



Government of Western Australia
Department of Parks and Wildlife



Biodiversity Conservation Act 2016

Presentation to Environmental Consultant's Association (WA):
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Biodiversity Conservation Act 2016

Organisation of Presentation

1. Key advances (comparison with Wildlife Conservation Act).
2. Path to full operation/process for regulations.
3. Matters likely to be of most interest to ECA.



Biodiversity Conservation Act 2016

1. OVERVIEW: Biodiversity Act v Wildlife Act; *radically different approaches and provisions*

A. The *Wildlife Conservation Act 1950* is severely out of date (essentially updated *Game Act 1912*);

- is penalty and regulatory based (with inadequate penalties and regulation),
- no proper recognition of threatened species,
- no coverage for ecological communities, threatening processes, critical habitat, recovery plans, management programmes, environmental pests,
- no promotion,
- no encouragement,
- no consultation;
- fully overlaps with fisheries legislation.



Biodiversity Conservation Act 2016

1. OVERVIEW: Biodiversity Act v Wildlife Act; *radically different approaches and provisions*

B. The ***Biodiversity Conservation Act 2016*** incorporates updates in approach in keeping with developments in biodiversity conservation over the last 50+ years, along with modern regulatory reform principles.

- The BC Act provisions fill all the technical gaps identified in the Wildlife Act (threat'd species, communities, habitats, etc.)
- Recognising that biodiversity conservation involves everyone, the BC Act also incorporates: *promotion, encouragement and consultation, partnerships, negotiation, avoiding duplication and bureaucratic processes (possibility of accreditation under EPBC Act); along with modern prosecutions* (including increased penalties as both an incentive to conserve and increased deterrent for unlawful taking).



Biodiversity Conservation Act 2016

1B. Detailed Comparison between EBA and WCA.

https://www.dpaw.wa.gov.au/images/documents/plants-animals/threatened-species/biodiversity_conservation_act_2016_summary_table.pdf

or

***Go to: www.dpaw.wa.gov.au, click on:
“Plants & animals”, then;
“Biodiversity Conservation Act”,
then the link near the bottom of the page to;
“Biodiversity Conservation Act 2016 summary table”.***



Biodiversity Conservation Act 2016

2a. Path to full operation; proclamations to date

As at 3 December 2016, BC Act partially proclaimed: awaiting Reg's for other Parts.

- Part 1: Preliminary, proclaimed
- *Parts 2-4: Listing and management of threatened species, ecological communities (not proclaimed)*
- Part 5: Biodiversity management programmes, proclaimed
- *Part 6: Recovery plans (not proclaimed)*
- Part 7: Biodiversity conservation agreements, proclaimed (most provisions).
- Part 8: Biodiversity conservation covenants, proclaimed.
- *Parts 9 and 10: Environmental Pests, Flora & Fauna (not proclaimed).*
- Part 11: Nature-based tourism, proclaimed.
- *Part 12: Inspection and Compliance (not proclaimed)*
- Part 13: Legal proceedings, proclaimed.
- Part 14: Regulations, orders and guidelines, mostly proclaimed.
- Part 15: Miscellaneous (including exemptions) proclaimed.
- *Parts 16 and 17: Repeals, transitionals (not proclaimed).*
- Part 17: Consequential amendments to other Acts, partly proclaimed.



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2b. Path to full operation: - process for regulations

- Regulations required to ‘flesh-out’ detail of operations, particularly in relation to the licensing scheme to provide ‘lawful authority’ to cover actions/activities with fauna and flora.
- Regulations will be made by the Minister for Environment.
- Previous Minister gave public undertaking for targeted consultation on proposed regulations. Not specifically raised by Labor in election policies.
- Drafting approval has not yet been given, and drafting, with consultation, is likely to continue through 2017 (and possibly early 2018). There will be scope for consultation with ECA during this process, subject to Ministerial approval. (Drafting to be consistent with agreed national approaches for regulatory reform)



3. Matters likely to be of most interest to ECA (a)

- a. Sections 43 and 49 of the BCA provide new duties for those conducting field work related to an application for an EP Act clearing permit, or conducting field work for an EP Act environmental assessment, to report (orally or in writing) locations of listed threatened species (43) and/or threatened ecological communities (49) found in the study area.
- Penalty \$50,000 (equivalent to maximum penalty under the regulations (Section 255(4)), subject to defence of not knowing the species/community is a listed species/community.



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3. Matters likely to be of most interest to ECA (ctd-(b))

- b. Section 256 and Schedule 1 of the BCA provide for the making of regulations to establish a licensing scheme, including:
- various types of licences, application procedures (including training, qualifications, testing, online applications/issue and reporting etc., duration of licences, guidelines, reporting on performance, industry codes (standards etc.), fees and charges., etc.

Provides for specialised licences for consultants that could be multi-year and multi-survey. Current intent is to create “biological/ecological/biodiversity” survey licence category.

BC Act structured to provide for differentiation between individuals, corporations, partnerships etc., potential for tiered licensing involving ‘consultant-company’ licence and portable ‘consultant-individual’ licences.



Biodiversity Conservation Act 2016

3. Matters likely to be of most interest to ECA (ctd –(c))

c. Linked to the nationally agreed intentions for environmental regulatory reform, the BC Act provides for avoidance of unnecessary (including duplicate) regulation.

This is provided for in a number of ways including;

- Section 6 - Lawful activity and Section 7- Lawful authority,
- Section 9 – Determining whether fauna or flora is covered by the Act,
- Section 12 – Application of Act in relation to aquatic matters (species),
- Regulation making powers under Part 14 (and Schedule 1) including for EPBC Act matters (Ramsar Wetlands, World Heritage, etc.),
- Exemption provisions under Section 271, and,
- Consequential amendments to other Acts under Part 17.



Biodiversity Conservation Act 2016

3. Matters likely to be of most interest to ECA (ctd -(c))

c. (ctd) (Avoidance of unnecessary, including duplicate, regulation.)

- The Act provides that the Minister may, by Order, exclude native species from the Act's coverage under Section 9 (carrying forward WCA/WCR provisions for 'unprotected' fauna under Section 14(2)), subject to disallowance by Parliament under BCA.
- Also, under S'n 271, the Minister may establish formal conditional exemptions for specific people, specific locations, specific things, etc., again subject to parliamentary disallowance. Further development of possibilities in keeping with regulation preparation.



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Questions?

Grevillea brachystylis subsp. *grandis*: critically endangered