing agreement with the ACT and, if native title holders exist in relation to the reserve, with the native title holders for the reserve (the access providers) to enable the fair and equitable sharing of benefits derived from the use of the resources (see pt 8.5). Biological resources are defined to include genetic resources, organisms or parts of organisms, populations of species or ecological communities, and any other biotic component of an ecosystem with actual or potential use or value for humanity (s 204).



It is an offence to access biological resources in a reserve without a licence unless the person accessing the resources is the access provider or the biological resources are exempted (ss 208-209). These provisions give effect to the 2010 *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation*, which is a protocol to the Convention on Biological Diversity. Australia signed the Nagoya Protocol in 2012, but has not yet ratified it and as a consequence, it is not yet binding on Australia.

In the financial year 2013-14 the conservator issued 783 'keep' licences under the former *Nature Conservation Act 1980*, permitting the private and commercial keeping of non-exempt native animals including birds, reptiles, and amphibians and a small number of exotic species. Most of these were renewals. The conservator also issued:

- 134 licences to import a non-exempt animal into the ACT
- 58 licences to export a non-exempt animal from the ACT
- 95 licences to take a native flora and fauna from the wild for scientific research
- 8 licences to remove and/or interfere with the nest of a native animal (related to authorised tree removal and relocation of the nest and animal).

Native reptile policy

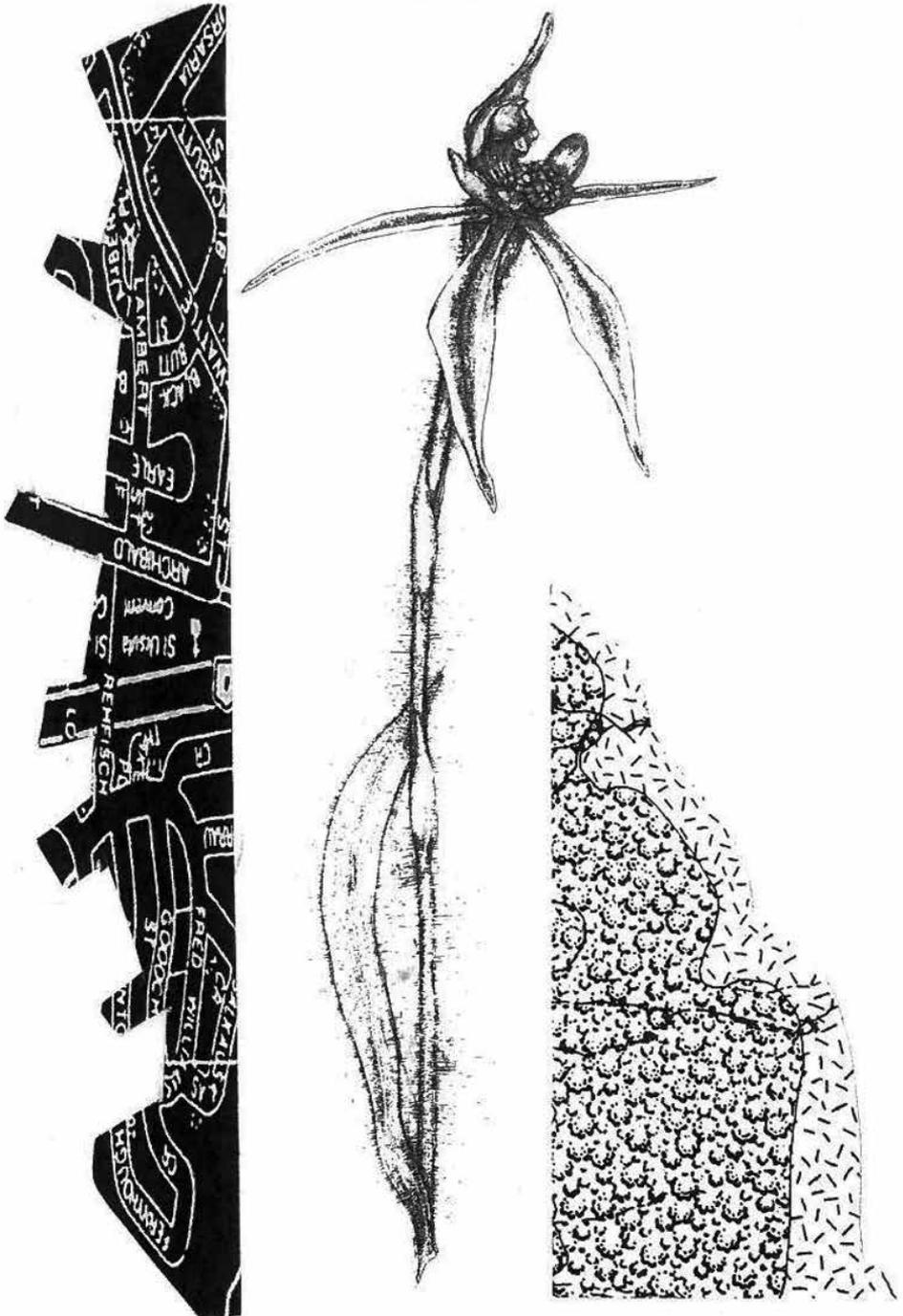
The ACT Native Reptile Policy, which can be accessed from the TAMs website (see Contacts list at the back of this book), illustrates how these provisions work in practice. Native reptiles (lizards, snakes and turtles), whether alive or dead, may not be taken from the wild without a licence. The ACT has published the reptile policy to establish guidelines for assessing applications for licences and to regulate the keeping of reptiles. For hobbyists, no licence is required to keep exempt animals, which currently include captive-bred common Long-Necked Turtle (*Chelodina longicollis*), Eastern-Blue Tongue (*Tiliqua scincoides*), Blotched Blue-Tongue (*Tiliqua nigrolutea*), Shingleback Lizard (*Trachydosaurus rugosus*), and Bearded Dragon (*Pogona barbatus*). These are referred to as Category A species. Category B species, currently comprised of 18 species, are captive-bred species that may be held by experienced amateurs with at least two years experience in keeping one or more species from a family in Category A. Category C contains 28 species and is reserved for captive-bred reptiles suitable for keeping for hobby purposes for highly experienced herpetologists. Applicants must have at least one year's experience with keeping Category B species.

