

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation (Australian National Botanic Gardens Management Plan) Instrument 2022

Overview of the Legislative Instrument

The Director of National Parks (Director) prepares management plans for Commonwealth reserves in accordance with section 368 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The purpose of this fourth management plan is to describe the philosophy and direction of management for the Australian National Botanic Gardens (ANBG) for the next 10 years in accordance with the EPBC Act. The management plan enables management to proceed in an orderly way, helps to reconcile competing interests, and identifies priorities for the allocation of available resources.

The management plan is an enabling document. It allows management activities to occur that would otherwise be restricted under the EPBC Act and *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations), and enables certain management, recreational and commercial activities to occur.

The fourth management plan for the ANBG has been prepared under the EPBC Act and replaces the third management plan which will cease to have effect in May 2022.

Australian National Botanic Gardens

The ANBG occupies an 85 hectare site on the lower eastern slopes of Black Mountain in Canberra and is a valuable part of the city's landscape. It is an integral part of a group of national research institutions including the Australian National University and the Commonwealth Scientific and Industrial Research Organisation (CSIRO).

The living collection is displayed in 35 hectares of the 85 hectare site. The topography of the site's central part provides a range of opportunities, and favourable microclimates, for displaying and managing the diverse living collection that has been developed to showcase Australia's flora, and to educate and raise awareness about its biological diversity. The collection is a representation of Australia's flora and focuses on several broad themes including taxonomy, ecology and geography, horticulture, conservation and ethnobotany. The collection displays about one-third of all Australian flowering plant species and provides interpretation of iconic plants, such as eucalypts, banksias and wattles, and of different Australian landscapes.

The ANBG was declared as a reserve under the *National Parks and Wildlife Conservation Act 1975* (NPWC Act) on 10 September 1991, for the purpose of increasing knowledge, appreciation and enjoyment of Australia's plant heritage by establishing, as an integrated resource, a collection of living and herbarium specimens of Australian and related plants for study, interpretation, conservation and display. The EPBC Act replaced the NPWC Act on 16 July 2000 and the ANBG was continued as a Commonwealth reserve under the EPBC Act, pursuant to the *Environmental Reform (Consequential Provisions) Act 1999*.

The ANBG is Australia's only national institution to focus solely on Australian plants and related flora. Its collections knowledge base and research are of both national and international significance.

The ANBG's living collection of Australian native plants is one of the most comprehensive in the world. Furthermore, the ANBG makes an important contribution to taxonomy through the Centre for Australian National Biodiversity Research, where research programs and collections provide a national focus for botanical data. The ANBG is seen as a centre for horticultural trials and learning in relation to Australia's flora, and makes a valuable contribution to native plant horticulture and display. Staff also provide horticultural expertise in collaborative conservation projects. The ANBG facilitates collaborations with Australia's other leading botanic gardens to enhance their work on Australia's national biodiversity conservation agenda.

The ANBG is assigned to category IV habitat/species management area of the 'Australian International Union for Conservation of Nature (IUCN) reserve management principles' as prescribed in the EPBC Regulations. Of particular relevance to the ANBG is principle 5.07 of this category which provides that:

'If the reserve or zone is declared for the purpose of a botanic garden, it should also be managed for the increase of knowledge, appreciation and enjoyment of Australia's plant heritage by establishing, as an integrated resource, a collection of living and herbarium specimens of Australian and related plants for study, interpretation, conservation and display.'

Consultation

On 1 February 2021, consistent with paragraph 368(1)(a) of the EPBC Act, a notice was published in the Australian Government Gazette, The Australian newspaper, the Canberra Times newspaper and placed on the Department of Agriculture, Water and the Environment's website, inviting comments on the proposal to prepare a draft management plan. A 'Have Your Say' flyer, media release, and social media promotions were also circulated to stimulate awareness of the planning process and the opportunity to contribute to the plan. This public comment period closed on 3 March 2021 and 9 public submissions were received.

Following consideration of these submissions, the Director then prepared a draft management plan in accordance with paragraph 368(1)(b) of the EPBC Act, that was released for public comment on 1 November 2021 until 1 December 2021.

Invitations to comment were published in the Australian Government Gazette, The Australian newspaper, the Canberra Times newspaper, and placed on the Department of Agriculture, Water and the Environment's website. A media release and social media promotions were also circulated to stimulate awareness of the planning process and the opportunity to contribute to the draft management plan. Emails were sent to individual stakeholders with an invitation to comment. Electronic versions of the draft management plan were available from the Department of Agriculture, Water and the Environment's website and were attached to emails sent to stakeholders.

