

BIODIVERSITY CONSERVATION ACT 2016 AND REGULATIONS UPDATE

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BIODIVERSITY CONSERVATION ACT 2016

Will ultimately replace the:

- *Wildlife Conservation Act 1950*
- *Sandalwood Act 1929*
- and their associated Regulations

Will provide for modern biodiversity conservation legislation in Western Australia



BIODIVERSITY CONSERVATION ACT 2016

- *Biodiversity Conservation Act 2016* - assent 21 September 2016
- Partial proclamation of Act - 3 December 2016
- Parts proclaimed are those that do not require Regulations (new matters), e.g.:
 - Biodiversity management programmes
 - Biodiversity conservation agreements
 - Biodiversity Conservation Covenants

DEVELOPMENT OF THE BIODIVERSITY CONSERVATION REGULATIONS

- Regulations required to replace:
 - *Wildlife Conservation Regulations 1970*
 - *Wildlife Conservation (Reptiles and Amphibians) Regulations 2002*
 - *Sandalwood Regulations 1993*
- Guiding principles:
 - regulatory reform – review of licensing activities
 - streamlining licensing arrangements (i.e. industry licences for multiple activities)
 - modern interface (web-based applications and payment)
 - support small business and the community

BIODIVERSITY CONSERVATION REGULATIONS

- Development of the Biodiversity Conservation Regulations – 24 months to 21/9/2018
- Transition of Wildlife Conservation Act licences and permits ~ 14,000
- Proposed to come into effect 1/1/2019
- New licensing arrangements
- New arrangements for threatened species, specially protected species, ecological communities, key threatening processes, critical habitat

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Biodiversity licensing

- Existing Wildlife Conservation Act (and Sandalwood Act) licences will transition to new BCA licences
- If new licence type applies, will not be required until existing licence expires, or 1/1/2019 if no licence
- Some simplification – e.g. categories for pet licences, and amalgamating similar licence activities
- Review of licence fees required - to be full cost recovery
- Most proposed modest price increases, some reduced
- Most have option for licence renewal at reduced fee
- Options for multiyear licences being considered



Biodiversity licensing – new licence types

- Flora (incl sandalwood) industry – dealers and processors
- Flora or fauna bioprospecting
- Flora or fauna biological survey & salvage/relocation:
 - Can be project-specific or annual licence
 - Fauna – can describe techniques (SOPs) and renew based on same techniques
 - May be option for multi-year licences
 - Persons doing taking must be licensed
 - Can have authorised persons on the licence assisting (supervised)
 - Business can be licensed for certain activities (e.g. dealing, processing)

Biodiversity Licensing System

- On-line licence applications, amendments, permits, notifications, submission of returns etc.
- Single login to all your licences and licensing information
- On-line payments
- Ability to apply for multiple related licence categories at once (e.g. flora pick, supply, deal and process)
- Ability for licensee to link themselves to one or more companies
- Ability for companies to view licences for linked employees and associated contractors



New arrangements – listing threatened species

- Reflect existing policy position of DBCA and national MOU on listing threatened species
- List species as critically endangered, endangered, vulnerable, extinct, extinct in the wild (IUCN threat categories)
- Differential penalties & protection.
Max \$500,000/\$2.5M (*Sentencing Act 1995*)
- Public nominations and feedback
- Minister must consider scientific advice - TSSC
- Basic criteria in Act, fine detail in ministerial guidelines (IUCN Red List criteria)
- No change to Priority species

Threatened Ecological Communities - current

- Threatened Ecological Communities (TECs) not recognised under the *Wildlife Conservation Act 1950*
- Recognised under the *Environmental Protection Act 1986* via the *Environmental Protection (Environmentally Sensitive Areas) Notice 2005* (EP notice) and EIA process
- Criteria for TECs not the same nationally
- National MOU for listing using IUCN RLE criteria but not signed by most
- Aiming for legislative changes and eventual alignment



New arrangements – listing TECs

- List communities as critically endangered, endangered, vulnerable, collapsed.
- Public nominations and feedback.
- Minister must consider scientific advice - TECSC.
- Basic criteria in Act (CE, EN, VU, Collapsed), fine detail in ministerial guidelines (proposed new IUCN RLE criteria).
- 69 communities currently listed, assessment against new criteria will take time
- Transitional arrangements to preserve the current level of protection (i.e. listing status) for each of the TECs
- Differential penalties & protection.
Max \$500,000/\$2.5M.

New arrangements (under the Act) – managing threatened species and TECs

- Issue of notices to land owner
- Requirement to notify change of ownership
- Requirement to notify visitors
- Legislated process for recovery plans (Minister) and interim recovery plan (CEO)



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- Requirement for persons conducting field work for EP Act to report presence of TS or TEC (defence applies)
- Requirement for authorisation to take threatened fauna as well as threatened flora – precautionary approach for licences
- Requirement for authorisation to modify a TEC

New arrangements – specially protected species

- List species as
 - (i) species of special conservation significance (CD)
 - (ii) migratory species;
 - (iii) cetaceans;
 - (iv) species subject to international agreement; or
 - (v) otherwise in need of special protection
- Penalties Max \$200,000/\$1.0M
- Cetaceans separate protection \$500,000/\$2.5M
- Basic criteria in Act, fine detail in ministerial guidelines
- Propose no separate listing for cetaceans or international agreements

New arrangements – key threatening processes

- List key threatening processes where causing increased threat status for TS and TEC
- Public nomination process
- No requirement to take action
- Provides for management of key threatening processes under recovery plans or management programmes
- Criteria for listing key threatening processes included in the ministerial guidelines

New arrangements – critical habitat

- Habitat critical to survival may be listed and placed on register
- No nomination process
- May be identified in recovery plans – Minister approval
- Direct consultation with landholders before listing
- Critical habitat areas may be subject to habitat conservation notices (HCN)
- HCNs can require prevention of damage and repair of damage – penalties apply based on threat status
- Exceptional circumstances only – requirement for threat
- Criteria for listing as critical habitat to be specified in ministerial guidelines

Ministerial Guidelines

- Provide the listing criteria and the procedure for nominating/listing
 - threatened species,
 - threatened ecological communities,
 - specially protected species,
 - critical habitat, and
 - key threatening processes.
- Minister will publish these guidelines, can be done prior to proclamation of the remaining Parts of the Act.
- Can be updated as required (eg change to IUCN criteria)



Consultation

- Consultation web page being developed on DBCA site:
 - <https://www.dpaw.wa.gov.au/plants-and-animals/biodiversity-conservation-act>
 - Discussion notes for different sectors
 - Ministerial Guidelines
- Sector meetings