The policy allows licences to be granted to take non-venomous reptiles from the wild for scientific or educational purposes, and venomous reptiles to be taken from the wild for scientific purposes. When practicable these animals must be released at the capture site at the completion of the scientific study or educational exercise or surrendered to the Service. Currently, suitably experienced members of the ACT Herpetological Association (see Contacts list at the back of this book) are permitted to take locally occurring non-venomous reptiles from the wild for the purpose of study at association meetings. As a condition of their licence, animals are released at the site of capture within 72 hours and records of take and release must be kept. There are rules governing the purchase and sale of animals, and the disposal of live and dead animals surrendered to the Service.

Reptiles kept for scientific purposes must be kept at approved institutions, or if kept by private individuals at private residences, must be kept under a scientific project approved by the conservator. All reptiles must be kept in line with the relevant institution's ethics committee's requirements and must not be in breach of any ACT legislation. The offspring of reptiles kept for scientific study cannot be disposed of without prior consent of the conservator.

Licences are rarely issued in relation to animals with special protection status, including migratory animals that are subject to a Commonwealth convention, treaty or agreement, and species vulnerable to or threatened with extinction. Under normal circumstances licences to keep reptiles belonging to this category will not be issued unless the conservator determines that the activity enhances the protection of the animal.

The deliberate cross-breeding (hybridisation) of captive reptile species and subspecies is not considered to be a desirable aim for the management of captive reptiles. In order to prevent possible genetic contamination of captive and wild populations, species or subspecies capable of hybridising must be housed separately.



Management agreements

The conservator has the power under the *Nature Conservation Act* to propose a management agreement to a supplier of gas, electricity, water, sewerage, navigation or telecommunication services or an entity responsible for the development of land (an agency) where the agency's activities affect, or may affect, public land or unleased territory land, and the conservator reasonably believes the activities may conflict with the management objectives for the land (s 311).

Under section 310, agency management agreements may deal with any or all of the following issues: access to land; fire management; drainage; management and maintenance of public or private facilities; rehabilitation of land or public or private facilities; indemnities; emergency procedures; internal stockpiling; fencing; feral animals and weed control.

In addition, under the *Planning and Development Act 2007* (ACT), a rural lease will only be granted, renewed, varied or assigned if the person whose lease is renewed or varied, or the person to whom the lease is being assigned or granted, has entered into a management agreement with the ACT government, through the conservator (s 283).

Management agreements are important because they enable a landscape-scale approach to resource management to be adopted, embracing public lands and private lands such as rural leases. This is necessary because although the territory has an extensive amount of land that is protected, significant biodiversity, including remnant vegetation and important local habitat elements such as streams and hollow-bearing trees, are also found on rural leases and public land outside the reserve system.

