

Biodiversity Conservation Act 2016

Implications for environmental consultants

Garth Humphreys



Purpose of the Act

The *Biodiversity Conservation Act 2016* provides for:

- ▶ the conservation and protection of biodiversity and biodiversity components in Western Australia; and
- ▶ the ecologically sustainable use of biodiversity components in Western Australia; and
- ▶ the repeal of the *Wildlife Conservation Act 1950* and the *Sandalwood Act 1929*



Key Areas of Change

Scope and objects of the Act

Principles of ESD

Landowner notification of TECs and Threatened Species

Recovery plans and biodiversity plans

Ministerial exemptions

Ramsar and World Heritage Areas

Nature-based tourism

Taking and keeping native species

Biodiversity conservation agreements and covenants

Species definition

Threatened fauna and flora

Threatened Ecological Communities

Reporting of TECs and Threatened Species

Critical habitat

Threatening processes and environmental pests

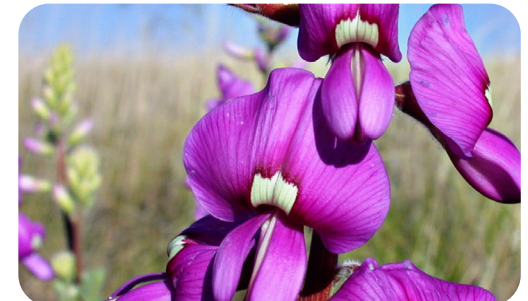
Some questions for us?

Species - Defined

Species is now defined under the Act (just 'fauna' and flora' under the *Wildlife Conservation Act 1950*): *'organisms that interbreed to produce fertile offspring and share characteristics derived from common gene pool'*

Also includes:

- ▶ subspecies ('a taxonomically separate population of a species')
- ▶ distinct populations of a species that the Minister declares to be a 'species' for the purposes of the Act
- ▶ the Minister can declare a non-native species 'fauna' for the purposes of the Act and can also declare a native species not 'fauna'
- ▶ even scope for taxa in other kingdoms to be declared 'fauna' or 'flora'



Threatened Fauna and Flora

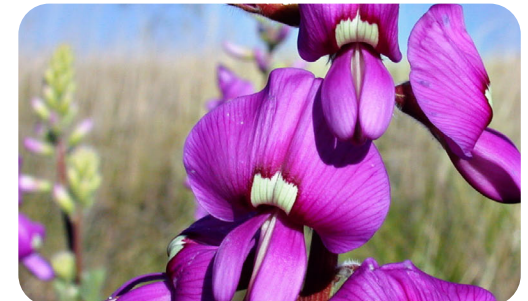
Species listing will follow the IUCN categories ('Critically endangered', 'Endangered', 'Vulnerable', 'Extinct' and 'Extinct in the wild')

Statutory process for nomination and listing, including criteria

Minister must consider scientific advice and follow guidelines

'Near threatened' and 'Least concerned' to be protected at administrative level (Priority listing)

Significant penalties for unauthorised impacts will apply (up to \$2.5 M for corporations)



Threatened Ecological Communities

TECs will now have statutory standing at State level
(‘Critically endangered’, ‘Endangered’, ‘Vulnerable’ and ‘Collapsed’)

Statutory process for nomination and listing

Minister must consider scientific advice and follow guidelines

Again, significant penalties for unauthorised modifications to TEC
species composition and structure will apply
(up to \$2.5 M for corporations, depending on listing category)



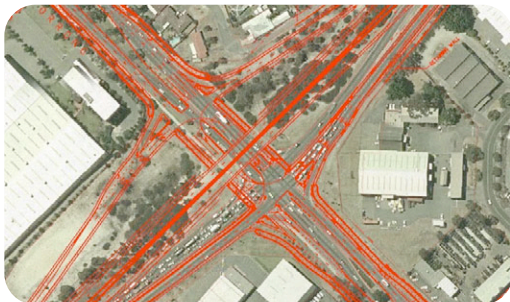
Impacts on Threatened Species or Communities

Ministerial authorisation required for significant impacts on Threatened species or significant modifications to TECs

Conditions will provide for mitigation or offsetting of impacts on listed species or modifications to listed communities

Approval of both Houses of Parliament needed for taking or modification that would change a Threatened species' status changing to 'Extinct' or a TEC's status to 'Collapsed'

Existing non-significant/non-permanent impacts on TECs may continue



Reporting of Threatened Species and TECs

All records of Threatened species and TECs recorded during biological surveys must be reported

Fines of up to \$50,000 for individuals who fail to report new records of Threatened species and communities during *Environmental Protection Act 1986* surveys - both Part IV and Part V

Potential defence that the person could not have reasonably known what the species or community was

Intended to ensure that new discoveries do not go unreported and maximum improvement in data to inform the conservation of species and communities



Critical Habitat

Habitat critical to the survival of a threatened species or community can be listed and will be placed on a publicly available register

Direct consultation with landholders before listing to ensure accuracy, awareness and to assist with conservation management

Where there is a threat of significant damage (or damage is occurring) to critical habitat areas, the CEO may issue a Habitat Conservation Notice (HCN) and place a Notification on Title

HCNs can prevent damage, and also to require repair of any damage that has occurred, with significant penalties for contravention



Threatening Processes and Environmental Pests

Capacity to list threatening processes as 'key threatening processes' and to list pest species that are not of agricultural significance but impact on biodiversity

Provides for management of key threatening processes under recovery plans or management programmes

Provides for control of environmental pests that are not a priority under other acts and where their control will assist biodiversity conservation and implementing the identified control is a practical option

Regulations may provide for the prevention, eradication, reduction and containment of key threatening processes



Some Considerations for Consultants?

Ability for the Minister to grant approval for a change which could make a species or community extinct or collapsed

Yes: subject to the approval of both houses of parliament, but in effect could this still be knowingly approving the extinction of a species or community type?

Both Part IV and Part V surveys carry the 'must report' requirement for Threatened species and TECs

Potential defence that the person could not have reasonably known what the species or community was - if we offer our services to proponents as specialists, that defence may not be available, and charges can also extend to the employer

Existing non-significant/non-permanent impacts on TECs may continue

On what basis will this be determined? How do we make an assessment and do we need to? (i.e. will the Act have any retrospective application?)

How will conditioning under the Act relate to and interact with conditions applied under the *Environmental Protection Act 1986* and the *EPBC Act 1999*?

Further detail, advice and policy to come from Parks and Wildlife and the Office of the EPA?

Matters for the Regulations...

21 of these listed in Schedule 1 of the Act and still to be detailed

Regulations still to be made for taking fauna and flora (under Part 14 of the Act), but will replace currently still in force *Wildlife Conservation Act 1950* regulations - covers everything from Sandalwood harvesting, bioprospecting, seed collecting and taking for any other purpose

The Act flags a variety of potential requirements around qualifications, training and experience for applicants

Range of other administrative requirements still to be clarified regarding licences

Significant penalties for taking fauna or flora without authority

