

BIODIVERSITY CONSERVATION ACT 2016

MINISTERIAL GUIDELINE NUMBER 1

**PROCEDURES FOR MAKING AND ASSESSING PUBLIC NOMINATIONS
FOR LISTING SPECIES OR COMMUNITIES AS THREATENED SPECIES
OR THREATENED ECOLOGICAL COMMUNITIES, AND FOR LISTING
KEY THREATENING PROCESSES**

1. Legislative Basis for these Guidelines

Section 260(1) of the *Biodiversity Conservation Act 2016* (the Act) provides for the Minister to issue *Ministerial Guidelines* establishing criteria for, and setting out other matters relevant to, the listing of specially protected species, threatened species, extinct species, threatened ecological communities, key threatening processes, and critical habitats.

Section 260(2) provides for the Minister to issue *Ministerial Guidelines* for making and dealing with nominations under section 38(1) relating to threatened species or threatened ecological communities.

Section 38 of the Act provides for any person to nominate:

- a native species for listing as a threatened species in a particular category;
- an ecological community for listing as a threatened ecological community in a particular category;
- a threatening process for listing as a key threatening process; and
- to make a nomination to amend or repeal any of the above listings.

This *Ministerial Guideline*, No. 1, provides the procedure for any person to make such a nomination, and for the Minister to assess such a nomination. In this *Ministerial Guideline*, reference to threatened species will be taken to include extinct species, and reference to threatened ecological communities will be taken to include collapsed ecological communities.

Section 37 of the BCA provides that: “before making a listing decision the Minister must obtain and have regard to advice from one or more persons considered by the Minister to have scientific expertise relevant to the matter to which the decision relates”.

Ministerial Guideline No. 2 provides the criteria for the listing of a species as a threatened or extinct species and *Ministerial Guideline* No. 4 provides for listing an ecological community as a threatened or collapsed ecological community. *Ministerial Guideline* No. 6 provides the criteria for the listing of a key threatening process.

The criteria and procedure for the listing of critical habitat are provided in *Ministerial Guideline* No. 5.

2. Procedure for making and considering nominations.

2.1 Procedure for making a public nomination

Section 38(2) of the Act provides that nominations for consideration by the Minister may be made by anyone at any time, whether or not the Minister has sought nominations. However, the Minister may seek nominations at particular times to facilitate the assessment process and associated administrative arrangements.

When the Minister intends to seek nominations from the public, a notice will be published in accordance with regulation 8(1) of the Biodiversity Conservation Regulations 2018 through a notice posted on the Department of Biodiversity, Conservation and Attractions' (the Department's) website.

A call for public nominations will specify the closing date for the receipt of nominations. Nominations received after the closing date may be reviewed at a subsequent assessment period at the discretion of the Minister or the Department.

The Minister may also consider proposals submitted by the Department for the listing of a threatened species, threatened ecological community or key threatening process.

2.2 Information requirements

The nomination form approved by the CEO and available from the Department's website must be used to nominate a species, ecological community or threatening process. The nomination form may be completed on-line, or downloaded and sent to the Department at the address specified on the Department's website.

The nomination form will specify the information that must be included. This information must address the listing criteria, and provide information on the biology, ecology, threats and management requirements of the species or ecological community to enable its conservation status to be adequately assessed. Similarly, nominations for key threatening processes must provide information that enables the process to be clearly described, its impacts understood, and management or mitigation measures identified.

Section 38(3) of the Act provides that if the Minister considers that a nomination is vexatious, frivolous, not made in good faith or has not been made in accordance with the relevant ministerial guidelines, the Minister may reject the nomination without providing a reason or notification. In such circumstances, the Minister will give written notice of this decision to the nominator.

When a nomination form is received by the Department, the CEO will determine whether there is sufficient information to enable an assessment against the relevant assessment criteria set out in these Ministerial Guidelines.

If the CEO determines that the nomination form does not meet these requirements, then the CEO will defer assessment of the nomination, and provide advice to the nominator on the information requirements for re-submission. Where further information is available to the Department, the Department will assist the nominator in revising the nomination, unless the nomination is determined by the Minister to be vexatious, frivolous, or not made in good faith.

2.3 *Provision of scientific advice*

Section 37 of the Act provides that the Minister must obtain and have regard to advice from one or more persons considered by the Minister to have scientific expertise before making a listing decision for a threatened species, threatened ecological community or key threatening process. This advice will primarily be through formal committees established by the Minister, termed the Threatened Species Scientific Committee (TSSC – Attachment 1) and the Threatened Ecological Communities Scientific Committee (TECSC – Attachment 2).