Conservator's directions and treatment directions

Under section 331 of the *Nature Conservation Act*, the conservator can give the occupier of land directions for the protection or conservation of native species, ecological communities or the habitat of such species or communities on the land if the conservator reasonably believes that there is conduct that the occupier may engage in that may threaten the natives species, community or habitat or could engage in that would promote the protection or conservation of the natives species, community or habitat. The directions must be consistent with applicable conservation advice, action plans, native species conservation plans or controlled native species management plans. Directions must specify a time limit on compliance. It is an offence to fail to comply with a conservator's direction and the penalties are higher if the direction relates to a native species with special protection status, a threatened ecological community, the habitat of such species or communities, or a Ramsar Wetland (s 332).

The conservator can also direct the owner of a diseased native animal or plant to treat the animal or plant in a particular way if they reasonably believe that it is necessary or desirable. In making a treatment direction, the conservator has regard to the likelihood of the disease infecting other animals or plants, the impact if it were to do so, matters relevant to the protection or conservation of native animals and plants and any other matter prescribed by regulation (s 333). It is an offence to fail to comply with a treatment direction (s 334). Where the owner does not comply with the notice, or does, but the animal or plant does not respond satisfactorily, the conservator can require the animal or plant to be delivered up or destroyed. If the owner still does not comply, a conservation officer may enter the land or premises where the animal is kept and seize it and then carry out treatment or dispose of or destroy the animal as he or she thinks fit (s 335).

To date, issues have generally been managed through management agreements or by negotiation.

Review by the ACT Civil and Administrative Tribunal

Chapter 15 of the *Nature Conservation Act* allows listed entities to seek review of specified decisions before the ACT Civil and Administrative Tribunal (ACAT) (s 362(a) and sch 1). Third parties can seek review of a 'reviewable decision' if they can show that their interests are affected by the decision (s 362(b); sch 1 and s 22Q of the *ACAT Act*). See, for example, *Animal Liberation ACT v Conservator of Flora and Fauna* [2014] ACAT 35. Reviewable decisions of the conservator include those concerning directions, licences, licence conditions, and the taking of regulatory action (see Schedule 1 in the Act for a complete list of reviewable decisions) (see Chapter 12 in this Handbook for more information about appealing to ACAT).

Wildlife in the suburbs

Residents have various responsibilities when native animals are in their suburb. For example, all snakes are protected under the *Nature Conservation Act* and cannot be killed unless they threaten life. Possums are also protected and cannot be trapped, killed or removed without a licence. The solution to possums living in the roof space is to block up any holes that allow them to get in, and then enjoy their antics outside. To assist the community to understand the importance of urban habitats and managing threats to that habitat, the Natural Heritage Trust and partner organisations supported the 2006 publication by ANUgreen entitled 'Life in the Suburbs: Urban Habitat Guidelines for the ACT' (see Contacts list at the back of this book).

Domestic Animals

Domestic pets pose one of the most significant threats to urban biodiversity. The *Domestic Animals Act 2000* (ACT) provides for the identification and registration of certain animals and the duties of owners, carers and keepers. The Act provides for the mandatory registration of dogs, and requires keepers of declared dangerous dogs to hold a licence. A code of practice has also been approved under Part 4 of the *Domestic Animals Regulation 2001*, titled the *Domestic Animals (Implanting Microchips in Dogs and Cats) Code of Practice 2008 (No 2)* DI2008–73. Dogs over six months of age and cats over three months of age must be de-sexed unless a permit is issued otherwise (s 74). The aim of these provisions is to reduce the number of unwanted domestic pets, many of which the RSPCA euthanase each year, and to reduce predation of native wildlife in Canberra. With limited exceptions, a multiple licence is required to keep four or more cats or dogs on residential premises (ss 18, 84A).

The *Domestic Animals Act* also empowers the minister to declare a cat curfew (s 81) if cats in a particular area are a serious threat to native flora and fauna. The suburbs of Bonner, Coombs, Crace, Denman Prospect, Forde, Jacka, Lawson, Molongo, Moncrieff, Wright, and parts of Watson are cat containment areas. Cats located in these areas must be confined to premises at all times (see the *Domestic Animals (Cat Containment) Declaration 2015 (No 1)* (ACT) DI2015 – 11). Areas can also be designated as dog exercise and dog-on-leash areas (see *Domestic Animals (Dog Control Areas) Declaration 2005 (No 1)* (ACT) DI2005–198). The *Domestic Animals Act* includes offence and penalty provisions. Infringement notices can be issued under the *Magistrates Court Act 1930* (ACT) and the *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005* (ACT) SL2005–29.