33 submissions on the draft management plan were received during the public comment period, including from the CSIRO, the Australian National University, the ACT Government, major Australian botanic gardens, tourism and education industry representatives, and business leaders.

In accordance with paragraph 368(1)(e) of the EPBC Act, the Director considered the comments provided in the submissions and amended some aspects of the plan in response to this advice.

Period of operation

Following approval by the Minister for the Environment under section 370 of the EPBC Act and in accordance with the *Legislation Act 2003*, the management plan will come into operation in accordance with the commencement date set out in the management plan. This management plan will cease to have effect ten years after it took effect, unless it is amended or revoked and replaced by another management plan for the ANBG.

Regulatory Impact

This management plan has been written to describe actions and policies which conserve and enhance the values of the ANBG while providing visitors with a range of recreational opportunities to enrich their visit. It does not place any new restrictions upon individuals or businesses. The Office of Best Practice Regulation (OBPR) advised that a Regulatory Impact Statement was not required for this management plan (OBPR reference: OBPR22-01738).

Free access and use

The management plan describes the natural and cultural values of the ANBG, through the use of images and maps depicting the ANBG's landscape, natural values and cultural heritage. This is necessary to ensure an accurate description for the benefit of the users of the ANBG. Some of those images are copyrighted to third parties. The full terms of the management plan may be freely accessed and used by ANBG visitors and ANBG users to understand their obligations under law when entering or carrying out activities in the ANBG. However, the copyrighted images are included for the management plan's accuracy, particularly those depicting elements of cultural heritage, and are not to be taken from the management plan and used for other purposes.

The management plan may be freely accessed on the Federal Register of Legislation at www.legislation.gov.au and the Parks Australia website at www.parksaustralia.gov.au.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian National Botanic Gardens Management Plan 2022

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Director of National Parks prepares management plans for Commonwealth reserves in accordance with section 368 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The purpose of this management plan is to describe the philosophy and direction of management for the Australian National Botanic Gardens (ANBG) for the next 10 years in accordance with the EPBC Act. The plan enables management to proceed in an orderly way, helps to reconcile competing interests, and identifies priorities for the allocation of available resources.

The EPBC Act and the EPBC Regulations prohibit certain activities from occurring in the ANBG and other Commonwealth reserves. The management plan for the ANBG is an enabling document. It allows management activities to occur that would otherwise be restricted under the EPBC Act and EPBC Regulations, and enables certain management, recreational and commercial activities to occur.

The conventions listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* were considered in the preparation of this ANBG management plan.

Human rights implications

This Legislative Instrument engages with the following human rights:

Right to freedom of movement

The right to freedom of movement is contained in article 12 of the International Covenant on Civil and Political Rights (ICCPR). In order to achieve the objectives of the management plan it is necessary to restrict some access and uses that may impact on the values of the ANBG, or to restrict access to areas that are dangerous to human health and safety. This may involve the right to freedom of movement. However, this is not an absolute right and may be subject to permissible limitations where there is a legitimate objective, in this case the conservation and protection of values into the future, and to ensure the health and safety of visitors to the ANBG. Limitations on access and use of the ANBG under the management plan are reasonable, necessary and proportionate responses to the potential threats posed to achieving the objectives of the management plan.

Right to enjoy and benefit from culture

The right to enjoy and benefit from culture is contained in Article 27 of the ICCPR and Article 15 of the International Covenant on Economic, Social and Cultural Rights. The right to enjoy and benefit from culture includes allowing people to take part in cultural life and enjoy the benefits of scientific progress. The management plan promotes this right by seeking to involve interested stakeholders and the community in accessing and utilising the resources of the ANBG. The ANBG has an active volunteer program with over 130 members of the public regularly volunteering to provide guided tours, assist in the Visitor Centre, National Seed Bank or Australian National Herbarium. The Friends

of the ANBG with over 3,000 members support the operations of the ANBG and raise funds for new developments and its members provide the majority of the volunteers at the ANBG.

The management plan may limit some recreational activities in some instances where proposed activities are not consistent with the primary objective of the management plan which is to protect and conserve biodiversity and other ANBG values. However, these instances are expected to be rare, and will be carefully considered prior to a decision being undertaken.

Conclusion

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and to the extent that it may limit any human rights, those limitations are reasonable, necessary and proportionate.

The Hon Sussan Ley MP

Minister for the Environment