
Enhancing nature conservation policy in the ACT: outcomes from the review of the Nature Conservation Act 1980

A Final Report prepared for the ACT Government

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Executive Summary

INTRODUCTION AND STUDY PURPOSE

The Nature Conservation Act 1980 (the NCA) comprises the statutory core for nature conservation in the ACT, underpinning the application of nature conservation policy. The Act protects native flora and fauna, and provides management authority for national parks and nature reserves.

Marsden Jacob Associates (MJA) has been engaged by Territory and Municipal Services (TAMS) to undertake a strategic review of the NCA. The review particularly includes:

- identifying inadequacies of the NCA in terms of what constitutes best practice nature conservation legislation;
- means to enhance the NCA to better reflect best practice;
- an initial evaluation the role of the Conservator of Flora and Fauna; and
- an evaluation of the compliance and enforcement provisions in terms of policy and practical effectiveness.

This project will provide vital input to a broader process being undertaken by the ACT Government to review and enhance its approach to nature conservation management.

KEY FINDINGS

This report summarises the key findings from the review and provides several recommendations for both legislative amendments and the consideration and potential use of non-regulatory approaches to enhance environmental outcomes in the ACT. Recommendations are outlined throughout this report in shaded boxes.

While the NCA has been largely unchanged since 1980, the basic structure and content of the legislation is not radically different from what might be considered contemporary best practice legislation. Most contemporary environmental legislation is structured in similar ways to the NCA and includes similar types of provisions (e.g. protection of native vegetation) and specific responsibilities such as those currently required of the Conservator.

However, there are a number of areas where the black letter of the law outlined in the NCA could be enhanced (e.g. incorporation of options for restoration orders in lieu of maximum financial penalties for illegal clearing of native vegetation, recognising climate change as a threatening process). These issues are addressed in Section 2 of this report.

The major areas where the NCA does not reflect current best practice is the lack of integration and use of legislation within a broader suite of policy mechanisms such as the better use of market approaches to achieve the objectives of the NCA.

There are significant opportunities for the ACT Government to utilise a broader suite of policy tools to achieve the objectives of the NCA in a more effective manner, particularly through the adaptation and implementation of approaches already developed in other jurisdictions.

In recent years, most major jurisdictions have been progressively moving towards the greater use of market-like approaches ranging from cost reflective licence fees through to the creation of sophisticated markets to manage the use of natural resources.

These market approaches, particularly the use of environmental offsets, are used as part of the development regulatory framework to simultaneously maintain environmental values and minimise the regulatory burden on the development sector. These approaches are outlined in detail in Section 4 of this report.

The role of the Conservator and the Flora and Fauna Committee are not radically different from the role of the Chief Executive and Ministerially appointed advisory committees established under legislation in other jurisdictions. However, there are a number of areas where the role, structure and operation of the Conservator and the Flora and Fauna Committee could be enhanced. These issues are addressed in Section 3.2 of this report.

Compliance and enforcement issues were raised a number of times during interviews and discussions with TAMS staff. The major differences between the current compliance regimes under the NCA and those emerging in other jurisdictions are twofold. Firstly, in other jurisdictions, a greater onus is placed on licence holders (e.g. a licence to keep and sell native animals) to self report on performance against licence conditions. This reduces the workload on existing staff and enables staff to concentrate on higher priority issues.

Also, there is a trend emerging in other jurisdictions to establish licence fees that both recover the cost of administering licence regimes as well as reflect the risks to the objectives of the legislation from licensed activities. The rationale for this approach is to both ensure agencies have sufficient resources to undertake compliance and enforcement activities and also as a means to discourage (not prohibit) activities that may be contrary to the objectives of the legislation. This issue is addressed in Section 3.2 of this report.

Finally, the review identified a number of areas where other institutional arrangements (e.g. alternative legislation, planning regimes, strategies and roles) could inadvertently result in outcomes inconsistent with the objectives of the NCA or result in duplication of effort. These issues are addressed in Section 3.3 of this Report.

1. Introduction

The Nature Conservation Act 1980 (the NCA) comprises the statutory core for nature conservation in the ACT, underpinning the application of nature conservation policy. The Act protects native flora and fauna, and provides management authority for national parks and nature reserves.

While a number of minor amendments have been made to the Act since its inception, it remains fundamentally unchanged. Meanwhile, in recent years a number of significant advancements have been made in the policies, legislation and management of nature conservation, both nationally and internationally. In addition, the nature of the risks to the objectives of the Act have changed in recent years.

It is therefore timely to review the Act to determine whether there are aspects of the current legislation that could be enhanced, potentially in conjunction with other policy and administrative arrangements.

It should also be noted that a review of the NCA was undertaken in 1999 as part of the ACT Government's obligations as a signatory to the Competition Principles agreement to implement National Competition Policy reforms.¹ However, the scope of that review was primarily related to any anti-competitive aspects of the NCA.

1.1. Objectives and approach of this study

The objectives of this study are to provide advice on the form, scope and functions of contemporary best practice nature conservation legislation. This includes:

- identifying inadequacies of the NCA in terms of what constitutes best practice nature conservation legislation
- means to enhance the NCA to better reflect best practice;
- an initial evaluation the role of the Conservator of Flora and Fauna; and
- an evaluation of the compliance and enforcement provisions in terms of policy and practical effectiveness.

This project will provide vital input to a broader process being undertaken by the ACT Government to review and enhance its approach to nature conservation management.

The MJA team carried out this project by undertaking a comprehensive review of Australian and international literature relevant to the consultancy, including material relevant to:

- general best practice principles for regulation and legislation (primarily based on COAG principles);
- the Nature Conservation Act (1980) itself and associated subordinate legislation, as well as going back to the original objectives of the legislation through documents such as second Parliamentary reading speeches;

¹ Braysher, M. 1999. Report on the Review of the Nature Conservation Act 1980 and Associated Subordinate Legislation. Braysher Consulting, June 1999.

- analysis of equivalent nature conservation frameworks in different jurisdictions, including different mixtures of legislation, regulation and market-base approaches;
- factors that influence the direction and flow of benefits from nature conservation areas and the costs of enhancing management outcomes;
- current and potential policy and program options and their relative effectiveness to achieve the desired outcomes of the ACT Government under different circumstances;
- linkages and relationships between biophysical measures and indicators and economic and social indicators;
- decision making and consultation processes;
- the relative differences in resource requirements under different approaches; and
- gaps in knowledge, data and indicators.

In addition to the review of literature MJA has also undertaken a series of targeted semi-structured interviews with ACT Government staff, researchers and policy makers from other jurisdictions.

1.2. Background and context

The ACT is unique in Australian jurisdictions in that the majority of its landmass is dedicated public land of various types. Land use in the ACT is as follows; 53% reserves; 20% rural; 7% forestry plantation (ACT Forests manage a further 3% native vegetation) and the remainder is urban, industrial and urban open space.² Land tenure in the ACT is exclusively leasehold.

The ACT lies wholly within the Murrumbidgee catchment. Although the ACT only comprises 3% of catchment area, Canberra contains approximately 58% of the catchment population.

Namadgi National Park is the largest conservation reserve in the ACT, covering 43% of total land, and containing all of the ACT's component of the Australian Alps bioregion. The Park was significantly affected by the 2003 ACT bushfires.

There are several threatened species and endangered ecological communities in the ACT, including Yellow Box-Red Gum Grassy Woodland, and Natural Temperate Grassland. While threatened, the majority of these communities are under conservation management or subject to other non-urban land use or rural lease.

There are also a number of nationally and locally important riverine and wetland assets in the ACT.

The Nature Conservation Act (1980)

The Nature Conservation Act 1980 comprises the statutory core for nature conservation in the ACT, underpinning the application of nature conservation policy.

² ACT Natural Resource Management Plan, 2004-2014, p.15.

The Act protects native flora and fauna, and provides management authority for national parks and nature reserves. Native vegetation is protected on all unleased land and native fauna and threatened species are protected on all land. The Act requires that ‘Action Plans’ be developed and implemented for all species and ecological communities declared threatened under its legislation, with monitoring of these by the Flora and Fauna Committee. This process seeks to ensure that the conservation requirements of threatened species and ecological communities are identified and provided.

1.3. Outline of report

The remainder of this report is structured as follows:

- **Section 2. Formal assessment of NCA** summarises the outcomes from MJA’s assessment of the NCA. This Section includes several recommendations with respect to potential amendments to the NCA as well as recommendations on non-regulatory approaches to enhance the outcomes sought from the NCA.
- **Section 3. Other issues relevant to the review of the Nature Conservation Act** summarises findings and provides recommendations with respect to: the role of conservator; agency resourcing and the impact on compliance; and other institutional arrangements.
- **Section 4. Current ‘better practice’ policy and legislative approaches** provides an overview of contemporary policy and legislative approaches to nature conservation. This is primarily reference material for TAMs to assist with future consideration of any regulatory or non-regulatory policies to enhance environmental outcomes in the ACT. The concepts and principles outlined in Section 4 have also been used as a basis for establishing many of the recommendations in Sections 2 and 3.

Sections 2 and 3 are largely written in an exception report style. Where MJA could not identify any material enhancements of the NCA, the report is largely silent on those issues.

Throughout this report, any recommendations for potential reforms of a regulatory or non-regulatory nature are highlighted in boxes shaded grey.

2. Formal assessment of NCA

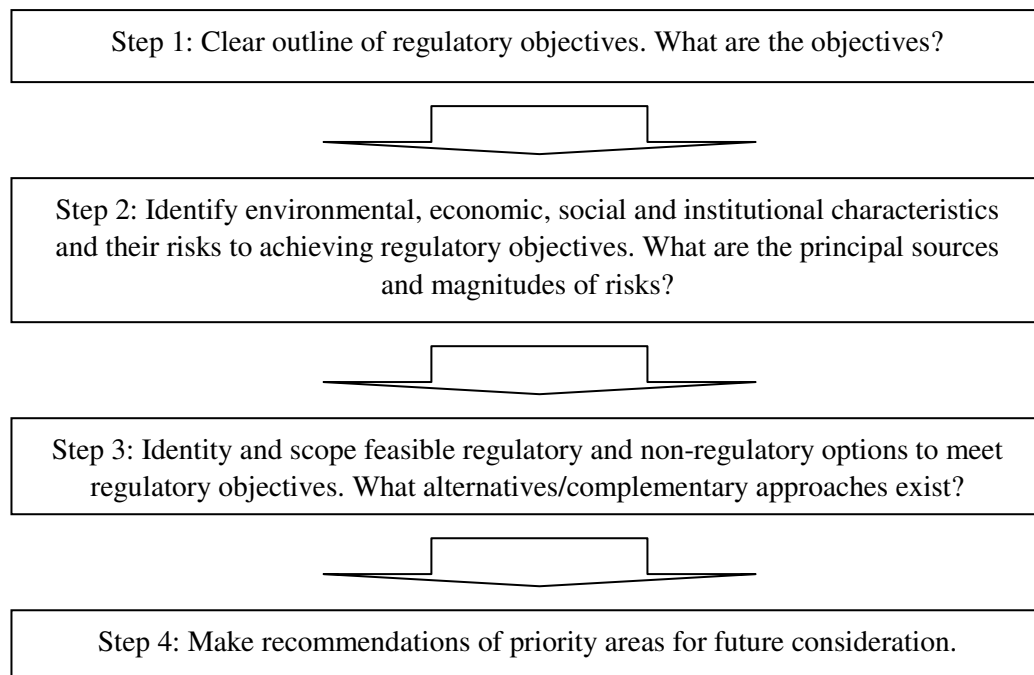
This Section summarises the approach and findings of the formal assessment of the NCA. It considers the specific elements of the NCA as at the beginning of 2008.