Pest plants and animals

As noted above, biodiversity in the ACT is threatened by pest plants and animals. Invasive species impact adversely on natural resources and agricultural activities. The *Pest Plant and Animals Act 2005* (ACT) establishes a system for declaring plants and animals to be pests. Declarations may prescribe management actions and can require occupiers of premises to notify the appropriate authorities about the presence of a declared species.

Directions may be issued under Part 4 of the Act to the occupier of premises to eradicate or control pest plants or pest animals consistent with declared management plans. Contravention of a pest management direction is established as an offence carrying a penalty of up to 50 penalty units (s 27) and where a person has not undertaken something required by a direction, an authorised person may do so at the reasonable cost of the occupier (s 28).

The *Pest Plant and Animals Act* (Parts 2 and 3) also prohibits the propagation, importation and supply of certain pest plants or pest animals, or material contaminated with certain declared pest plants or pest animals. The Act establishes offences for

activities, such as the use of vehicles and machinery contaminated with a prohibited pest plant or animal (ss 13 and 21) or the disposal of prohibited pest plants or animals or things contaminated with prohibited pest plants or animals, which would result, or be likely to result, in the spread of prohibited pest plants or pest animals (ss 15 and 24). Infringement notices can be issued under the *Magistrates Court (Pest Plants and Animals Infringement Notices) Regulation 2005* (ACT) SL2005–34.

Fisheries Act 2000

The objects of the *Fisheries Act 2000* (ACT) are to conserve native fish species and their habitats, manage ACT fisheries sustainably, provide high quality and viable recreational fishing, and cooperate with other Australian jurisdictions in sustaining fisheries and protecting native fish species (s 3).

The *Fisheries Act* enables fishing closures (s 13) and other restrictions to be declared. The *Fisheries Act* provides four types of licence: commercial fishers; fish dealers; dealers in priority species; and an import/export licence (for live fish) (s 19). Under the *Fisheries Act*, there are restrictions on the number and size of fish that can be taken from public waters and it is an offence to disturb or damage spawn or spawning fish. To assist with sustainable fisheries management, under Part 2 of the Act, the conservator can prepare draft fisheries management plans about which he or she must invite written submissions before submitting the plan to the minister. The Act also includes offence and record-keeping provisions, authorises various conservation officers' powers, and provides for review of decisions.

Commonwealth legislation

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('*EPBC Act*') is the most significant Commonwealth legislation relating to environmental protection, sustainable development and the conservation of biodiversity. The *EPBC Act* includes assessment and approval processes for certain actions, as well as provisions to protect biodiversity. It is not easy to separate these two aspects of the Act, as the former impacts significantly on the latter.

The actions that must be assessed and approved fall into two broad groups. The first group are actions carried out by the Commonwealth or its agencies, or those carried out on Commonwealth land or that will have an impact on Commonwealth land, and that are likely to have a significant impact on the environment. The second group is actions likely to have a significant impact on 'matters of national environmental significance'. Currently those matters are:

- listed threatened species and communities
- listed migratory species
- Ramsar wetlands of international importance
- the Commonwealth marine environment

- World Heritage properties
- National Heritage places
- nuclear actions (including uranium mining)
- the Great Barrier Reef Marine Park
- water resources, in relation to coal seam gas and large coal mining developments.

As the ACT has many Commonwealth agencies and much Commonwealth land, as well as a Ramsar wetland at Ginini Flats in Namadji National Park, numerous migratory species and listed threatened species and communities, the *EPBC Act* is an important law applicable in the territory (see Chapter 4 in this Handbook for more information on the referral and assessment processes of the *EPBC Act*).

Assessments can be on a project by project basis or at a landscape scale (strategic assessments). The ACT has recently had 2 plans endorsed and actions under those plans approved subsequent to a strategic assessment:

- the 2013 Gungahlin Strategic Assessment Biodiversity Plan, Final
- the 2011 Molonglo Valley Plan for the Protection of Matters of National Environmental Significance (NES Plan).

Identifying species and communities at risk

The *EPBC Act* also provides for the:

- identification and monitoring of biodiversity and making of bioregional plans
- identification and listing of threatened species and threatened ecological communities and key threatening processes
- development of recovery plans, threat abatement plans and wildlife conservation plans
- regulation of trade in wildlife and access to biological resources
- administration of a Register of Critical Habitat
- compliance and enforcement of the Act.

The *EPBC Act* lists threatened species under six categories: extinct, extinct in the wild, critically endangered, endangered, vulnerable and conservation dependent. There are three categories of threatened ecological communities: critically endangered, endangered and vulnerable (see Table 1 for the list of threatened species and ecological communities under the *EPBC Act* that are also present in the ACT).

