

TERMS OF REFERENCE - REVIEW OF THE *BIODIVERSITY CONSERVATION ACT 2016*

Objective

The Minister for the Environment shall undertake the initial five-year review of the operation and effectiveness of the *Biodiversity Conservation Act 2016* (the Act), in accordance with the requirements set out under section 277 of the legislation.

Background

The Act received the Governor's Assent on 21 September 2016. Its commencement was staged, with select Parts coming into effect on 3 December 2016 to establish the legislative framework and enable future implementation. The remaining Parts commenced on 1 January 2019, alongside the Biodiversity Conservation Regulations 2018.

From 1 January 2019, the Act introduced a modern framework for biodiversity conservation in Western Australia (WA), superseding the outdated *Wildlife Conservation Act 1950* and *Sandalwood Act 1929*. Key reforms included:

- expanded coverage to include protection of threatened ecological communities, threatening processes, and critical habitats;
- introduction of new mechanisms for private land conservation, such as biodiversity conservation covenants and agreements;
- significantly increased penalties for wildlife-related offences, particularly those involving threatened species, threatened ecological communities, sandalwood and cetaceans.

The Act's objects are:

- to conserve and protect biodiversity and biodiversity components in WA; and
- to promote the ecologically sustainable use of biodiversity components.

In pursuit of these objects, regard must be given to the principles of ecologically sustainable development set out in section 4.

The Minister is required to undertake a review of the operation and effectiveness of the Act as soon as practicable after each fifth anniversary of the commencement of section 277. The Minister must prepare a report based on the review and table it in both Houses of Parliament.

Requirements of the review

In the course of the review, the Minister must consider and have regard to:

1. the objects of the Act;
2. the adequacy of the penalties imposed under the Act; and
3. any other matters that appear to the Minister to be relevant to the operation and effectiveness of the Act.

Scope

1. This review is to examine and report on the operation and effectiveness of the Act with particular attention to protecting and conserving threatened species and threatened ecological communities:
 - a. *Part 2 - Listing of native species and threatened ecological communities and threatening processes*

Provisions relating to the listing of threatened species, threatened ecological communities and threatening processes.
 - b. *Part 3 - Threatened species and threatened ecological communities*

Provisions relating to authorisations for taking or disturbing threatened species and authorisations for modifying threatened ecological communities, including reporting requirements. Provisions relating to landowner and occupier notification will also be reviewed.
 - c. *Part 4 - Listing of critical habitat*

Provisions relating to the determination of critical habitat and landowner and occupier habitat conservation notices.
 - d. *Part 6 - Recovery plans and interim recovery plans*

Provisions relating to the preparation, approval and adoption of recovery plans along with the general provisions for recovery and interim recovery plans.
 - e. *Penalties*

Adequacy of offences and penalties imposed under the Act related to threatened species and threatened ecological communities.
2. The review may consider other matters the Minister considers relevant.
3. Without limiting 2, the review will not include an assessment of subsidiary legislation (such as regulations, orders and notices), however, the review may comment on these instruments, policy and administrative matters, and other legislation if a significant area of concern is identified.
4. The review shall have regard to previous reports as they relate to biodiversity conservation and the effectiveness and operation of the Act. These include:
 - a. WA Auditor General's report into the Conservation of Threatened Ecological Communities, June 2025, (Report 23: 2024-25);
 - b. WA Auditor General's report into the Rich and Rare: Conservation of Threatened Species Follow-up Audit, September 2017, (Report 16: 2017);
 - c. WA Auditor General's report into the Rich and Rare: Conservation of Threatened Species, June 2009, (Report 5: 2009).

Support and administration

The review will be supported by a review panel comprising three individuals, one of whom will be nominated as Chairperson. In appointing members to the panel, the Minister will consider relevant skills, knowledge and expertise relating to biodiversity conservation, environmental science, legislation, government policy, Aboriginal affairs, development approvals and/or industry regulation. The panel will prepare a review report detailing findings and recommendations.

The Department of Biodiversity, Conservation and Attractions (DBCA) will provide comprehensive support, including secretariat services, policy and legal advice, technical input, administrative coordination and communications including regular briefings to the Minister's office.

Review process

The review will be undertaken in five main phases:

1. Initial stakeholder meetings and background briefings and research

This phase will involve the panel engaging in initial meetings with key stakeholders, such as industry peak groups, environmental non-government organisations, scientific committees, government agencies and Aboriginal stakeholders. It is expected the panel will also receive background briefings from DBCA on matters related to the scope of the review and undertake research as required. This phase will inform the review panel's deliberations and guide the development of a public consultation discussion paper (stage 2).

2. Public consultation

The public consultation process will be initiated through the release of a consultation discussion paper. It is anticipated that the paper will include key issues or themes and focus questions based on the scope of the review.

3. Analysis of public submissions

This phase will involve the review panel analysing submissions received during the public consultation phase. Follow-up engagement may be undertaken with submitters to clarify or expand on feedback. The analysis of public submissions will be made publicly available with the review report.

4. Review report preparation

The review panel will prepare a draft report for the Minister, including clear, actionable recommendations informed by its research, stakeholder consultation and analysis. A final report will follow within a period of six weeks.

5. Tabling and government response

The Minister will table the final report in both Houses of Parliament following receipt. The Government will consider the recommendations and provide a formal response.

Timeframe

The review process is anticipated to be completed within 18 months of the panel being appointed.