There are a number of frameworks and guidelines that have been adopted for the evaluation of regulatory frameworks and legislation including:

- CIE, 1999, Guidelines for NCP legislation reviews.
- Council of Australian Governments, 2004, Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies.
- Australian Government, 2007, Best Practice Regulation Handbook, Canberra (the Regulation Handbook).

The assessment below draws on many of the principles and processes outlined in the above documents, particularly the Regulation Handbook as this probably represents current ‘best practice’ thinking, but the focus is primarily on developing regulatory impact statements and therefore the efficiency of different regulatory approaches. The issues raised in these documents have been condensed into the relatively simple and intuitive framework used for this assessment. This framework and key questions underpinning the framework are outlined in Figure 1

Figure 1 : Assessment framework adopted



2.1. Step 1: Objectives of NCA

The NCA states:

Nature Conservation Act 1980 – An Act to make provision for the protection and conservation of native animals and native plants, and for the reservation of areas for those purposes.

It has been noted in previous studies³ that the NCA is not explicit in its overall objectives. However, the Nature Conservation Strategy, prepared as a requirement of the NCA, clearly set out the goals and objectives for nature conservation in the ACT.

Briefly, the scope of the NCA covers a wide range of nature conservation issues and mechanisms to achieve the objectives of the NCA. These include:

- the protection of fauna (killing, taking, keeping, selling, import/export, release and escape of native animals) – Part 4;
- the protection of flora (taking, preserving or dealing in native plants and timber) – Part 5;
- regulation of prohibited and controlled organisms (declaration of and possession of prohibited organisms) – Part 6;
- provision of conservation directions (rules governing conservation officer access to land and conservator directors to land occupiers relating to native animals, native plants and timber) – Part 7; and
- management of reserved areas (restriction on activities, clearing or damaging native vegetation in reserved areas) – Part 8.

In addition, parts 1 - 4 of the NCA outline a number of administrative arrangements to underpin the implementation of the NCA, while parts 9 - 14 provide for a number of administrative arrangements and processes to ensure efficient implementation of actions under the NCA.

Like most nature conservation legislation, the NCA imposes controls relating to the use and management of natural resources. **Implicit in the regulatory controls of the NCA is the assumption that in administering the NCA, ecosystem function and resilience will be maintained for current and future generations.**

2.2. Steps 2 to 4: Risks, options and recommendations

This section provides a summary of the findings of implementing steps 2 through 4 of the assessment process. MJA has identified a number of risks relating to different parts of the NCA, the characteristics of those risks, and identified a number feasible regulatory and non-regulatory approaches to address risks.

Consideration of feasible regulatory and non-regulatory approaches draws heavily on the lessons from current best practices approaches outlined in Section 4. The first column of

³ Braysher Consulting. 1999. The National Competition Policy review of the Nature Conservation Act.

Table 1 identifies parts and specific sections of the NCA that could potentially be enhanced. The second column briefly outlines the nature of the risks to the objectives of the NCA. The third column briefly highlights recommended feasible changes of a regulatory and non-regulatory nature that could be implemented to reduce risks to the objectives of the NCA.

Table 1 : Findings of formal review of Nature Conservation Act

NCA objective and part	Characteristics and risks (includes specific sections of NCA where appropriate)	Recommended feasible regulatory and non-regulatory approaches to address risks
Part 1 - Preliminary		
	<p>Compliance with the NCA may be limited due to inability of members of the community and relevant business / agencies to understand the scope and objectives of the NCA. These are not clearly articulated in the NCA.</p> <p>The current scope of coverage of the NCA is relatively restrictive compared to similar legislation elsewhere.</p>	<p>Minor amendment to the NCA to include a short preamble broadly stating the scope and objectives of the NCA. Objectives to be included are a matter for policy. Recognising that development will occur and that the key ecological communities, flora and fauna need protection, it may be prudent to consider the inclusion of facilitating ecologically sustainable development within the stated objectives.</p> <p>Ensure that the scope of land application of the NCA is as broad as is practicable to capture a broader range of issues and land uses / tenures).</p>
	<p>S 5. There is a potential risk to the objectives of the NCA attributable to actions undertaken under the Emergencies Act 2004, pertaining to bushfire preventative measures.</p>	<p>This risk is noted. However, there may be little than can be done within the auspices of the NCA to mitigate these risks with the exception of working with relevant agencies and the community to manage for bushfire risk through existing controlled burning programs. Where high value environmental assets are adjacent / close to high fire risk areas, bushfire preventative measures should be prioritised in those areas.</p>
Part 2 – Nature conservation strategies, declarations and actions plans		
Division 2.1	<p>There is a risk of potential overlap, duplication and inconsistency between the roles of the Conservator and the Commissioner for the Environment.</p> <p>There is also a risk that both the Conservator and the Commissioner for the Environment may make recommendations without necessarily considering the resource implications of recommendations.</p>	<p>No legislative changes are proposed at this stage. However, policies and procedures should be put in place to ensure a consistency of recommendations from the Conservator and the Commissioner for the Environment.</p> <p>In addition, resource implications of recommendations should also be considered. This is most likely to occur where the Conservator is also a senior executive of TAMS.</p>

NCA objective and part	Characteristics and risks (includes specific sections of NCA where appropriate)	Recommended feasible regulatory and non-regulatory approaches to address risks
Division 2.2	<p>S 17. The skills base of the membership of the Flora and Fauna Committee is very narrow (limited to biodiversity or ecology). This limits the use of potential insight and knowledge from experts in fields that better understand the nature of some risks to the objectives to the NCA (e.g. environmental planners).</p> <p>In addition, potential risks and opportunities from the policies and actions of the NSW government should be fundamental to the operations of the Flora and Fauna Committee.</p>	<p>Minor amendment to S 17 to remove restriction to membership.</p> <p>Seek to broaden the skills base on the Flora and Fauna Committee to include other relevant disciplines and potentially NSW representation to enhance the complementarity of advice provided and management between the jurisdictions.</p>
Part 3 – Nature conservation and declarations		
Division 3.1	<p>S 26. There is a risk that the nature conservation strategy, now somewhat dated, is inconsistent with other relevant strategies and plans.</p>	<p>At the least, the nature conservation strategy could be reviewed and updated. However, there may be synergies from rolling the nature conservation strategy into broader strategies such as the sustainability strategy as nature conservation is a subset of the objectives of that broader strategy.</p> <p>The nature conservation strategy is a policy document and not a legislative component. As such, it should be kept at a strategic level and not redefined into legislation.</p>
Division 3.2	<p>S 33-34. Information relating to mapping of declared flora and fauna may be inadequate (detail and accessibility) to be easily considered as part of the current development assessment process.</p>	<p>Ensure declared areas are easily identified and information is simple to access. This should include clear explanations of the meaning of the information and the implications for development (i.e. the constraints) are clearly articulated.</p>
Division 3.3	<p>s 35. This section states that the committee must specify criteria for the making of declarations. This creates a potential risk of inconsistency when assessing declarations under the NCA. In addition, the criteria should be formulated around the change in risks to the objectives of the NCA attributable to declaration / not-declaration.</p>	<p>It would be prudent to specify a minimum set of criteria to be used in assessment of declarations to ensure some consistency. Criteria should directly link back to the objectives of the NCA.</p>

NCA objective and part	Characteristics and risks (includes specific sections of NCA where appropriate)	Recommended feasible regulatory and non-regulatory approaches to address risks
	<p>S 38. The NCA does not state that the Conservator, nor the flora and fauna committee are required to consider the resourcing implications (compliance and administration) of declarations, not necessarily the policy and or / planning approaches to mitigate risks and for declared species, communities or processes. Declaration of species where risks cannot be feasibly managed, or resource requirements (public and / or private) are excessive are likely to result in non-compliance. This may also compromise the position of the Executive Director (Environment and Recreation Network) at TAMS where they are also the Conservator, as under the Conservator role they may make a recommendation for declaration that cannot be implemented due to resourcing and other constraints.</p> <p>Protection scope includes a species, ecological community or process. Critical habitats and areas of special ecological significance are not explicitly included.</p>	<p>Minor amendment to S 38 to ensure that the feasibility of management of risks and resource implications of declaration are at least noted as part of the process of making declarations.</p> <p>The application of the declaration process should then consider this broader set of issues. In effect, the considerations of the declaration process would be akin to a simple regulatory impact statement. To provide robust and transparent information to the Minister, the declaration process should consider and be written up to make comparisons between the options to declare or not declare a species, community or process.</p> <p>Consider the inclusion of critical habitats of endangered species and areas of special ecological significance such as nature corridors.</p> <p>Declaration process needs to be kept simple and complementary with other legislation, such as the Commonwealth Environment Protection and Biodiversity Conservation Act.</p> <p>Consider formally recognising climate change as a threatening process under the NCA.</p>
	<p>S 40-42. The requirement for the Conservator to prepare an action plan for each declared species, community or process may result in multiple overlapping plans and increase the risk of inconsistent plans. Note:, no inconsistencies were actually identified, this issue is raised as a possibility..</p> <p>MJA understands that most recent Action Plans have consolidated previous plans. This practice should enhance the effectiveness of the implementation of the NCA.</p> <p>MJA understands that while the last three Action Plans have covered multiple species, the NCA does not appear to explicitly provide for this.</p> <p>The NCA is not clear on the process and content of reporting on the implementation of action plans on a periodic basis. This increases the risks (real or perceived) of non-implementation of plans..</p>	<p>Consider a review of existing plans to ensure consistency. Revise any plans that have conflicting outcomes (if any are identified).</p> <p>Consider the rationale for the consolidation of existing plans on a rational basis. Plans should then link directly back to objectives of NCA, provide a means of monitoring implementation, and provide information for broader state of the environment reporting requirements.</p> <p>Consideration should be given to the explicit provision of multiple species action plans.</p> <p>Consider adding a requirement and process to monitor and report progress on action plans at periodic intervals</p>