At the time of writing there were 21 listed key threatening processes under the *EPBC Act*, including: land clearance; dieback; competition and land degradation by feral goats and rabbits; predation by feral cats, exotic rats and the European red fox; predation, habitat destruction, competition and disease transmission by feral pigs; exclusion of birds from potential habitat by noisy miners, incidental catch of sea turtle

and sea birds; injury and fatality to vertebrate marine life caused by harmful marine debris; novel biota and their impact on biodiversity; diseases affecting amphibians and endangered birds; biological effects of cane toads; loss of biodiversity due to invasive ant species; loss and degradation of native plant and animal habitat by invasion of escaped garden plants and introduced grasses; and the loss of climatic habitat caused by anthropocentric emissions of greenhouse gases.

Any person may nominate a native species, ecological community or threatening process for listing under any of the categories specified in the *EPBC Act*.

Nominations, except those that are vexatious, frivolous or not made in good faith, are forwarded by the Commonwealth Minister ('minister') to the Threatened Species Scientific Committee. The committee prepares a priority assessment list for the minister who finalises the list. The committee then consults with stakeholders on the finalised priority assessment list, and assesses each nomination against the relevant criteria. Once the threatened species committee has completed the assessment, its advice is forwarded to the minister who makes the final decision. If the minister accepts the recommendation, then the species, community or process is added to the lists under the *EPBC Act*.

Protecting biodiversity

Recovery plans made, adopted or implemented under the Act set out what must be done to protect and restore important populations of threatened species and communities, as well as how to manage and reduce threatening processes. Before making or adopting a recovery plan the minister must:

- consult with relevant state and territory ministers where the species or community occurs
- consider advice from the Threatened Species Scientific Committee
- invite public comment
- consider all comments received.

Various species listed as vulnerable or endangered under the ACT's *Nature Conservation Act* also have recovery plans under the *EPBC Act*, including the Smoky Mouse (*Pseudomys fumeus*), Striped Legless Lizard (*Delma impar*), Trout Cod (*Maccullochella macquariensis*) and Tuggeranong Lignum (*Muehlenbeckia tuggeranong*).

If a habitat is identified in a recovery plan as critical to the survival of a species or community, then the minister must consider whether to list that habitat on the Register of Critical Habitat. Damaging critical habitat in a Commonwealth area is punishable by a fine of up to 1,000 penalty units (currently \$170,000) or imprisonment for two years or both (s 207B).

Threat abatement plans cover the research and management actions that need to be taken to reduce the impact of a listed key threatening process to an acceptable

level in order to maximise the chances of the long-term survival in nature of native species and ecological communities affected by the process (s 271). Within 90 days of listing a process, the minister must decide whether an abatement plan is a feasible, effective and efficient way to abate the process. If a plan is to be developed, that fact must be advertised and comment invited. At the time of writing 14 plans had been approved including: those relating to beak and feather disease affecting endangered parrots (*Psittacine* species); infection of amphibians with chytrid fungus resulting in chytridiomycosis; sea bird by-catch during long-line fishing; dieback caused by the root-rot fungus *Phytophthora cinnamomi*; the activities of feral cats, pigs, rabbits, rodents, goats, and foxes; and reduction in impacts of tramp ants on biodiversity in Australia and its territories.

Other protective tools under the *EPBC Act* are legally binding conservation agreements between the minister and another person for the protection and conservation of biodiversity (pt 14). These can require, among other things, that a person carry out certain activities, refrain from carrying out activities, or spend granted money in a certain way.

The minister may also make conservation orders to protect listed threatened species or communities, requiring or prohibiting certain actions in Commonwealth areas (div 13 of pt 17). Contravention of a conservation order is an offence.

Permits are required under the Act for certain activities, including whale watching in Commonwealth waters, research or commercial activities in Commonwealth parks or reserves, and activities in Commonwealth areas that may affect listed species or communities. It is an offence to kill, injure, take, trade, keep or move a member of a listed species or community in a Commonwealth area without a permit (div 1, pt 13 of ch 5).

For up-to-date information consult the [Department of Environment website](#) which includes extensive material on the operation of the *EPBC Act* (see C contacts list at the back of this book).

Conclusion

This chapter has provided an introduction to the legislative provisions framing some interactions with biodiversity in the ACT. Natural resource management, including biodiversity conservation, ranges from broad scale regional planning and management, to the micro-management of licences. The trend in law and policy is away from species-specific approaches to a more integrated and holistic planning and management approach that partially relies on conservation and sustainable development partnerships with community stakeholders for its success. An overarching objective in this approach is to ensure that sufficient habitat is available for species to ensure their survival. Dramatic and ambitious examples of the policy trend to bioregional and even continental-scale land use planning and connectivity, including the Australian Bush Heritage's 'Kosciuszko to Coast' project, and the 'Great

Eastern Ranges Initiative'. Connectivity is already recognised in numerous ACT policy documents, including the action plans adopted under the *Nature Conservation Act*.