The Minister, or the TSSC and TECSC, may also seek additional scientific advice as required to enable the assessment of a nomination.

The Minister may forward nominations to the TSSC or TECSC for their consideration. Assessment by the committees will normally be undertaken at formal meetings, but matters may also be considered out-of-session as required.

The TSSC or TECSC will initially assess a nomination to determine whether the nomination contains sufficient information to ensure that the assessment of the species, ecological community or threatening process will give a reliable determination of the status of the species, ecological community or threatening process against the assessment criteria.

Once the relevant committee has considered the nomination, the committee will either make a recommendation to the Minister for the Minister's decision, or defer consideration of the nomination until further information can be provided by the nominator, or becomes available to the Department. If further information is not available or cannot be provided, then the relevant committee may recommend to the Minister that the nomination be rejected. If the Minister is satisfied that the nomination has not been made in accordance with the relevant Ministerial Guideline, the Minister may formally reject the nomination and notify the nominee in writing of this decision.

The TSSC will consider nominations for key threatening processes with regard to their effect on species, while the TECSC will consider nominations for key threatening processes with regard to their effect on ecological communities. Where a proposed key threatening process applies to both species and ecological communities, the Department will coordinate the advice from both scientific committees for referral to the Minister. Where these advices are conflicting, the department will seek further advice with the objective of reaching a mutually agreed position between the committees. If this is not achievable, the Department will present both sets of advice for the Minister to make a decision on the listing of the key threatening process.

The TSSC may also consider whether species that have been nominated as threatened species and not found to be eligible may be considered for listing as a specially protected species.

While not required under the Act, the TSSC and TECSC also have the appropriate expertise to assess critical habitat for threatened species and ecological communities. Recommendations of critical habitat may be made through the nomination to list or amend the threat status of a species or ecological community, or through other means (refer to Ministerial Guideline No.

5). These recommendations will be referred to the TSSC or TECSC as appropriate for the provision of advice to the Minister.

2.4 *Public consultation*

The Act does not require nominations for listing, amending or repealing the lists of threatened species, threatened ecological communities or key threatening processes to be made available to the public. However, the Western Australian Government is a signatory to the *Intergovernmental Memorandum of Understanding - Agreement on a Common Assessment Method for Listing of Threatened Species and Threatened Ecological Communities* (the MOU). The MOU includes a requirement to undertake public consultation on assessments that will result in changes to the lists of nationally threatened species or ecological communities. Consequently, the opportunity for the public to review and make comment on nominations is included in this guideline.

Nominations to amend the lists of threatened species, threatened ecological communities or key threatening processes will be advertised on the Department's website. Copies of nominations will be referred to any person(s) or organisation(s) that has requested to have them referred. An email address will be advertised on the Department's website for the public to provide comments on any nomination.

Copies of nominations will be made up to ten (10) business days before the scheduled time of consideration by the respective scientific committee(s). To maintain confidentiality, the identity of nominators will be removed from nominations.

Any comments received as part of this process will be collated by the Department and provided to the TSSC or TECSC without prejudice for their consideration.

2.5 *The making of the lists*

Once the Minister has made the decision to list a species, community or key threatening process, the Minister will make respective orders that list the threatened (and other specially protected) species, threatened ecological communities and key threatening processes. These orders must be laid before each House of Parliament as soon as practicable after the order is published in the *Government Gazette*.

2.6 *Notification of the Minister's decision*

The Minister must provide written notice of his decision to the person who made the nomination. If the Minister decides that the listing, amendment or repeal made by the nominator is not to be made, the Minister must provide reasons for his decision. The Minister will provide a response to the nominator after the order to make the threatened species list, threatened ecological communities list or the key threatening processes list is published in the *Government Gazette*.

In addition to directly notifying the nominator, the outcome of any review of the lists of threatened species, threatened ecological communities or key threatening processes will be

published on the Department's website. The published outcome of any review will include the recommendations of the TSSC or TECSC.

2.7 Procedure for making an urgent listing

Where there is new information that a species or ecological community that is not currently listed meets the criteria specified in the relevant ministerial guideline for listing in a particular category, the Minister may receive nominations from the TSSC, TECSC or any other person, without the Minister seeking such a nomination. Likewise, where there is new information that a species or ecological community could be eligible to be transferred to a different category, the TSSC or TECSC may consider making a recommendation to the Minister.

The making of an urgent listing decision will only be considered where the listing of the species or community, or the category in which the species or community should be listed, is necessary for the effective conservation of the species or community. In such cases, the TSSC or TECSC may meet out of session to consider the new information. Otherwise, the nomination will be considered at the next available scheduled meeting of the TSSC or TECSC.