NCA objective and part	Characteristics and risks (includes specific sections of NCA where appropriate)	Recommended feasible regulatory and non-regulatory approaches to address risks
Part 4 – Protection of animals and fish		
	<p>S 43(2). The relativities of penalty units between nests of native animals with special protection status vs. nests of other native animals (i.e. 30 vs. 20 penalty units) does not appear to reflect the relative values of protecting native nests.</p>	<p>It may be prudent to review the penalty units for all offences under the NCA, to ensure penalties clearly reflect the risks to the objectives of the NCA from specific offences.</p>
	<p>Generally, part 4 of the NCA is very legalistic and the likelihood of the general public and specific sectors (e.g. construction / defence) being aware of the requirements of part 4, and being able to understand their obligations under the NCA are likely to be low.</p> <p>This creates a risk to the objectives of the NCA where persons at risk of breaching the NCA are unaware that an offence has occurred. This risk is similar across many obligations imposed under the NCA.</p> <p>Definition of ‘animal’ be revised to remove anomalies, and include invertebrates.</p>	<p>It would be prudent to develop simple communication tools (e.g. fact sheets) that clearly outline roles and responsibilities with respect to native plans, animals, nests etc. These should include simple messages and contact details for advice if appropriate.</p> <p>It would also be prudent to target awareness towards sectors that potentially pose greater risks (e.g. the construction sector).</p> <p>Include a broad definition of ‘animal’ to require for the taking of animals and native invertebrates from a nature reserve of other protected area requires a licence.</p>
Part 5 – Protection of plants		
	<p>S 52. The specification of caps on penalties for offences that potentially have commercial benefits (e.g. felling and selling native timber) can provide a perverse incentive for individuals to undertake offences. For example, where the commercial value of illegally felling, taking and selling native timber (e.g. \$10,000) without a licence exceeds the maximum penalty (i.e. \$5,000 – 50 penalty units), there is a commercial imperative to illegally fell timber, particularly where the likelihood of prosecution is perceived to be low. There have been instances where illegal clearing of native timber has occurred because the commercial benefits have exceeded maximum penalties.</p>	<p>In addition to the maximum penalties as specified under S 52, S 52 could also stipulate an option to require a restoration order, particularly for repeat offenders and / or endangered vegetation communities. Restoration orders have become more common in much contemporary legislative instruments to protect vegetation (e.g. Queensland Native Vegetation Act).</p>
Part 6 – Prohibited and controlled organisms		
	<p>S 55. While the declaration of prohibited and controlled organisms is prudent, a review of the ACT Legislation Register found no current or repealed declarations under this section.</p>	<p>S 55 may be redundant, given no evidence of current or historic use. Review the need for these provisions. A more detailed assessment may find the provisions have been superseded by more recent legislation, specifically the Pest Plants and Animals Act 2005 which provides more flexible declaration options, and the</p>

option of preparing a pest plant or animal management plan.

<i>NCA objective and part</i>	<i>Characteristics and risks (includes specific sections of NCA where appropriate)</i>	<i>Recommended feasible regulatory and non-regulatory approaches to address risks</i>
Part 7 – Conservation directions		
	<p>Part 7 of the NCA stipulates a number of instances and powers under the NCA for conservation orders. However, similarly to the penalties for breaches of S 52, there may be perverse incentives embedded within maximum penalties (e.g. those imposed under S 60 (3)). This may reduce the effectiveness of part 7 of the NCA.</p>	<p>Include an option to require a restoration order as part of the penalty provisions under part 7 on the NCA.</p>
	<p>S 60 (2a). The specification of minimum time periods to implement conservation directions (e.g. 14 days) may be inappropriate for some offences under the NCA (e.g. where native animals are endangered and actions under the conservation direction are urgent).</p>	<p>Consider a minor amendment to S 60 (2a) to enable shorter period for compliance where necessary. Consideration of time periods under any conservation direction should reflect the risks of inaction within that designated period.</p>
Part 8 – Reserved areas		
Division 8.1	<p>S 63. There are a number of circumstances where actions under S 63 may need to be implemented very quickly (e.g. restrict access to a reserve to maintain public safety).</p> <p>Where the Conservator is not readily available, this may create impediments to implementing S 63 in a timely fashion.</p>	<p>To ensure timely implementation of the Conservator’s responsibilities under the NCA, it may be most appropriate that the Conservator is a senior member of the TAMS staff (e.g. Executive Director).</p> <p>There should also be automatic provisions for delegation to an alternative senior officer to deal with urgent responsibilities in the Conservator’s absence.</p>

NCA objective and part	Characteristics and risks (includes specific sections of NCA where appropriate)	Recommended feasible regulatory and non-regulatory approaches to address risks
	<p>S 72. This section requires restoration of excavation areas by permit holders. However, there does not appear to be any means to robustly measure compliance with restoration requirements. This creates a significant risk of non-compliance and / or an inability to enforce the provisions of licences for excavation.</p>	<p>Amend S 72 to require licences to excavate to include a clearly articulated restoration plan (i.e. restoration requirements – what, where, when). This would form the basis of any compliance regime for restoration.</p> <p>The costs of preparing and administering restoration plans should be borne by the beneficiary (i.e. the party undertaking the excavation).</p> <p>An additional option to provide a positive incentive to undertake restoration in accordance with the NCA (and a restoration plan) is to require a performance based bond be paid upon approval of the licence. The bond is then returned on completion of specified restoration milestones within the restoration plan).</p>
<p>Division 8.2</p>	<p>S 75 – 76. The areas described for “serious” or “material” harm seem arbitrary as areas are often a poor proxy for environmental values damaged / at risk.</p>	<p>There is a need to relate the definition of “serious” and “material” harm back to the relative environmental values of native vegetation cleared. The recent developments in measuring native vegetation values in NSW through tools such as the property vegetation plan developer tool may provide a better measure of the environmental damage of illegal clearing.</p>

NCA objective and part	Characteristics and risks (includes specific sections of NCA where appropriate)	Recommended feasible regulatory and non-regulatory approaches to address risks
Part 10 – Management agreements		
	<p>The scope of part 10 is relatively narrow and only applies to utilities and government owned land development agencies. However, there are other major land uses that create similar risks that management agreements are designed to mitigate. In particular, defence force land and potentially major private sector land developments (e.g. Canberra Airport, private urban developments).</p>	<p>An investigation into the net benefits of broadening of the application of part 10 to other major land uses (e.g. defence) would be prudent. There may be justification for broadening the application of Part 10 of the NCA to other land use and ownership</p>
	<p>S 99. The implementation of management agreements may impose significant costs on relevant utilities. While the imposition of the requirements via management agreements is appropriate to ensure development and services are not provided at the cost to the environment (and these costs can generally be recovered via regulated prices), section 99 is relatively narrow and may impose inefficient costs on utilities in meeting environmental regulatory requirements.</p>	<p>It is entirely appropriate that utilities and land development agencies meet the full cost of implementing management agreements as core business. However, options such as the use of environmental offsets should be considered as an approach to enable environmental obligations to be met at a lower economic cost. To avoid the administrative cost of establishing a specific offset scheme for the ACT, consideration should be made of adopting and utilising the NSW approach (see the NSW case study in Box 1).</p>
Part 11 - Licences		
	<p>Licences for the keeping of small numbers of some fauna (e.g. native birds) by private individual may create an excessive compliance burden on both TAMS and the individual.</p>	<p>Review the risks associated with private individuals keeping native fauna as pets. Where health and environmental risks are negligible, consider relaxing licensing requirements where appropriate.</p>
	<p>S 105 (2). There do not appear to be any formal monitoring and reporting requirements under a licence. This can both increase the risk of non-compliance and reduce the likelihood of enforcement given current agency resources.</p>	<p>Minor amendment of S 105 (2) to require some form of formalised monitoring and reporting as a compliance tool. Costs of administering the compliance regime should be recovered from the licence applicant.</p>
	<p>S 105 (2). There are a number of potential instances requiring licences under S 105 (2), where the costs of meeting environmental regulations could be lower and environmental benefits could be enhanced through actions undertaken on alternative sites.</p>	<p>Consider the implementation of environmental offsets as part of the suite of regulatory compliance options and tools available.</p>

NCA objective and part	Characteristics and risks (includes specific sections of NCA where appropriate)	Recommended feasible regulatory and non-regulatory approaches to address risks
	<p>S 112. While records are required to be kept under S 112, their usefulness in the enforcement regime would appear limited.</p> <p>Periodic reporting under licence conditions can form the basis of an efficient compliance regime and provide vital information that can be consolidated to inform broader environmental performance measures (e.g. state of the environment reporting).</p>	<p>Ensure that periodic reporting to TAMS of activities undertaken under licence conditions is implemented. The costs of administering licence systems should be fully recovered from licence holders.</p> <p>Reporting under licence conditions could become a central platform for any amended regulatory regime and be incorporated into state of the environment reporting (where practicable).</p>
	<p>S 133. “A conservation officer may seize any animal, plant, substance or thing in connection with which he or she believes, on reasonable grounds, an offence against this Act has been committed.”</p> <p>An undefined use of the term ‘thing’ is vague and could provide a risk to the effective application of the Act.</p>	<p>Define the term ‘thing’ in the context of section 133.</p>

Source: MJA

3. Other issues relevant to the review of the Nature Conservation Act

3.1. The role of the conservator

The Conservator of Flora and Fauna

The Conservator of Flora and Fauna ('the Conservator') is a public servant (conservation officer) appointed by the chief executive. The Conservator is responsible for administering the powers of the Act, assisted by the conservation officers of the Australian Capital Territory Parks and Conservation Service.

The conservator may declare a species of native animal⁴ or plant to have special protection status if he or she believes the species to be threatened with extinction, or endangered.

Protected status can be extended to fish or invertebrates, native plants or animals. Animals can also be declared 'exempt animals', in that they can be kept domestically, imported, exported and sold.

The Flora and Fauna Committee (see below) can also recommend to the Minister that a species or ecological community be declared to be vulnerable or endangered. The committee can also advise the Minister that a process within the Territory is a 'threatening' process.

A draft action plan must be prepared by the conservator for each species, ecological community or process subject to a declaration.

The decisions and actions of the Conservator of Flora and Fauna can have an impact on achieving the objectives of the NCA.