Governments, industry, community groups, rural lessees and individuals can all contribute to protecting, restoring, monitoring and evaluating biodiversity in the ACT. Planning law and policy, governments' inter-governmental regional natural resource management framework, and the projects that are funded and implemented in partnership with community investment, are particularly important. The community's voluntary contributions through activities with Greening Australia, Parkcare, Landcare, Waterwatch and 'Friends of...' are also important. But so is living sustainably, advocating for sustainability during participatory policy development, and by using territory and Commonwealth legislation to protect biodiversity in the territory and region.

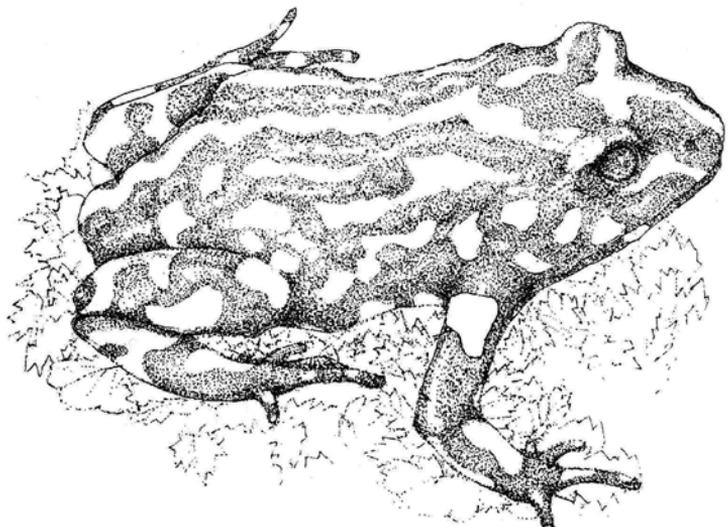


Table 1: Uncommon, vulnerable, endangered and special protection status species and ecological communities protected in the ACT¹ and their conservation status in New South Wales² and the Commonwealth³

KEY	
AP	= Action Plan, as numbered in the disallowable instrument on the ACT Legislation Register
CD	= Conservation dependent [#]
CE	= Critically endangered [#]
Cth	= Australian Government jurisdiction
E	= Endangered
Ex	= Extinct [#]
ExW	= Extinct in the wild [#]
M	= Listed as a migratory species under the EPBC Act
P	= Provisional [#]
SPS₁	= Special Protection Status in the ACT by virtue of an ACT listing of the species as threatened
SPS₂	= Special Protection Status in the Act by virtue of a Commonwealth listing of the species as threatened under the EPBC Act. The list below does not include species that have Special Protection Status by virtue of being listed migratory species under the EPBC Act which may visit the ACT, unless they are also threatened listed species. This category includes species such as the Fork-tailed Swift, the White-bellied Sea-Eagle, the White-throated Needletail, the Rainbow Bee-eater, the Black-faced Monarch, the Satin Flycatcher, the Rufous Fantail, the Great Egret, the Cattle Egret, Latham's Snipe and the Eastern Osprey
UC	= Uncommon or of conservation concern, as referred to in action plans ⁴
V	= Vulnerable
[#] At the time of publication no species were listed under these categories in the ACT	

Native plants

Common name	Scientific name	ACT	Cth	NSW	AP
Yass Daisy	<i>Ammobium craspedioides</i>	SPS ₂	V	V	-
Canberra Spider Orchid	<i>Arachnorchis actensis</i>	E, SPS ₁	CE	-	31
a shrub	<i>Bossiaea grayi</i>	E, SPS ₁	-	-	34
Mauve Burr-daisy	<i>Calotis glandulosa</i>	SPS ₂	V	V	28

