



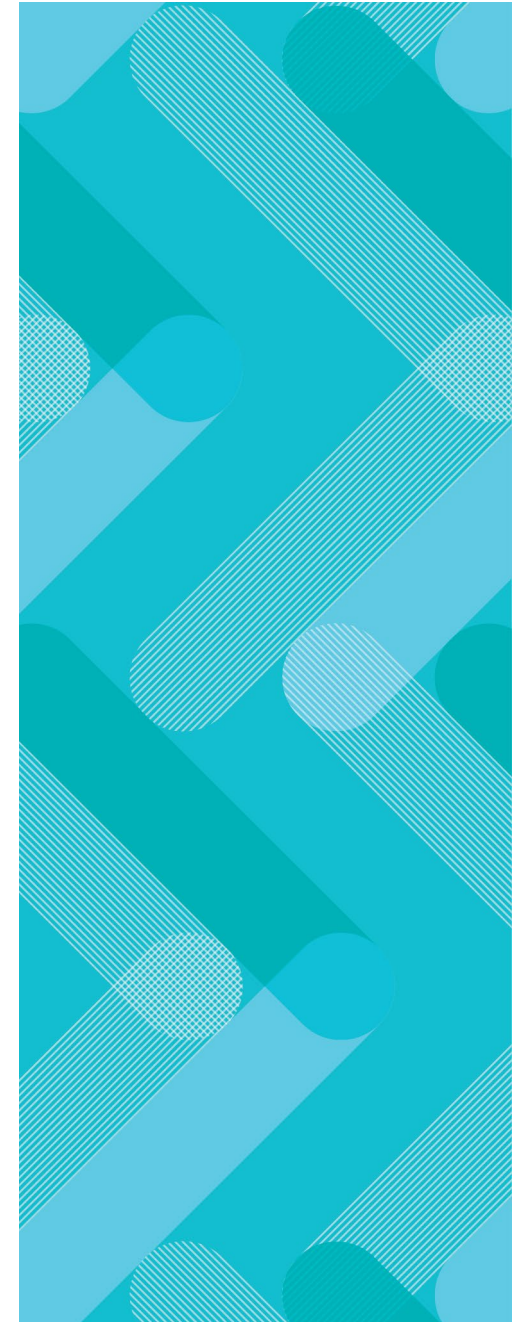
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New BC Act & Regs

Environmental consultant risks & opportunities

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Michael Voros, Special Counsel
Michael.Voros@hsf.com, +61 8 9211 7519



A long road

Date	Event
Nov 2015	BC Bill introduced to WA Parliament
2016	Debated
Sep 2016	BC Act assented to
Dec 2016	Several parts of BC Act proclaimed. Remaining and substantive provisions to come into effect when BC Regs commence.
Sep 2018	BC Regs published in Gazette
1 Jan 2019	BC Act and Regs to commence

What the new BC Act & Regs do

- **Modernise** biodiversity regime.
- **Listing** for native species, ecological communities, threatening processes and critical habitats.
- Require **Ministerial authorisation** to take or disturb listed threatened species and ecological communities.
- Make it an **offence** to impact any native flora or fauna without 'lawful authority' – big penalties (up to \$2.5 million for companies)
- Provide various mechanisms to help **protect and improve** biodiversity, including programmes, plans and conservation agreements and covenants.

Key implications for environmental consultants

Assisting clients

- Obtain **authorisations**
- Participate in consultation
- Manage inspections
- Respond to notices and direction

Duty to report

- Threatened species
- Threatened ecological communities

Accessory to an offence

Extended liability

Authorisations

- Licences to take flora and fauna issued to individuals rather than to a corporate entity.
- DBCA say this is necessary to ensure that any taking is done appropriately, by a person who has the skills and expertise, to meet best practice and ensure animal welfare.
- Allow for the licence to also authorise other specified persons to carry out activities under the licence, or assist the principal licensee holder in carrying out such activities. Such authorised persons need to be acting under the direct supervision of the licensee.

Duty to report

43. Duty of certain people to report occurrence of threatened species

- (1) This section applies to a person who is carrying out field work for the purposes of—
 - (a) an assessment under the *Environmental Protection Act 1986* Part IV; or
 - (b) complying with a requirement under the *Environmental Protection Act 1986* section 51E(1)(d) in relation to an application for a clearing permit.
- (2) If the person, in the course of carrying out the field work, finds an occurrence of a species that is a threatened species on land to which the work relates, the person must report its presence to the CEO.
Penalty for this subsection: a fine of \$50 000.
- (3) A report under subsection (2) may be made orally or in writing.
- (4) It is a defence to a charge of an offence under subsection (2) to prove that the person charged did not know, and could not reasonably have known, that the occurrence found was an occurrence of a threatened species.

49. Duty of certain people to report occurrence of threatened ecological community

- (1) This section applies to a person who is carrying out field work for the purposes of—
 - (a) an assessment under the *Environmental Protection Act 1986* Part IV; or
 - (b) complying with a requirement under the *Environmental Protection Act 1986* section 51E(1)(d) in relation to an application for a clearing permit.
- (2) If the person, in the course of carrying out the field work, finds an occurrence of an ecological community that is a threatened ecological community on land to which the work relates, the person must report its presence to the CEO.
Penalty for this subsection: a fine of \$50 000.
- (3) A report under subsection (2) may be made orally or in writing.
- (4) It is a defence to a charge of an offence under subsection (2) to prove that the person charged did not know, and could not reasonably have known, that the occurrence found was an occurrence of a threatened ecological community.

A condition of biological survey licence that the licence holder provide notification of any threatened species or TECs in the licence return. If not able to identify that the time, as not confirmed until later by WA Museum or Herbarium or vegetation data required technical analysis, the responsibility rests with the licence holder to provide the information when it becomes known.

Accessory to an offence

234. Attempt, incitement or accessory after the fact

- (1) In this section —
accessory after the fact to an offence has the meaning given in *The Criminal Code* section 10.
- (2) *The Criminal Code* section 555A applies to an offence under this Act as if it were a simple offence under that Code.
- (3) A person who becomes an accessory after the fact to an offence under this Act (the *principal offence*) commits an offence and is liable on conviction to the penalty to which a person convicted of the principal offence is liable.

Extended liability

- A person can incur liability for offence caused by the person's:
 - employees;
 - agents; or
 - partners.

Company officers can incur liability in respect of offences by a body corporate.

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