Flora and Fauna Committee

The Flora and Fauna Committee was established under the NCA to provide advice to the Minister in relation to nature conservation. The Committee is an independent body of seven experts in biodiversity and/or ecology, at least two of whom must not be public servants. Members are appointed by the Minister on a part-time basis for three years.

The function of the Flora and Fauna Committee is to advise the Minister in relation to nature conservation. In particular, it is required to advise the Minister of species and ecological communities that are threatened with extinction and processes that are ecologically threatening, and recommend that they be declared accordingly.

The Flora and Fauna Committee provides key input to the identification of potentially threatened species and threatening processes. The Committee is fundamental to ensuring that many decisions to be made under the NCA have sufficient technical ecological input.

⁴ Including migratory animals.

Analysis and recommendations

Virtually all contemporary environmental and natural resource legislation has a series of roles designated to a senior officer of the relevant department. In the case of much of the legislation, the Chief Executive is the responsible officer, although some roles may be delegated to other senior officers (either directly within legislation, or by the Chief Executive).

With respect to the NCA, the Executive Director (Environment and Recreation Network) within TAMS has similar responsibilities to the Chief Executive of environmental and natural resource agencies in larger jurisdictions. The rationale for a senior executive having these powers is that:

- the majority of requirements are to operationalise and implement existing policy and legislation (i.e. interpret legislative intent into actions by departmental officers and others);
- many of the requirements are administrative and managerial and involve directing agency staff to undertake certain actions – requiring direct control over agency staff and resources;
- a departmental officer is more likely to be able to authorise and implement actions at short than an external person undertaking the role of Conservator (or similar); and
- a senior executive exercising these responsibilities is more likely to understand resource implications and broader policy considerations / Government objectives than an external person with the Conservator's role.

In effect, the role of the Conservator being undertaken by a departmental senior executive should result in more efficient implementation of legislative requirements. However, there are sometimes criticisms of the abovementioned model due to:

- a perceived lack of independence of the Conservator (or similar roles); and / or
- given the fact the most senior executive positions are managerial, not technical roles, the knowledge base of the Conservator (or similar roles) is sometimes questioned and / or criticised.

These criticisms are typically overcome (at least partially) through a series of formalised advisory committees / boards to provide informed, robust and impartial advice of specific responsibilities under the legislation. These committees / boards typically operate under some form of charter (usually an advisory role only), and consist of Ministerially appointed relevant experts and representatives of relevant stakeholder interests. In the case of the NCA, this function is performed by the Flora and Fauna Committee.

MJA's review of the role of the Conservator did not highlight the need for major change to the roles and responsibilities of the Conservator per se. Rather, **a series of recommendations are made in Section 2 that relate to both the responsibilities and operations of the Conservator and the Flora and Fauna Committee.** These recommendations are primarily designed to enhance the effectiveness and streamline the efficiencies of the respective roles.

MJA is aware of the proposal to merge the statutory Flora and Fauna Advisory Committee with the non-statutory Natural Resource Management Advisory Committee. As noted, the

key role of the Flora and Fauna Advisory Committee is to advise the Minister on declarations of species and ecological communities that are threatened, and pest animals, plants and processes that are ecologically threatening. The NRMAC has a potentially broader role in providing advice on matters requested by the Minister, and to provide advice to the Executive Director of the Environment and Recreation on NRM issues in the ACT.

Provided there are no conflicts of interest or efficiency losses associated with the new Committee, and it is staffed and resourced appropriately, there may be benefits to combining these roles. It is also important that transparency is ensured of the rationale behind all decisions made under these arrangements. MJA has recommended that the Flora and Fauna Advisory Committee expand its skill base, and the new Committee may be consistent with this goal.

Recommendations

Key recommendations with respect to the Conservator and the flora and fauna committee are to:

- broaden the skills based of the Flora and Fauna Advisory Committee (or replacement committee) to ensure representation from disciplines that understand broader threatening processes and risks and how they are considered under other decision making frameworks (e.g. land use planners);
- ensure resourcing implications and all feasible implementation mechanisms / policies are at least noted when developing recommendations;
- update and rationalise strategies, plans and reporting arrangements;
- avoid duplication and ensure consistency across the roles and responsibilities of other accountable positions (e.g. the Commissioner for the Environment); and
- ensure transparency in rationale behind decisions made by the Conservator.

These recommendations are covered in greater detail in Section 2

3.2. Agency resources and adequacy of fees and charges: impacts on compliance and enforcement

Resources available to achieve the objectives of the NCA and other related legislative requirements are very limited. The TAMS annual report⁵ indicates that the budget resources for environment, sustainability, heritage and forestry resources (agency output 1.5) is around \$41.8M. These resources must cover:

- development and maintenance of environmental, nature conservation and heritage legislation;
- provision of advice and delivery of the regulatory framework for the environment, biodiversity and heritage outcomes; and
- management of the natural resources of the ACT, including nature parks and reserves, plant and animal species, and the delivery of the ACT's sustainability and policy / initiatives.

⁵ TAMS, 2007, TAMS Annual Report 2006-07.

In addition, approximately \$0.4M. was allocated in 2006-07 for the Office for the Commissioner for the Environment.

Given the limited financial resources available, there is a significant need to ensure that the regulatory framework under the NCA and the implementation of actions to achieve the objectives of the NCA are cost effective.

3.2.1. Fees and charges for regulated activities

During the interview process, a number of Departmental staff raised the issue of inadequate resourcing to adequately regulate (compliance and enforcement) activities under the NCA. Generally the resources to administer the NCA come from two principal sources (directly and indirectly): annual budget appropriations and fees under the NCA. There are several matters for which fees are applicable (e.g. fees to take a native animal for commercial purposes NCA Section 45).⁶ It would appear that these fees have not been comprehensively reviewed for several years and that minor price adjustments have been made on a year to year basis (e.g. consumer price index adjustments).

Comparisons of the fees applied under the NCA with fees for similar matters in other jurisdictions indicated that the fees are often lower than those charged by other jurisdictions.

Contemporary practice in other jurisdictions would indicate that:

- Wherever possible, fees are charged on a cost-recovery basis. In effect, the fee structures are based on the premise that the entity applying to undertake an activity (e.g. selling of animals) is likely to gain commercially from the activity (i.e. an application of the beneficiary pays principle). In establishing fees, consideration is typically made of both the fixed costs to the regulatory agency (such as establishing registers - typically recovered over time) as well as the variable costs (such as processing individual applications or undertaking annual evaluations).
- Wherever possible, fees are also being developed to provide a strong economic signal of the potential risks to the objectives of the relevant legislation associated with the activity. Generally this is being done by assigning risks against specific activities (e.g. collection of seeds) where fees increase based on the relative risk of the activity and the amount of the activity undertaken.⁷

In effect, contemporary fee regimes are being used to both recover administrative costs, and to discourage (not prohibit) activities that may create risks to the objectives of the relevant legislation.

While it has been noted that higher fees may encourage activity outside the regulatory framework, it should be noted that:

- It is likely that illegal activity is already occurring.⁸

⁶ ACT Government, 2006, Nature Conservation (Fees) Determination 2006 (No 1)

⁷ This is often done through a points system for each activity based on risk assessments. Some jurisdictions (e.g. NSW and Queensland) are moving towards load based license fees for some activities.

⁸ OECD, 1991, Guidelines for the Application of Economic Instruments in Environmental Policy, Environmental Committee Meeting at Ministerial Level, 30-31 January, Background Paper No. 1. OECD, Paris. MJA, 2007, Review of license fees for Queensland Environmental Protection Agency.

- Where sanctions/fines for non-compliance are sufficiently high and compliance is adequately resourced, the financial risks to non-compliant businesses are sufficient to encourage businesses to work with the regulated system, even under higher fee regimes.⁹

In addition, in other jurisdictions, there is an emerging trend towards requiring licence holders to provide performance or activity reports against specific criteria on a regular basis for licensed activities (e.g. selling native animals). In effect, the onus of reporting falls squarely on the shoulders of the licence holder. **This reporting typically forms the fundamental basis of monitoring for contemporary compliance and enforcement regimes.** To save costs in updating or replacing existing compliance regime systems, there are likely to be opportunities for TAMS to adopt (all or part) systems from other jurisdictions.

3.2.2. Commercial concessions

It should also be recognised that there are often substantial commercial benefits derived by commercial operators (e.g. tour operators) from the use of reserves and other open space owned by the ACT. Increased use of these areas can have a detrimental environmental impact and increase risks to natural assets. Contemporary regulatory practice has seen an emergence of fees charged to commercial operators for the use of reserves for commercial purposes (a charge based on usage). However, it should be realised that simply imposing a charge may have little impact on use levels and provides an imprecise means to manage pressures on reserves by tourists.

An alternative approach being used in some jurisdictions is to establish a maximum load (e.g. number of visitors per day from commercial operations) and then allocate the rights to access reserves usually as some form of concession specifying the number of visitors, time period etc. These rights are typically distributed via market mechanisms (e.g. a tender where operators bid for a share of the total available visitor load for a specific period).

This approach has two advantages over a straight charging regime. Firstly, physical loads (e.g. visitor numbers) can be managed to ensure environmental risks are adequately managed. Secondly, the amount paid by tourism operators for a concession actually represents the commercial value to the operator. This avoids the need for TAMS to second guess the value of concessions. This model could be further extended by allowing concessions to be traded between operators (while ensuring all other requirements of the concession are met by the new owners).

3.2.3. Royalties

Where the ownership of potentially valuable natural resources are vested in the Crown, the commercial exploitation of those resources could provide a revenue stream to the Government via royalties. During the consultation phase, the ownership of genetic material was raised, including the impacts on revenue. The appropriate royalties regime is dependent on the genetic material being extracted and the use of that material.

⁹ MJA, 2007, Review of license fees for Queensland Environmental Protection Agency.

Where material will be used on an ongoing basis (e.g. seeds), some form of charge or ad-valorem royalty or resource rent regime based on volumes, values or profits may be appropriate.

However, for many uses of genetic material (such as for pharmaceuticals), the use of the generic material is a once-off use and the commercialisation occurs via synthetic replication of the key component of the genetic material. In these circumstances, the royalty regime is passed on the value of the intellectual property encompassed within the genetic material. This approach is significantly more complex.

The rationale and revenue from royalties must be weighed up against the costs of administering such systems. It would be more appropriate to consider the development of royalties on a case-by-case basis against alternative approaches to manage the exploitation of genetic material.

Recommendations

To ensure sufficient resources to administer the NCA and to provide continuous economic incentives that reduce risks to the objectives of the NCA, the Department should undertake a review of existing fee structures with a view to developing a fees regime that achieves a) cost recovery and b) discourages activities that increase risks to the objectives of the NCA.

