

DISCUSSION NOTES

for environmental consultants



Background

The Biodiversity Conservation Regulations (the Regulations) will provide new licensing arrangements for environmental consultants and researchers undertaking biological surveys or other activities relating to taking or disturbing native flora and fauna. For more information on when the new Regulations will commence, see the Department's website.

The Regulations will provide for transitional arrangements to ensure that holders of existing licences relevant to these activities will continue to be authorised under the new regulations **without needing to apply for a new licence**. That is, existing licences will continue to operate until they expire. Where a licence expires close to commencement day, the transitional regulations will provide that the licence expires after commencement date, so that licence holders have time to apply for a new biodiversity conservation licence. It is currently intended that applications for new licences may be made from October 2018.

Current status

Environmental consultants and researchers who undertake biological surveys or other activities are required to hold either a Regulation 17 (scientific) or Regulation 15 (relocation) licence under the Wildlife Conservation Regulations 1970 for fauna, or a Scientific or Other Prescribed Purposes licence under the *Wildlife Conservation Act 1950* for flora.

The current fauna licences are issued on the basis that they apply to an individual project or number of projects for a particular client who may have assistants listed on the licence working under their supervision, while the flora licences are issued for a 12 month period to each person taking flora.

Proposed new arrangements

It is intended that the new regulations for licensing biological survey and fauna relocation will provide for the issue of *Fauna (biological survey)* and *Flora taking (biological survey) (Crown land) licences* for biological survey, and a *Fauna relocation licence*.

These licences can only be issued to an individual, but may authorise other specified persons to carry out activities under the licence, or assist the principal licence holder in carrying out such activities. It is proposed that such authorised persons will need to be operating under the direct supervision of the principal licence holder, that is, the principal licence holder will need to be supervising or coordinating the activity in the field where the

assisting personnel are operating. For example, these licences could be issued to the principal investigator or project leader of an environmental consulting firm (if operating in the field), to an independent consultant, or to university researchers or students, and may include a list of persons who would be operating under the supervision of the principal licence holder. People operating independently in the field will be required to hold individual licences.

These licences could operate for a specified period (could be one year or longer), or a minimum time period for a specific project.

Fauna

One option being considered is whether applicants for fauna licences could provide Standard Operating Procedures (SOPs) which cover all of the methods that they intend to use for the survey or relocation of fauna during the period of the licence, including for multiple projects. Such methodologies will need to address animal welfare issues as well as matters relating to the conservation of the fauna, including appropriate use of animals through best practice survey design. Administrative arrangements will set out the level of detail that needs to be included in the SOP and the level of survey to which it applies. DBCA provides SOPs on fauna survey activities on the website:

<https://www.dpaw.wa.gov.au/plants-and-animals/monitoring/standards-and-protocols/99-standard-operating-procedures>.

Fauna surveys for environmental impact assessments should also be conducted in accordance with the Environmental Protection Authority's Technical Guidance: Vertebrate fauna surveys for environmental impact assessment.

It is proposed that, once the licence is issued, only those methods specified in the application are authorised to be used. If a different method is required, the applicant can either submit an amendment (with an appropriately detailed SOP), or apply for a new licence. Where the proposed method is novel or experimental, a *Fauna taking (non-commercial purposes) licence* (scientific licence) will be required as the activity is not a recognised biological survey or relocation technique and will require specific assessment. Such methods will not be included as an on-going survey or relocation technique until endorsed as such.

Alternatively, for fauna, biological survey or fauna relocation licences could continue to be issued as project-based licences where an individual applies for and receives a licence for a specific project, to be conducted by specific people within a specified time (which may include multi-year) using approved techniques. A licensee could hold multiple project-based licences at any particular time where licensed projects operate concurrently.

Flora

The taking of flora during a biological survey does not pose the same level of risk or require the same level of assessment that applies to fauna. It is proposed that licenses for biological surveys of flora will authorise the taking of voucher specimens for plant identification where the taking does not pose a risk to the health of the plant, or in the case of small herbaceous plants, does not pose a risk to the population of that species at the location.

Flora surveys for environmental impact assessments require a *Flora (biological survey) licence* and should be undertaken in accordance with the Environmental Protection Authority's Technical Guidance: Flora and vegetation surveys for environmental impact assessment, and collect herbarium voucher specimens in accordance with the guide prepared by the Western Australian Herbarium, i.e. How to Collect Herbarium Specimens.

The new licensing system will be an on-line platform, and flora and fauna licence returns will be able to be provided electronically via the web. It is intended that the new system will also provide for licence holders to provide DBCA with notification when a particular biological survey is to be conducted under a non-specific biological survey licence.

The flora and fauna biological survey licences cannot authorise the taking or disturbing of threatened (flora and fauna) species. Where a survey is likely to result in the taking or disturbance of a threatened species, a ministerial authorisation under section 40 of the *Biodiversity Conservation Act 2016* is required and should be applied for at the time of applying for the licence(s), or subsequently if it becomes known that such an authorisation will be required.

Defences are provided in the Act at sections 151(2) and 174(2) for the accidental taking of threatened fauna or threatened flora, but these defences only apply where the taking occurred in the course of a lawful activity, the sole or dominant purpose of which was not to take fauna or flora and the taking could not reasonably have been avoided.

Sections 43 and 49 of the Act compel any person carrying out field work for the purposes of an assessment under Part IV of the *Environmental Protection Act 1986* (EP Act), or complying with an EP Act s.51E(1)(d) application for a clearing permit, to report the presence of a threatened species or a threatened ecological community (TEC) to the CEO (of DBCA). Defences are provided in sections 43(4) and 49(4) that apply where the person did not know, or could not reasonably have known, that they had found a threatened species or TEC.

It will be a condition of a biological survey licence that the licence holder (i.e. the principal investigator or project leader) provide notification of any threatened species or TECs in the licence return. This means that, if the person undertaking the field work (either as the licensee or an authorised person) was not able to identify the species or community at the time of the survey (because the identification was not confirmed until later by the WA

Museum or Herbarium, or vegetation data required technical analysis) that the responsibility rests with the licence holder to provide this information when it becomes known.

Proposed licence fee structure

Current Wildlife Conservation Act licence	Current fee	Biodiversity Conservation licence	New licence fee	Licence Renewal fee
Scientific or other prescribed purposes licence	\$60	Flora taking (biological survey) (Crown land) licence	\$150	\$100
Licence to take fauna for scientific purposes	\$100	Fauna biological survey licence	\$200	\$110

Seeking your feedback

DBCA is seeking your views on the proposed licensing arrangements presented above, and in particular whether environmental consultants see any benefits from having a licence that operates for a longer period and authorises a range of methods. Project-based licences could still be issued in particular circumstances, or if desired as a preferable approach by licence applicants.

Please send your comments and suggestions to: biodiversity@dbca.wa.gov.au.