2.8 Reviewing the listed species, ecological communities and key threatening processes

The list of threatened species, threatened ecological communities and key threatening processes will be reviewed by the TSSC or TECSC at least once every ten years, or on instruction from the Minister. The TSSC or TECSC may review groups of species or communities (e.g. those with similar characteristics or that occur in similar geographic locations) more frequently as new information becomes available.

Where a review of the list of threatened species, threatened ecological communities or key threatening processes indicates the need to amend the relevant lists, nominations will be prepared for the TSSC or TECSC. Nominations may take the form of full (detailed) nominations where a listed item is to be deleted (other than for taxonomic reasons). In the case of other proposed changes (threat category or listing criteria), an abridged nomination may be presented to the TSSC or TECSC to provide new information that justifies the change, and provides an assessment against the listing criteria.

A review of a key threatening process will be undertaken at the time a species or ecological community on which its nomination was solely based is removed from the list of threatened species or ecological communities, or has its conservation status moved to a lower category of endangerment. Such a review may be a confirmation that the threatening process still poses a risk to that species or ecological community (if still listed), or if other species or ecological communities are now also being affected by the threatening process.

THE THREATENED SPECIES SCIENTIFIC COMMITTEE (TSSC)

Section 37 of the BCA states “Before making a listing decision [for a threatened species, extinct species, threatened ecological community, collapsed ecological community, or key threatening process] the Minister must obtain and have regard to advice from one or more persons considered by the Minister to have scientific expertise relevant to the matter to which the decision relates”. For listing threatened or extinct species, and associated key threatening processes, the primary mechanism for obtaining such advice will be through a Threatened Species Scientific Committee.

Establishment of the Threatened Species Scientific Committee

The Minister has established the **Threatened Species Scientific Committee** to consider nominations for listing species on the **Threatened Species** List and key threatening processes affecting threatened species. This committee is appointed by the Minister following a public call for nominations. Members of this committee will be appointed on the basis of their individual expert knowledge and qualifications where this is relevant to the conservation of Western Australia’s biodiversity, and not as representatives of any organisation. A range of expert knowledge fields will be sought to ensure a broad representation on the committee.

The committee will meet at least once a year, but may meet more frequently to provide advice to the Minister on the listing and ranking of species, key threatening processes, using the criteria included in these guidelines. Administrative support for the committee will be provided by the Department of Biodiversity, Conservation and Attractions (the Department).

Role of the TSSC

The role of the TSSC is to:

- review nominations for the listing, delisting or changed status of species on the Threatened Species list;
- provide advice to the Minister on nominations concerning threatened species and on other matters relating to the conservation of threatened species in Western Australia; that may include
- recommendations to the Minister on the allocation of species to the categories of threat of the International Union for Conservation of Nature (IUCN); and
- advice to the Minister on proposals to list key threatening processes that affect threatened species.

The TSSC may also provide other advice and recommendations to the CEO in respect of research and management needs arising from the reviews of taxonomic lists and threat categories, as it deems appropriate, including recommendations for the listing of critical habitat.

Terms of Reference for the TSSC

1. The TSSC will be appointed by the Minister for Environment.
2. The TSSC will consist of six to 12 persons, selected on the basis of their expert knowledge of the conservation status of Western Australian flora and fauna.
3. The Chair will be appointed by the Minister from the membership of the committee.
4. The TSSC will undertake the role as described above, and may also make recommendations to the Minister on other matters relevant to the conservation of species in Western Australia, including lists maintained by the Department for administrative purposes (ie. the priority species lists).
5. Using approved criteria in Appendices 1, 2 and 3 of Ministerial Guideline 2, make recommendations at least annually to the Minister on species to be listed, or delisted, and the categories to which they should be allocated.
6. The TSSC will advise the Minister whether any listed species should have a higher or lower priority for conservation action than that indicated by its IUCN Red List Category. This advice will be based on biological and ecological attributes and will consider only matters that relate to the survival of the species.
7. Using the guidance provided in Ministerial Guideline 5, make recommendations to the Minister on areas to be listed as critical habitat for listed species.
8. Using the guidance in Ministerial Guideline 6, make recommendations to the Minister on threatening processes to be listed as key threatening processes.
9. The committee may appoint subcommittees (subject to the endorsement of subcommittee membership by the Minister), e.g. to consider and review lists and categories of threat annually for particular groups of plants or animals.
10. Any subcommittees formed must be chaired by a member of the TSSC and will consist of up to 10 persons appointed on the basis of their expert knowledge of the conservation status of the relevant group. The membership of any subcommittee will include at least one member of the committee in addition to the Chair.
11. Subcommittees shall make their recommendations only to the TSSC. The TSSC will review subcommittee recommendations and submit them to the Minister. The TSSC will oversee the work of subcommittees to ensure that standards are met and there is consistency between the subcommittees. The TSSC will provide feedback to subcommittees on its consideration of their recommendations and obtain additional information as required.