Consider the use of charges and / or market-like approaches to manage and allocate concessions to commercial operators using reserves.

Based on the outcomes of the review, consult and then implement a new fees regime.

Undertake a detailed analysis of options to enhance compliance and enforcement regimes under the NCA, potentially utilising systems developed by other jurisdictions.

3.3. Relationship with other institutional arrangements

The role and functions of the NCA can be impacted by a number of other legislative instruments, institutional arrangements and specific bodies. These are outlined below including areas where enhancements in coordination and other matters could be enhanced to better achieve the outcomes of the NCA.

3.3.1. Related and complementary legislation and strategies

Planning and Development Act 2007

The Planning and Development Act 2007 has been introduced to replace the Land (Planning and Environment) Act 1991 (the Land Act) and the Planning and Land Act 2002. The new legislation creates a faster, more transparent and effective system of planning in the ACT.

The new legislation is designed to ensure development of the ACT that is consistent with the social, environmental and economic objectives of the ACT. Specific regulatory requirements under the Act include:

- establishing the basis for exempt developments;

- establishing the need for and processes for environmental assessments relating to new developments and the specific needs for environmental impact statements;
- the referral processes for new development applications; and
- the management of leases.

However, there was some evidence from the consultation that the interests of the NCA were not always adequately considered within the assessment processes required under other legislation such as the Planning and Development Act. Changes in land use that allow use of land that is directly or indirectly contrary to the objectives of the NCA is perhaps the biggest manageable risk to achieving the objectives of the NCA.

Recommendation

Undertake an assessment of other regulatory approval processes that could inadvertently result in outcomes contrary to the objectives of the NCA. Assess and develop a policy case for expanding the scope of referral requirements consistent with achieving the objectives of the NCA.

Pest Plants and Animals Act 2005

The Pest Plants and Animals Act 2005 commenced on 12 November 2005. The purpose of the Act is to protect the Territory's land and aquatic resources from threats from pest plants and animals, and to promote a strategic approach to pest management. The Act replaces the pest plant and animal provisions in the Land (Planning and Environment) Act 1991, but may supersede section 55 of the NCA (declarations of prohibited and controlled organisms made by disallowable instrument).

The objectives of the Pest Plants and Animals Act 2005 are complementary with the objectives of the NCA, but may supersede the provisions for declaring prohibited or controlled organisms under section 55 of the NCA.

Nature Conservation Strategy

The Nature Conservation Strategy is drafted by the conservator and provides a sound strategic context for the NCA. The strategic goal for the ACT Nature Conservation Strategy is adopted from The National Strategy for the Conservation of Australia's Biological Diversity '*...to protect our biological diversity and maintain ecological processes and systems*'.

The Strategy outlines a broad strategic vision for the ACT relating to key aspects of nature conservation. Originally drafted in 1997, each section states key objectives, actions and performance indicators or targets. Due to the statutory nature of the document, a time-frame is deliberately omitted. However, it is stated in the document that its lifespan is anticipated to be five to 10 years in its original form, with many of its implementation commitments being integrated into broader management and planning programs. It is further stated in the Strategy that the Conservator of Flora and Fauna will develop and maintain a *Strategy Implementation Plan* (annually) as an aid to implementation of commitments made in the Strategy.

Objectives of nature conservation, as stated in the Nature Conservation Strategy, include:

1. Conservation of biological diversity
 - i. Bioregional planning for biodiversity conservation
 - ii. Conservation through reservation
 - iii. Off-reserve conservation of biodiversity
 - iv. Conservation of threatened species and communities
 - v. Monitoring our biodiversity
2. Management of ecological threats
 - i. Management of pest animals
 - ii. Management of environmental weeds
 - iii. Management of changed fire regimes
 - iv. Management of degradation of aquatic systems
 - v. Management of decline and loss of native vegetation.

The Nature Conservation Strategy provides as sound strategic context within which the NCA is applied. However, it would be prudent to review and update the Nature Conservation Strategy given recent institutional, planning and program developments (e.g. the establishment of the regional NRM Council).

Recommendation

Review and update¹⁰ the Nature Conservation Strategy to ensure it represents contemporary knowledge of the risks to the objectives of the NCA and is consistent with other relevant institutional and planning arrangements.

3.3.2. Other related organisations and entities

ACT Planning and Land Authority (ACTPLA)

The ACT Planning and Land Authority is the ACT's statutory authority responsible for planning for the future growth of Canberra in partnership with the community. The ACTPLA's head of power is provided under the Planning and Development Act 2007.

The Authority aims to promote sustainable, attractive, safe and well-designed urban, residential and rural environments in the ACT. It has responsibility for strategic and land planning, lease administration, land information, development and building regulation.

¹⁰ The NCA Conservation Strategy notes that it is anticipated to last 5-10 years in its original form, and was drafted in 1997.

The Authority is generally required to administer the ACT Plan and plan and regulate for the development of land in the ACT.

It should be noted that changes to land use were identified in the interview process as potentially the greatest risk to achieving the objectives of the NCA that can be directly managed and mitigated by planning decisions.

Recommendation

Consider amending relevant legislation to ensure that the objectives of the NCA and risks attributable to major developments are incorporated (i.e. TAMS is a referral agency) into the operations of the ACTPLA (implementation of Planning and Development Act).

Natural Resource Management Council

Since the establishment of the NCA there has been a significant move towards formalised community-based natural resource management arrangements. These have primarily been part-funded by the Australian Government.

In the ACT, the Natural Resource Management Council (previous the Board) was set up in 2003 to meet the requirements of the Bilateral Agreement for the delivery of the Natural Heritage Trust.¹¹ Its primary goal is to develop and oversee the implementation of the ACT Natural Resource Management Plan. The Plan provides a strategic framework for natural resource management activities and investment in the ACT and surrounding region.

The Council is comprised of community members from the ACT representing community interests in relation to natural resource management in the Territory.

The ACT Minister for the Environment appoints Council members. The Council is responsible for:

- preparation of the *ACT Natural Resource Management Plan*;
- development of the Territory's Natural Resource Management Investment Strategy;
- oversight of the implementation and review of the *Plan*; including:
 - i. Projects derived from the *Plan*;
 - ii. Expenditure of Natural Heritage Trust (NHT) funds; and
 - iii. Management Actions and Territory Targets identified in the *Plan*.

Similar to all other jurisdictions, the Council plays a vital role in implementing positive natural resource management programmes across the ACT. **The Council has a number of priorities (matters for target) that are directly aligned with the objectives of the NCA,** specifically enhancement of:

- native vegetation outcomes;
- outcomes for significant native species; and
- outcomes for significant invasive species.

¹¹ The NHT is being replaced by the Commonwealth Government's 'Caring for Country' initiative. This may affect the future role of the Council.

As at the end of the 2004-05 year, the Council had already invested around \$2.4M against these matters for target.¹² **The greater degree to which the ACT Government is able to influence the prioritisation of actions undertaken by the Council, the greater the likelihood that risks to the objectives of the NCA can be reduced through investments by the Council that positively contribute to the objectives of the NCA.** The negotiation of in-kind contributions to the Council provides an opportunity to assess commonalities between the objectives of the Council and the NCA as a point for establishing in-kind contributions and jointly developing priority actions that positively contribute to achieving the objectives of the NCA.

Recommendations

Ensure the objectives of the NCA are reflected in the planning and actions of the NRM Council through active participation on Council activities.

It may be prudent for the Conservator (or a representative) to be appointed to the NRM Council.

Commissioner for the Environment

Under the Commissioner for the Environment Act 1993, the Office of the Commissioner for the Environment shall:

- produce State of the Environment reports for the ACT
- investigate complaints from the community regarding the management of the Territory's environment by the ACT Government and/or its agencies
- conduct investigations directed by the Minister
- initiate investigations into actions of the ACT Government or its agencies, where those actions have a substantial adverse impact on the Territory's environment
- make recommendations for consideration by the ACT Government, and include in the Annual Report the outcomes of those recommendations.

The position of the Commissioner is independent, and while currently part time, it has been announced that the role will be substantially expanded and will be changed in name to the Commissioner for the Environment and Sustainability.

Its mission is to *“develop understanding of changes in the condition of the environment and the reasons for these, and to encourage all sectors of the community to progressively improve the environment, and so work towards sustainability.”*¹³

Through the decisions made and advice to the ACT Government, the Commissioner for the Environment can have a material impact on the ACT's abilities to meet the objectives of the NCA.

Recommendations

¹² DAFF, 2005, Regional Programs Report 2004-05, Regional Summary 1.01, Australian Capital Territory Region, Australian Capital Territory

¹³ <http://www.environmentcommissioner.act.gov.au/aboutus>

Review the degree to which the actions of the Conservator and the Commissioner for the Environment roles overlap and where there may be inconsistencies between each respective role.

Investigate the potential to merge the Conservator and the Commissioner for the Environment roles.

Natural Resource Management Ministerial Council

The Minister for Environment, Water and Climate Change is the Territory's representative at the Natural Resource Management Ministerial Council (NRMMC). The NRMMC consists of the Australian/State/Territory and New Zealand government ministers responsible for primary industries, natural resources, environment and water policy. The Council is the peak government forum for consultation, coordination and, where appropriate, integration of action by governments on natural resource management issues.

The agreed objective of the NRMMC is:

"to promote the conservation and sustainable use of Australia's natural resources".

The NRMMC provides opportunities for the ACT Government to work in conjunction and share knowledge with other jurisdictions (particularly NSW) in order to reduce the risks to the objectives of the NCA attributable to policy and program implementation in other jurisdictions. In addition, NRMMC provides a forum for the potential sharing of knowledge, skills, systems and processes between jurisdictions.

4. Current ‘better practice’ policy and legislation approaches

4.1. Introduction

Contemporary best practice nature conservation policy requires the use of a mix of complimentary approaches. As noted by the National Natural Resource Management Ministerial Council:

“An effective approach to NRM entails the application of a wide range of policy and programme responses, including capacity-building initiatives, grants, on-ground works and regulation, and is likely to entail an increased emphasis on the use of market-based instruments in the future.”¹⁴

This sections provides an overview of current better practice approaches that may be applicable to the ACT.

4.2. Best practice – a spectrum of complementary approaches

The range of policy instruments available to Government can be categorised into four broad areas:

- Suasive approaches, which aim to influence behaviour through information provision and education. These include guidelines, codes of practice, training, extension services and research and development;
- Regulatory approaches, relating to both legislation and subordinate regulations, include prohibitive restrictions on behaviour with penalties for non-compliance. These include licensing, mandatory management plans and covenants;
- Market-based instruments, which aim to influence behaviour using market incentives. These include development offsets, auction systems for the securing of native vegetation outcomes on private land, and pollution and emission trading; and
- Public provision of services where it is impractical to allow private provision

None of these approaches is superior in all contexts. Rather, different approaches are preferred depending on the aspects of the particular problem being addressed. When used together in a coherent strategy, superior public policy results can be achieved.