Brindabella Midge Orchid	<i>Corunastylis ectopa</i>	E, SPS ₁	CE	-	32
Emu-foot	<i>Cullen tenax</i>	UC	-	-	27
Australian Anchor Plant	<i>Discaria pubescens</i>	UC	-	-	27/29
Wedge Diuris	<i>Diuris dendrobioides</i>	UC	-	-	27
Golden Moths	<i>Diuris pedunculata</i>	UC, SPS ₂	E	E	28
Purple Diuris	<i>Diuris punctata</i> var. <i>punctata</i>	UC	-	-	27
Trailing Hop-bush	<i>Dodonaea procumbens</i>	SPS ₂	V	V	28
Mountain Cress	<i>Drabastrum alpestre</i>	UC	-	-	29
Silver-leaved Mountain Gum	<i>Eucalypus pulverulenta</i>	SPS ₂	V	V	-
a subalpine herb	<i>Gentiana baeuerlenii</i>	E, SPS ₁	E	E	5
Yam Daisy	<i>Microseris lanceolate</i>	UC	-	-	27
Ginniderra Peppercress	<i>Lepidium ginninderrense</i>	E, SPS ₁	V	-	28
Aromatic Peppercress	<i>Lepidium hyssopifolium</i>	SPS ₂	E	E	-
Hairy Buttons	<i>Leptorhynchos elongates</i>	UC	-	-	27
Hoary Sunray (white form)	<i>Leucochrysum albicans</i> var. <i>tricolour</i>	UC, SPS ₂	E	-	27
Austral Trefoil	<i>Lotus australis</i>	UC	-	-	27
Tuggeranong Lignum	<i>Muehlenbeckia tuggeranong</i>	E, SPS ₁	E	-	29
Omeo Stork's Bill	<i>Pelargonium</i> sp. <i>Striatellum</i>	SPS ₂	E	E	-
a milkwort	<i>Polygala japonica</i>	UC	-	-	27
Pale Pomaderris	<i>Pomaderris pallida</i>	UC, SPS ₂	V	V	29
a leek orchid (sometimes known as Tarengo Leek Orchid)	<i>Prasophyllum petilum</i>	E, SPS ₁	E	E	27/28
Blue-tongued Orchid	<i>Pterostylis oreophila</i>	SPS ₂	CE	CE	-

Button Wrinklewort	<i>Rutidosia leptorhynchoides</i>	E, SPS ₁	E	E	28
Wild Sorghum	<i>Sorghum leiocladum</i>	UC	-	-	27
Mountain Swainson-pea	<i>Swainsona monticola</i>	UC	-	-	27
Small Purple Pea	<i>Swainsona recta</i>	E, SPS ₁	E	E	27
Silky Swainson-pea	<i>Swainsona sericea</i>	UC	-	V	27
Austral Toadflax	<i>Thesium australe</i>	UC	V	V	27
Zornia	<i>Zornia dictiocarpia</i>	UC	-	-	27

Native birds

Common name	Scientific name	ACT	Cth	NSW	AP
Dusky Woodswallow	<i>Artamus cyanopterus</i>	UC	-	-	27
Australasian Bittern	<i>Botaurus poiciloptilus</i>	SPS ₂	E	E	-
Gang-Gang Cockatoo (faunal emblem of the ACT)	<i>Callocephalon fimbriatum</i>	-	-	V	-
Glossy Black-cockatoo	<i>Calyptorhynchus lathami</i>	V, SPS ₁	E	V	33
Brown Treecreeper	<i>Climacteris picumnus</i>	V, SPS ₁	-	V	27
Varied Sitella	<i>Daphoenositta chrysoptera</i>	V, SPS ₁	-	V	27
Diamond Firetail	<i>Emblema guttatum</i>	UC	-	-	27
White-fronted Chat	<i>Ephthianura albifrons</i>	UC	-	V	27
Crested Shrike-tit	<i>Falcunculus frontatus</i>	UC	-	-	27
Painted Honeyeater	<i>Grantiella picta</i>	V, SPS ₁	V	V	27/29
Little Eagle	<i>Hieraaetus morphnoides</i>	V, SPS ₁	-	V	35

White-winged Triller	<i>Lalage sueurii</i>	V, SPS ₁	-	-	27
Swift Parrot	<i>Lathamus discolor</i>	V, SPS ₁	E	E	27
Hooded Robin	<i>Melanodryas cucullata</i>	V, SPS ₁	-	V	27
Jacky Winter	<i>Microeca fascinans</i>	UC	-	-	27
Barking Owl	<i>Ninox connivens</i>	UC	-	V	27
Scarlet Robin	<i>Petroica multicolor</i>	V, SPS ₁	-	V	27
Flame Robin	<i>Petroica phoenicea</i>	UC	-	V	27
Superb Parrot	<i>Polytelis swainsonii</i>	V, SPS ₁	V	V	27
Speckled Warbler	<i>Sericornis sagittatus</i>	UC	-	V	27
Australian Painted Snipe	<i>Rostratula australis</i>	SPS ₂	E, M	E	-
Regent Honeyeater	<i>Xanthomyza Phrygia</i>	E, SPS ₁	CE	CE	27