THE THREATENED ECOLOGICAL COMMUNITIES SCIENTIFIC COMMITTEE (TECSC)

Section 37 of the BCA states “Before making a listing decision [for a threatened species, extinct species, threatened ecological community, collapsed ecological community, or key threatening process] the Minister must obtain and have regard to advice from one or more persons considered by the Minister to have scientific expertise relevant to the matter to which the decision relates”. For listing threatened ecological communities (and also collapsed ecological communities), and associated key threatening processes, the primary mechanism for obtaining such advice will be through a Threatened Ecological Communities Scientific Committee.

Establishment of the Threatened Ecological Communities Scientific Committee

The Minister will establish the **Threatened Ecological Communities Scientific Committee** that will consider nominations for listing ecological communities on the **Threatened Ecological Communities** List and key threatening processes affecting threatened ecological communities. This committee will be appointed by the Minister following a public call for nominations. Members of this committee will be appointed on the basis of their individual expert knowledge and qualifications where this is relevant to the conservation of Western Australia’s biodiversity, and not as representatives of any organisation. A range of expert knowledge fields will be sought to ensure a broad representation on the committee.

The committee will meet at least once a year, but may meet more frequently to provide advice to the Minister on the listing and ranking of ecological communities, key threatening processes, using the criteria included in these guidelines. Administrative support for the committee will be provided by the Department.

Role of the TECSC

The role of the TECSC is to:

- review nominations for the listing or delisting, and ranking, of ecological communities on the Threatened Ecological Communities list;
- provide advice to the Minister on nominations concerning threatened ecological communities and on other matters relating to the conservation of threatened ecological communities in Western Australia; that may include
- recommendations on the allocation of ecological communities to threat categories and the appropriate listing criteria; and
- advice to the Minister on proposals to list key threatening processes that affect threatened ecological communities.

The TECSC may also provide advice and recommendations to the CEO in respect of research and management needs arising from the reviews of threatened ecological communities, including recommendations for the listing of critical habitat.

Terms of Reference for the TECSC

1. The TECSC will be appointed by the Minister for Environment.
2. The TECSC will consist of six to 12 persons, selected on the basis of their expert knowledge of the conservation status and conservation management of Western Australian ecological communities.
3. The Chair will be appointed by the Minister from the membership of the committee.
4. The TECSC will undertake the role as described above, and may also make recommendations to the Minister on other matters relevant to the conservation of ecological communities in Western Australia, including lists maintained by the Department for administrative purposes (i.e. the priority ecological communities lists).
5. Using approved criteria in Appendices 1, 2 and 3 of Ministerial Guideline 4, make recommendations at least annually to the Minister on ecological communities to be listed and the categories to which they should be allocated.
6. The TECSC will consider the status of Western Australian ecological communities throughout their total natural range in Australia, and only where appropriate (e.g. for ecological communities for which the Australian occurrence is not significant to the status of the ecological community as a whole), their range and status outside Australia.
7. The TECSC will advise the Minister whether any listed ecological communities should have a higher or lower priority for conservation action than that indicated by its IUCN Red List Category. This advice will be based on biological and ecological attributes and will consider only matters that relate to the survival of the ecological community.
8. Using the guidance provided in Ministerial Guideline 5, make recommendations to the Minister on areas to be listed as critical habitat for listed species.
9. Using the guidance in Ministerial Guideline 6, make recommendations to the Minister on threatening processes to be listed as key threatening processes.
10. The committee may form subcommittees e.g. to consider and review lists and categories of threat annually for particular groups of ecological communities.
11. Any subcommittees formed must be chaired by a member of the TECSC and will consist of up to 10 persons appointed on the basis of their expert knowledge of the conservation status of the relevant group. The membership of any subcommittee will include at least one member of the committee in addition to the subcommittee Chair.
12. Subcommittees shall make their recommendations only to the TECSC. The TECSC will review subcommittee recommendations and submit them to the Minister. The TECSC will oversee the work of subcommittees to ensure that standards are met and there is consistency between the subcommittees. The TECSC will provide feedback to subcommittees on its consideration of their recommendations and obtain additional information as required.