The choice of best practice policy instrument in nature conservation can be aided by an understanding of the private and public costs and benefits of any environmental change. In effect, where are the incentives and disincentives for individuals and firms to act in a manner consistent with the objectives of the NCA?

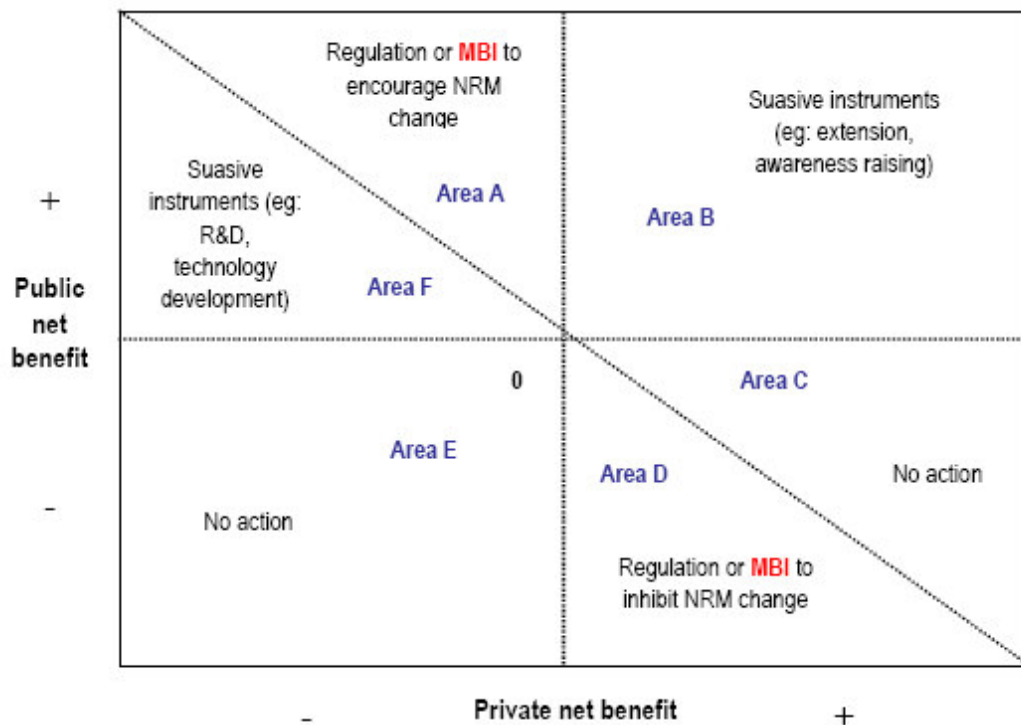
Realistically, a policy change (regulatory or otherwise) is justified only where its overall benefits exceed the costs associated with the change. How those costs and benefits are

¹⁴ <http://www.nrm.gov.au/publications/frameworks/pubs/future-programmes.pdf>

distributed between broader society (the ‘public’) and private agents (such as land developers) can inform us as to the appropriate policy tool.

In Figure 2 below, the public net benefits (positive and negative) are shown on the vertical axis, and private net benefits are shown on the horizontal axis. The various combinations of private and public benefits lend themselves to particular policy alternatives.

Figure 2: A framework for selection appropriate policy tools



Source: Pannell, David. 2008, *Public benefits, private benefits, and policy intervention for land-use change for environmental benefits, Land Economics (forthcoming)*¹⁵

Key issues for considering which policy tool may be most appropriate include:

- Where the net public benefit is high and the net private benefits is marginally negative (Area A), there is a strong case for intervention to encourage change in the public good. In this case, a regulation or MBI may be most appropriate.
- Where there is both a private and a public net benefit (Area B), a suasive approach is appropriate to inform private agents of the benefits of action. For example, planting native vegetation in areas affected by saline groundwater.
- Where the private net benefit of an action exceeds the public net costs (Area C), no action is required.
- However, where the net public costs exceed the net private benefits (Area D), there is a strong case for regulatory or MBI intervention to prevent an NRM change from occurring. An example would be where development is planned for an area retaining strong nature conservation values.

¹⁵ <http://cyllene.uwa.edu.au/~dpannell/sif3-ppf.pdf>

- Where both private and public net costs occur (Area E), there is no incentive for either public and private interests to bring about a change.
- Lastly, where there is a small net public benefit, and a larger net private cost (Area F), the only appropriate policy response is to invest in research and development in order to change these relative costs and benefits.

4.3. Public provision

The focus of conserving native flora and fauna in all Australian jurisdictions has historically been on the protection of valuable natural assets in public parks and reserves. This is particularly evident in the ACT, where 54 per cent of total land is dedicated to nature conservation.¹⁶ By securing significant areas of native vegetation and limiting human impact on those areas, ecosystems have been protected, and nature conservation values retained.

Public provision of nature conservation through parks and reserves is a powerful and effective means of protection, however, expanding the quantity and quality of protected areas is expensive and difficult. This approach also is unable to affect the sometimes substantial natural values existing on private (or leasehold) land.

While understandably a primary focus in previous years, attention has shifted in recent times to the preservation of nature conservation values on private land, given the values residing on these lands, and the growth in residential and agricultural developments.

4.4. Legislation/regulation

Legislative Acts typically form the basis of nature conservation in any jurisdiction.

4.4.1. Rationale

Legislation and regulation are used in nature conservation to proscribe or limit certain actions that have been recognised as inconsistent with desired public interests. Regulatory solutions generally impose uniform requirements on citizens and landowners, for example limiting actions on public lands (such as removal of native species) or restricting particular property rights of landowners (clearing native vegetation on private land).

Clear legislation is invaluable for situations involving environmental thresholds, beyond which irreversible decline would occur. For example, endangered species legislation is required to protect native species on the brink of extinction.

In the absence of perfect information, regulation can provide a means of applying the ‘precautionary principle’ to remove the risk of reaching these threshold points. Common identified advantages of regulatory approaches include:

- simple and universal application;
- low administrative cost (to Government) of implementation; and

¹⁶ <http://www.anra.gov.au/topics/land/landuse/act/index.html>

- some certainty to affected parties by providing clear information on legal requirements or the specification of property rights and obligations.

Despite the potential advantages of regulation as a policy tool, a number of disadvantages of regulatory approaches have been identified including:¹⁷

- Regulation can sometimes impose high compliance costs (usually development opportunities foregone (“opportunity costs”)¹⁸.
- Inflexible application and the potential for higher cost solutions. For example, a prohibition on land clearing would preserve native vegetation, but will prevent the clearing of (potentially high agricultural value) land with low environmental values.
- By providing a ‘one size fits all’ approach, regulation often does not provide incentives to find lower cost solutions or go beyond the limits set by regulators.
- High cost to Governments of ongoing monitoring and enforcement, to ensure compliance with regulations.
- Regulatory approaches often do not have clearly specified objectives and lack good regulatory practice, particularly transparency, accountability and better targeting of ecosystem service provision.

Regulatory approaches are often a prerequisite to the use of alternative approaches (e.g. market based instruments) as regulations are often required to establish the underlying property rights and minimum obligations for markets to work.¹⁹

4.4.2. Key elements of best practice legislation

Nature conservation regulation, like all regulation, should be consistent with general principles and guidelines for regulatory best practice. These are general principles and are not limited particular area of public policy concern, but lend themselves broadly to nature conservation. They are based upon consideration and reflection on CoAG’s Principles and Guidelines for National Standard Setting and Regulatory Action (Council of Australian Governments 2004). They include:

- Regulation should have clearly identifiable objectives and outcomes. The objective is the effective achievement/enforcement of the stated objectives, e.g. to reduce or eliminate behaviour leading to negative externalities, or to induce or require behaviour such as information disclosure which allows markets to operate more efficiently and effectively.

¹⁷ There are a number substantial reports that address the potential disadvantages of regulatory approaches including: Productivity Commission, 2004, Impacts of Native Vegetation and Biodiversity Regulations; ABARE. 2003. Queensland Land Clearing Proposal: Socio-Economic Impact. Prepared for the Commonwealth Department of Agriculture, Forestry and Fisheries. May 2003; and ABARE. 2006. Native vegetation management on broadacre farms in New South Wales. ABARE eReport 06.3. March 2006.

¹⁸ For example, the compliance cost of the changes to the Queensland Vegetation Management Act that phased out broadscale clearing is estimated to have had an opportunity cost to landholders totalling \$198M over 25 years. (ABARE. 2003. Queensland Land Clearing Proposal: Socio-Economic Impact. Prepared for the Commonwealth Department of Agriculture, Forestry and Fisheries. May 2003)

¹⁹ Whitten SM, Coggan A, Reeson A, Gorrdard R. 2007. Putting theory into practice: market failure and market based instruments (MBIs). Working Paper 2 in the Socio-Economics and the Environment in Discussion CSIRO Working Paper Series Number 2007-02. May 2007.

- The development and design of regulation should be scientifically rigorous and evidence based, i.e., there should be reasonable evidence to suggest that it is likely to be effective in achieving its objectives.
- Regulation should be enforced and effective. Un-enforced regulation reduces effectiveness, undermines attitudes and responsibility and allows capriciousness in enforcement where it does occur.
- Regulatory burden should be minimised. Compliance strategies and enforcement should ensure that the objectives are achieved effectively and at lowest compliance cost.
- Regulation of social behaviours must recognise different levels of government in Australia's federal system, in this context the Commonwealth, and State and Territories Governments, and the need for appropriate assignment of regulatory responsibilities and instruments between them.
- Regulation should be preferably be focussed on output or performance rather than regulating the inputs used in the production of that output.
- Individual regulations should be designed and assessed within the context of the situation and the bundle of potential and existing regulations. While many individual interventions can be appropriately assigned to deal with specific problems/objectives, it is also true that there is some substitution between them.
- Local externalities require local action. Where the negative externalities in question occur at the local level, local communities are entitled to express and seek to implement their views on what is desirable and acceptable in their neighbourhood.
- The burden of proof that regulation is necessary lies with the proponents – as a general rule. However, this burden should not be unnecessarily duplicated again and again.
- Processes for judgement and discretion in regulation should be impartial, avoid opportunity for anti-competitive motives and not be administered/directly influenced, therefore, by competitors.
- Unnecessary impacts should be avoided. Unless the profit making incentive is inimical to the reduction or elimination of the behaviour creating the negative externalities, then regulation should minimise impacts on competition. Conversely, unnecessary and unintended impacts on nature conservation policy objectives should be avoided.
- Regulation should not discriminate between different suppliers in competition, unless there are health, safety or other public policy reasons for doing so. Otherwise there should be no discrimination: the same rules, standards and restrictions should apply to all. The avoidance of discrimination does not require that each supplier is entitled to supply what they wish to the market.