Native mammals

Common name	Scientific name	ACT	Cth	NSW	AP
Spotted-tailed Quoll	<i>Dasyurus maculatus</i>	V, SPS ₁	E	V	30
Brush-tailed Rock-wallaby	<i>Petrogale penicillata</i>	E, SPS ₁	V	E	22
Smoky Mouse	<i>Pseudomys fumeus</i>	E, SPS ₁	E	CE	23
Squirrel Glider	<i>Petaurus norfolcensis</i>	UC	-	V	27
Koala	<i>Phascolarctos cinereus</i>	SPS ₂	V	V	27
Long-nosed Potoroo	<i>Potorous tridactylus tridactylus</i>	SPS ₂	V	V	-
Grey-headed Flying-fox	<i>Pteropus poliocephalus</i>	SPS ₂	V	V	-

Native reptiles

Common name	Scientific name	ACT	Cth	NSW	AP
Pink-tailed Worm Lizard	<i>Aprasia parapulchella</i>	V, SPS ₁	V	V	29
Striped Legless Lizard	<i>Delma impar</i>	V, SPS ₁	V	V	28
Black-headed snake	<i>Suta spectabilis dwyeri</i>	UC	-	-	27
Shingleback Lizard	<i>Trachydosaurus rugosus</i>	UC	-	-	27
Grassland Earless Dragon	<i>Tympanocryptis pinguicollis</i>	E, SPS ₁	E	E	28
Lace Monitor	<i>Varanus varius</i>	UC	-	-	27

Native frogs

Common name	Scientific name	ACT	Cth	NSW	AP
Booroolong Frog	<i>Litoria booroolongensis</i>	SPS ₂	E	E	-
Yellow-spotted Tree Frog	<i>Litoria castanea</i>	SPS ₂	E	CE	-
Southern Bell Frog	<i>Litoria raniformis</i>	SPS ₂	V	E	-
Alpine Tree Frog	<i>Litoria verreauxi</i>	SPS ₂	V	E	-
Brown Toadlet	<i>Pseudophryne bibronii</i>	UC	-	-	27
Northern Corroboree Frog	<i>Pseudophryne pengilleyi</i>	E, SPS ₁	CE	CE	6

Native fish and crustaceans

Common name	Scientific name	ACT	Cth	NSW	AP
Silver Perch	<i>Bidyanus bidyanus</i>	E, SPS ₁	CE	V	29
Two-spined Blackfish	<i>Gadopsis bispinosus</i>	V, SPS ₁	-	-	29
Trout Cod	<i>Maccullochella macquariensis</i>	E, SPS ₁	E	E	29
Murray Cod	<i>Maccullochella peelii</i>	SPS ₂	V	-	29
Macquarie Perch	<i>Macquaria australasica</i>	E, SPS ₁	E	E	29
Murray River Crayfish	<i>Euastacus armatus</i>	V, SPS ₁	-	-	29

Native invertebrates

Common name	Scientific name	ACT	Cth	NSW	AP
Key's Matchstick Grasshopper	<i>Keyacris scurra</i>	UC	-	-	27
Perunga Grasshopper	<i>Perunga ochracea</i>	V, SPS ₁	-	-	28
Golden Sun Moth	<i>Synemon plana</i>	E, SPS ₁	CE	E	28

Ecological community

Common name	Scientific name	ACT	Cth	NSW	AP
Natural Temperate Grassland		E	E ₅	-	28
Yellow Box/Red Gum Grassy Woodland		E	CE ₆	E	27

¹ *Nature Conservation Threatened Native Species List 2015 (NI 2015–438); Nature Conservation Threatened Ecological Communities List (NI 2015—437).*

² *Threatened Species Conservation Act 1995 (NSW); Fisheries Management Act 1994 (NSW); see also the NSW Threatened species profile search available at <http://www.environment.nsw.gov.au/threatenedspeciesapp/>.*

³ *EPBC Act List of Threatened Flora; EPBC Act List of Threatened Fauna; EPBC List of Migratory Species: searchable at <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>.*

- 4 Species mentioned in Action Plan. Nature Conservation (Threatened Ecological Communities and Species) Action Plan 2004 (No 1) (*Action Plan 27*); Nature Conservation (Threatened Ecological Communities and Species) Action Plan 2005 (No 1) (*Action Plan 28*); Nature Conservation (Threatened Ecological Communities and Species) Action Plan 2007 (No 1) (*Action Plan 29*).
- 5 Natural Temperate Grassland of the Southern Tablelands of NSW and the ACT.
- 6 White Box-Yellow Box-Blakely's Red Gum Woodland (as described in the final determination of the Scientific Committee to list the ecological community).