While the principles of best practice regulation are essentially independent of the objectives, the package of best practice regulation will vary with the objectives and with the evidence on the effectiveness, costs and efficiency of the different interventions at the local situation.

4.5. Market and market-like approaches

4.5.1. Rationale

Market based instruments (MBIs) are tools that rely on market signals to positively influence people’s behaviour and generate ‘win-win’ outcomes. They seek to overcome the inefficiencies of regulatory approaches and encourage innovative solutions to environmental problems such as nature conservation by providing economic incentives for desired behaviour.

Market based approaches work by providing a framework for a market exchange between buyers of environmental services (such as government agencies or licensed polluters), and willing sellers of these services (such as farmers). Under an MBI framework;

- ‘buyers’ of environmental services are provided with a marketplace in which to choose the best value outcomes; and
- landholders (and others) are given a business incentive to become suppliers, or ‘sellers’ of innovative environmental services.

In this way, MBIs entail the creation, introduction or facilitation of markets where none existed before.

MBIs can come in many different shapes and sizes, but all of them will make use of up to three broad classes of levers as follows:

Three classes of MBIs to influence behaviour:		
<p>Price-based levers work by modifying, or discovering, prices in order to secure more environmental services. e.g.</p> <ul style="list-style-type: none"> • <i>Reverse Auctions</i>, where access to public funds for a specific purpose is auctioned to the best bidders. <p><u>Note</u> – Taxes, subsidies, etc. also fit in this category.</p>	<p>Quantity-based levers work by specifying amounts of rights or obligations. e.g.</p> <ul style="list-style-type: none"> • <i>Capping & trading</i>, where limits are assigned to licensed polluters and trade in credits is enabled. • <i>Offset</i> mechanisms enable ‘polluters’ to invest in more cost-effective off-site actions as an alternative to on-site compliance. 	<p>Market Friction levers work by making existing markets work better, or by encouraging the development of new markets.</p> <p>By providing 1 or more markets with better information, this approach seeks to and to capitalise on synergies between different markets.</p>

Source: MJA

In nature conservation, auctions and offsets are already commonly in place in most Australian jurisdictions.

Importantly, not all MBIs fit neatly into one or other category. In some cases an MBI may make use of two different levers. For example, a native vegetation offset scheme may also make use of reverse auctions as an efficient means of finding cost-effective offset actions.

There may also be an opportunity to address two or more environmental issues by incorporating them into a single market-based approach. Where the gains from combining issues outweigh the costs, MBIs can be designed to optimise nature conservation outcomes across each different issue.

The National Heritage Trust is currently funding the ‘ACT Land Keepers’ program, which involves five projects including providing economic incentives to rural land owners to preserve biodiversity on their properties.²⁰

4.5.2. Key approaches used in other jurisdictions

MBIs are becoming increasingly common in Australian jurisdictions where more traditional regulatory approaches have been ineffective, or where limited funds have required more efficient allocation of resources.

In nature conservation, there has been a particular focus on the use of auctions to secure native vegetation on private land, and the use of environmental offsets with a ‘no net loss’ function for developments. The below figure lists a number of recent MBIs in use in jurisdictions across Australia.

Table 2 : Some recent market-based biodiversity initiatives

Commonwealth	<ul style="list-style-type: none"> ▪ National Heritage Trust (NHT) National Reserve System Program - acquisition funding and all ongoing management costs for the purchase of land with a biodiversity value (legal contract with conservation management agreement).²¹ ▪ Tasmanian Forest Conservation Fund, securing old growth forests and under reserved forest communities on private land (Federal Government funding) – auction tender approach²²
NSW	<ul style="list-style-type: none"> ▪ Certification and bio-banking outlined in Box 1. ▪ Southern Rivers Catchment Management Authority Bush Incentives Scheme – auction tender approach.²³ ▪ Enterprise Based Conservation (Lachlan, Lower Murray Darling and Western Catchment Management Authorities) – auction tender approach.²⁴ ▪ Liverpool Plains Pilot Project – auctions for environmental services (salinity).²⁵ ▪ The Camden Council Natural Assets Policy - offsets²⁶

²⁰ <http://live.greeningaustralia.org.au/GA/ACT/WhatsNew/actlandkeepers.htm>

²¹ <http://www.environment.gov.au/parks/publications/nrs/directions/pubs/directions.pdf>

²² <http://www.environment.gov.au/land/forestpolicy/fcf/index.html>

²³ <http://www.southern.cma.nsw.gov.au/pdf/SRBI-Brochure.pdf>

²⁴ http://www.western.cma.nsw.gov.au/pdf/EBC_Brochure.pdf

²⁵ <http://naturalresources.nsw.gov.au/salinity/science/pilot-liverpool.htm>

²⁶ http://www.camden.nsw.gov.au/files/environment/natural_assests_policy.pdf

	<ul style="list-style-type: none"> ▪ The Nature Conservation Trust (Revolving Funds)
QLD	<ul style="list-style-type: none"> ▪ Brisbane’s Bushland Preservation Levy, paid by all rate payers for the purchase and rezoning of native vegetation areas. ▪ Gold Coast City Council Open Space Acquisition Program, similar to the above.²⁷ ▪ Voluntary Conservation Agreements (Brisbane City Council) – grants for rezoning of native vegetation areas on private land.²⁸ ▪ East-West Landscape Corridors in the Southern Desert Uplands, Burdekin–Fitzroy - vegetation corridors to be established across the Desert Uplands through the use of an auction or other MBI-related voluntary landholder participation processes²⁹ ▪ Queensland Trust for Nature revolving funds
SA	<ul style="list-style-type: none"> ▪ Banrock Station Wine Environmental Labeling Project (market friction) ▪ cost sharing with risk ranking and cooperative action pilot in the Mount Lofty Ranges and Greater Adelaide regions (biodiversity auction/tender)³⁰ ▪ Catchment Care - Developing an Auction Process for Biodiversity and Water Quality Gains in Onkaparinga Catchment³¹ ▪ Nature Foundation revolving funds
TAS	<ul style="list-style-type: none"> ▪ Private Property Conservation Program (formerly Private Forest Reserves Program), a voluntary program uses market based instruments to establish private land reserves to conserve forest habitats that cannot be adequately protected on public land.³² ▪ Tasmanian Land Conservancy revolving funds
VIC	<ul style="list-style-type: none"> ▪ Bushtender/ECOTENDER, auction-based system for conservation on private land.³³ ▪ BushBroker, offsets, credit and trading³⁴ ▪ Trust For Nature voluntary (legally binding) covenants on private land - revolving funds³⁵ ▪ Sustainability Covenants (EPA) – voluntary agreements between the Environment Protection Authority in Victoria and a company, group

²⁷ http://goldcoast.qld.gov.au/attachment/Open_Space_Acquisition.pdf

²⁸ http://www.brisbane.qld.gov.au/BCC:STANDARD::pc=PC_682

²⁹ <http://www.napswq.gov.au/publications/books/mbi/round1-project18.html>

³⁰ <http://www.aares.info/files/AARES/Symposium/abstracts.htm>

³¹ <http://www.napswq.gov.au/publications/books/mbi/round1-project26.html>

³² <http://www.dpiw.tas.gov.au/inter.nsf/WebPages/LBUN-6JD735?open>

³³ <http://www.dse.vic.gov.au/dse/index.htm> (search website)

³⁴ <http://www.dse.vic.gov.au/dse/index.htm> (search website)

³⁵ <http://www.trustfornature.org.au/>

of companies or an industry sector to reduce the environmental impact of products and services.³⁶

- WA
- Auction for Landscape Recovery - auctions used to improve landscape recovery through a government / community partnership³⁷
 - National Trust of Australia (WA) revolving funds

Box 1: Case study - recent legislative change in New South Wales and the use of market approaches in conjunction with legislative change

Many of the risks and shortcomings of ACT nature conservation legislation were identified in comparable NSW legislation (*Threatened Species Conservation Act 1995*). Identified problems included:

- a disconnect between conservation outcomes and land-use planning outcomes;
- expensive and convoluted assessment process involved with development proposals;
- poor prioritisation of recovery and threat abatement actions;
- inadequate enforcement and compliance provisions.

The key finding of the NSW Department of Environment and Conservation (DEC) in assessing the 1995 legislation was that more powerful tools were required to better integrate conservation with mainstream decision-making about land-use and the broader economy.

Reforms were developed and introduced in the Threatened Species Legislation Amendment Bill 2004 in six key areas:

- In urban and coastal areas, better biodiversity outcomes are to be achieved through integration with better strategic land-use planning, changes to the development assessment process and accreditation of flora and fauna consultants;
- In rural areas, threatened species conservation is to be embedded within native vegetation protection to deliver a simpler and more supportive system of conservation incentives for landholders;
- Listing of threatened species is maintained as a scientific process, with enhanced credibility and transparency;
- Actions for recovery and threat abatement will be better prioritised;
- Enforcement and compliance provisions will be upgraded; and
- Expert advisory councils will be established to advise the Minister on social and economic implications and on biological diversity.³⁸

Biodiversity certification and biodiversity banking are intended to offer developers and NSW local governments an alternative path to threatened species assessment (assessment of

³⁶ http://www.epa.vic.gov.au/bus/sustainability_covenants/default.asp

³⁷ <http://www.epa.nsw.gov.au/resources/biobankback0609.pdf>

³⁸ <http://www.environment.nsw.gov.au/resources/tsreformprop.pdf>

significance) in some circumstances required under the Environmental Planning and Assessment Act 1979.

Both approaches require an 'improve or maintain' outcome for biodiversity values, and remove the need for an assessment of significance.

Once an EPI is certified for an area, site-by-site threatened species assessment is not required for any subsequent developments within the area covered and which comply with the plan. However while these 'assessments of significance' under the EP&A Act will not be required, survey and assessments under other legislation such as the *Environmental Protection and Biodiversity Conservation Act 1999* (Cwlth) are still necessary. Other suggested benefits of certification include:

- In general, it enables biodiversity to be considered at the start of the planning process.
- For whole-of-government activity, it ensures that regional-scale issues relating to planning are incorporated into local planning processes.
- For the entire community, it provides certainty for biodiversity conservation measures over a 10-year period and ensures broader community participation in planning decisions.
- For councils, it streamlines the development assessment and approval process by minimising conflict over threatened species, thereby saving time and money.
- For landowners, it ensures greater certainty about what they can and cannot do with their land.³⁹

The overall goal is to link planning strategies to conservation outcomes in reversing the long-term decline of biodiversity values.

<http://www.environment.nsw.gov.au/threatspec/infosheet06135.htm>

NSW Biodiversity banking

The Biodiversity Banking and Offset Scheme (BioBanking) is intended to provide a systematic and consistent framework for offsetting development impacts and achieve an 'improve or maintain' outcome for biodiversity values.

The scheme is intended as an addition to the tools available for biodiversity conservation. In attempting to avoid some of the criticisms directed at offsets schemes, the scheme will incorporate an 'improve or maintain' principle, and will also recognise that biodiversity loss should be avoided and/or minimised before considering the use of offsets.

The DEC considers that BioBanking will be of most benefit to small areas, single developments, or areas proposed for development where conservation values can be offset to achieve an improve or maintain outcome. In areas covered by biodiversity certification

³⁹ <http://www.environment.nsw.gov.au/threatspec/infosheet06135.htm>;
<http://www.environment.nsw.gov.au/resources/07207biodivcert.pdf>

BioBanking may be used to meet the improve or maintain requirement. In this way, all developments within specific land-use zones of a certified area may be required to participate in BioBanking. This will ensure that impacts to biodiversity are offset by positive management actions at another site.

Individuals can set up and manage biodiversity bank sites (BioBank sites) under a conservation agreement. In this way, lands will be secured and managed in perpetuity to protect and enhance their biodiversity values. The establishment of a BioBank site would therefore enable the generation of 'credits'. These could be sold and used to offset the impact of developments elsewhere. Funds generated by the sale would be used for the future management of the BioBank site.

The building blocks of BioBanking will include legislation, a scheme rulebook, a rule-based assessment tool (computer-based) and credit register. The DEC will manage the Scheme and encourage other organisations to participate.

The Scheme is currently under trial with an intention to implement the Scheme across much of NSW in the near future.

4.5.3. Environment Protection and Biodiversity Conservation (EPBC) Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* ([EPBC Act](#)) is a federal environmental protection Act, focussing on matters of national environmental significance. It aims to streamline national environmental assessment and approvals processes, protect Australian biodiversity and integrate management of important natural and cultural places.

The Act focuses federal interests on the protection of matters of national environmental significance, with the states and territories having responsibility for matters of state and local significance.

Objectives of the EPBC Act are:

- Provide for the protection of the environment, especially matters of national environmental significance
- Conserve Australian biodiversity
- Provide a streamlined national environmental assessment and approvals process
- Enhance the protection and management of important natural and cultural places
- Control the international movement of wildlife, wildlife specimens and products made or derived from wildlife, and
- Promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources..⁴⁰

Approval is required for actions that are likely to have a significant impact on:

- a matter of national environmental significance;

⁴⁰ <http://www.environment.gov.au/epbc/publications/pubs/epbc-act-guide.pdf>

- the environment of Commonwealth land (even if taken outside Commonwealth land); and
- the environment anywhere in the world (if the action is undertaken by the Commonwealth).

An action includes a project, development, undertaking, activity, or series of activities.

Permits are required under the EPBC Act for:

- certain activities in Commonwealth reserves;
- activities that affect listed species or communities in Commonwealth areas; cetaceans in Commonwealth waters and outside Australian waters;
- the import and export of wildlife; and
- activities involving protected species in the Territories of Christmas Island, Cocos (Keeling) Islands and Coral Sea Islands.

The EPBC Act provides protection for threatened species and ecological communities, migratory, marine and other protected species. The Act provides for:

- identification of key threatening processes;
- protection of critical habitat;
- preparation of management plans; and
- issuing of conservation orders and regulation of wildlife import/export.

Streamlining of processes can occur through bilateral agreements between State/Territory jurisdictions and Australian Government. A [bilateral agreement](#) is an agreement between the Commonwealth and a State or self-governing Territory for the purpose of protecting the environment, promoting conservation and ecologically sustainable use of natural resources, increasing the efficiency of environmental Assessments and Approvals, reducing duplication in environmental assessment and approval, or some combination of these.

The ACT currently has no bilateral agreements with the Australian Government. Current bilateral agreements in place are:

- New South Wales relating to environmental impact assessment 18 January 2007
- New South Wales relating to the Sydney Opera House 22 December 2005
- Northern Territory relating to environmental impact assessment 28 May 2007
- Queensland relating to environmental impact assessment 13 August 2004
- Tasmania relating to environmental impact assessment 12 December 2005
- Western Australia relating to environmental impact assessment 8 August 2007

EPBC and Offsets

The Australian Government released in 2007 a number of discussion and position papers relating to the EPBC and environmental offsets, defining environmental offsets as ‘actions

taken outside a development site that compensate for the impacts of that development - including direct, indirect or consequential impacts'.⁴¹

Essentially, the Australian Government recognises the validity of offsets to achieve long term conservation outcomes while providing for developments involving environmental impacts. They are viewed as one tool which can be used during project design and development to achieve ecologically sustainable development:

*Environmental offsets can be used under the EPBC Act to **maintain or enhance** the health, diversity and productivity of the environment as it relates to matters protected by the EPBC Act (i.e. matters of national environmental significance and the environment more broadly for actions involving the Commonwealth).*

Environmental offsets can be applied as an approval condition under the EPBC Act for developments that have undergone assessment. They may be used when a development will result in impacts on a matter protected by the EPBC Act.

The Australian Government's provides the following principles:

1. Environmental offsets should be targeted to the matter protected by the EPBC Act that is being impacted.
2. A flexible approach should be taken to the design and use of environmental offsets to achieve long-term and certain conservation outcomes which are cost effective for proponents.
3. Environmental offsets should deliver a real conservation outcome.
4. Environmental offsets should be developed as a package of actions - which may include both direct and indirect offsets.
5. Environmental offsets should, as a minimum, be commensurate with the magnitude of the impacts of the development and ideally deliver outcomes that are 'like for like'.
6. Environmental offsets should be located within the same general area as the development activity.
7. Environmental offsets should be delivered in a timely manner and be long lasting.
8. Environmental offsets should be enforceable, monitored and audited.

Table 3 : Summary of State and Territory policy positions on environmental offsets

ACT	No current offsets policy.
NSW	BioBanking – a biodiversity offsets and banking scheme: <ul style="list-style-type: none"> ▪ currently before the NSW Parliament in the form of the Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006

⁴¹ <http://www.environment.gov.au/epbc/publications/pubs/draft-environmental-offsets-discussion.pdf>

	<ul style="list-style-type: none"> ▪ provides a systematic and quantitative approach for offsetting the impacts of development to achieve an ‘improve or maintain’ outcome for biodiversity values ▪ involves developers purchasing offset (or biodiversity) credits produced by offset bankers
NT	No current offsets policy.
QLD	In the early stages of developing a whole-of-government approach to offsets. The process is being jointly coordinated by the QLD EPA and the Premier’s Department.
SA	<p>The <i>Native Vegetation Act 1991</i>:</p> <p>requires offsets to be made in relation to land clearing permits in order to receive a permit, contributions must be made to a Native Vegetation Fund to offset the environmental impact of the action by funding native revegetation within the same region.</p>
TAS	<p>Draft offsets policy for the Department of Primary Industry and Water:</p> <ul style="list-style-type: none"> ▪ goal of the policy is likely to be - ensure the environment is ‘as well-off or better off’ after a development is approved ▪ offsets are likely to be based on broad principles rather than prescriptive, quantitative approaches
VIC	<p><i>Native Vegetation Management – a framework for action:</i></p> <ul style="list-style-type: none"> ▪ establishes ‘net gain’ as the primary goal for native vegetation management in Victoria and incorporates the principle of offsetting as an option to achieve that goal. ‘Net gain’ is defined as, ‘a reversal, across the entire landscape, of the long-term decline in the extent and quality of native vegetation’ ▪ offsets are based on ratios that relate to the quantity and quality (habitat hectares) of the vegetation type to be cleared ▪ applied in part through the BushBroker scheme which provides for the registration and trading of native vegetation credits
WA	<p>WA EPA Environmental Offsets – Position Statement No. 9:</p> <ul style="list-style-type: none"> ▪ establishes the WA EPA’s policy on offsets focussing on the goal of achieving a ‘net environmental benefit’

Source: Reproduced from <http://www.environment.gov.au/epbc/publications/pubs/draft-environmental-offsets-discussion.pdf>

4.6. Suasive and other approaches

Poor environmental outcomes can sometimes occur through a lack of awareness, information or through negative perceptions. As a result, suasive and social approaches aim to change perceptions and affect decision-making through providing information, training and education services, and other strategies to enhance social capital.

4.6.1. Rationale

There has been a particular focus on suasive approaches to nature conservation by fostering a conservation ethic for private landowners in Australia, often entailing awards for achievement and landholder education campaigns. A 2007 study of landholder attitudes to land clearing in southern Australia found not only that controls on vegetation clearance are considered necessary to avoid inappropriate and environmentally damaging clearing, but that the benefits of appropriately managed native vegetation would likely outweigh the costs.⁴²

A key outcome from the use of suasive and social approaches is the level of volunteerism by citizens to enhance nature conservation outcomes (e.g. BushCare programs). Volunteers are central to many environmental programs in Australia and internationally and policies and programs that harness volunteerism can be highly effective.

Identified advantages of suasive and social approaches (including volunteerism) include:

- such approaches can be relatively cheap to run, as time and often resources are donated;
- the approaches can lead to significant changes in knowledge, attitudes and practices with respect to native vegetation management, particularly over the longer term.

Despite the obvious advantages, social and suasive approaches do have some disadvantages including:

- outcomes from social and suasive approaches can be highly uncertain, or there may be significant time lags before benefits are realised;
- some programs may result in misdirected or ineffective actions (e.g. a desire to volunteer to protect particular vegetation communities or locations, despite their being of a low priority when compared against broader regional conservation objectives);
- volunteers can often suffer from burnout, risking the continuity of programs;
- volunteer support programs may suffer from discontinuous funding, or problems with staff recruitment and retention; and
- while they can encourage some change in outcomes, they often cannot of themselves bridge the gap between private costs and benefits to landholders responsible for native vegetation management on private land.

Social and suasive approaches form an important component of any policy and program approach and can have an important impact on the acceptance, uptake and compliance with other government, regulatory and market approaches.

⁴² Mallawaarachchi, T. and S. Szakiel. 2007. *Nonbroadscale land clearing in southern Australia: economic issues in managing native vegetation on farm land*. ABARE research report 07.2. January 2007.