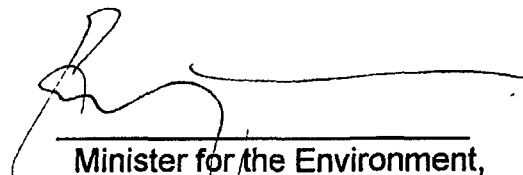




AUSTRALIAN CAPITAL TERRITORY
NATURE CONSERVATION ACT 1980
DETERMINATION OF LICENSING CRITERIA
DETERMINATION NO. 102 OF 1995

Pursuant to section 64 of the *Nature Conservation Act 1980*, I determine that the criteria for the grant or refusal of a licence, the imposition of conditions and determining the duration of a licence for prescribed activities shall be as set out in the Schedule.

Dated this 20th day of July 1995



Minister for the Environment,
Land and Planning

LICENSING CRITERIA - THE SCHEDULE

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GRANT OR REFUSAL OF A LICENCE

1.(1) The Conservator shall not grant a licence for a period of greater than one year.

(2) Where a licensee seeks to continue an authorised activity beyond one year and the Conservator is of the opinion that the matters taken into account when originally authorising the activity remain valid and unchanged, and the licensee has satisfactorily complied with any attached condition, the Conservator may grant a licence in the same terms.

Application for a licence

2.(1) An application for the grant of a licence:

- (a) shall be in writing and signed by the applicant;
- (b) shall state the full name and address of the applicant;
- (c) shall clearly indicate the nature of the activity in respect of which the licence is sought and its purpose; and
- (d) shall specify as relevant, the number and species of animals, fish or plants in respect of which the licence is sought.

(2) In order to assist determination of an application, the Conservator may request any other relevant information or documentation about the application or its purpose in relation to, for example:

- (a) the training, experience and qualifications of the applicant;
- (b) the place at which the activity is proposed, including relevant facilities and conditions;
- (c) handling, care and disposal of any animals, fish, plants, their progeny or products; or
- (d) commercial interests in the proposed activity.



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LICENSING CONSTRAINTS

Activity to be lawful

3. The Conservator shall not grant a licence unless satisfied, based on reasonable grounds, that:
- (a) the activity for which a licence is sought is not prohibited by a law in respect of each place specified in the application; and
 - (b) the activity does not involve a breach of State, Territory or Commonwealth legislation.

Suitability of applicant

4. The Conservator shall refuse to grant a licence if:
- (a) within the previous three years, the applicant has been convicted of an offence against the *Nature Conservation 1980*; or an offence of a similar kind in a State or Territory or under Commonwealth legislation;
 - (b) within the previous three years, the applicant, in relation to a licence for an activity of a kind similar to the one proposed, has failed to comply with a condition of that licence; or
 - (c) in the opinion of the Conservator, the activity for which a licence is sought is effectively under the management or control of a person who, within the previous three years, in relation to an activity of the kind proposed -
 - (i) has been refused a licence;
 - (ii) has had a licence cancelled; or
 - (iii) has been convicted of an offence against the *Nature Conservation 1980*; or an offence of a similar kind in a State or Territory or under Commonwealth legislation.

Wilderness areas

5.(1) The Conservator shall not grant a licence authorising a person to fell timber on, or remove timber from, land that is, or forms part of, a wilderness area.

(2) The Conservator shall not grant a licence authorising excavation in a wilderness area unless that excavation is for the purposes of an archaeological investigation.


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Drum nets

6. The Conservator shall not grant a licence authorising the placing of a drum net in public waters unless satisfied, based on reasonable grounds, that:

- (a) the activity will serve a genuine scientific or educational purpose that is dependant on the biological characteristics of the species sought;
- (b) there is provision for adequate precautions to be observed to ensure that harm to non-target species is minimised; and
- (c) the use of a drum net is reasonable in relation to alternative techniques and consistent with the purpose.

CONDITIONS OF A LICENCE

7.(1) A licence may specify conditions subject to which the licence is granted in relation to the activity and how it is to be carried on, for example:

- (a) the manner in which the activity is to be or not to be conducted;
- (b) the manner in which any damage caused by the activity is to be rectified;
- (c) handling and care requirements for an animal or plant;
- (d) the type of activity and its purpose;
- (e) the person(s) who may participate in the activity, their qualifications and experience;
- (f) the time and place for an activity or the meeting of a specified condition;
- (g) the number of animals, plants or fish involved;
- (h) whether or not the activity is of a commercial nature;
- (i) breeding/propagation controls and disposal of progeny or products;
- (j) record keeping, and reporting requirements;
- (k) identification of animals, plants or fish;
- (l) environmental monitoring requirements.


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(2) Where a licence is granted to take a native plant or native animal or remove native timber, the Conservator may place a condition on the licence in relation to the Territory's right to share in any commercial benefits (foreseen or otherwise) that may accrue to the licensee or subsequent beneficiary in respect of any properties, products or derivatives of the plant or animal or its progeny, including its genetic characteristics. This condition may specify the development of a materials transfer agreement between the Conservator and a third party prior to the licensee or subsequent party passing on or selling any material or thing that is obtained or developed as a consequence of the licence.

(3) Where a licence is granted to undertake an activity for scientific purposes, the Conservator may place a condition on the licence in relation to the results of related research being made available to the Conservator.

Change in conditions of a licence

8. The Conservator may vary a condition of a licence where, since the granting of a licence:

- (a) a change has occurred in relation to a matter that was taken into account in determining the application for the licence;
- (b) an unforeseen or significant event changes the impact of the activity on a species or place; or
- (c) new information becomes available in relation to the conservation requirements of a species or threats to its survival in the wild;

and the Conservator is of the opinion that the change or information is such as to necessitate the modification of the activity in respect of which the licence was granted.

GENERAL CONSIDERATIONS

9.(1) For the purpose of determining an application for a licence, the Conservator shall have regard to the effect the activity will have on:

- (a) a species of native animal or native plant already found in the Territory;
- (b) the significant ecosystems of the Territory; and
- (c) if the activity is proposed to be undertaken on public land, the effect of the activity on that land.



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(2) For the purposes of determining an application for a licence, the Conservator may make a distinction between different kinds of plants or animals or fish in relation to, for example;

- (a) handling and care requirements;
- (b) the type of activity and its purpose;
- (c) the qualifications and experience of the applicant;
- (d) the time and place for an activity;
- (e) the number of plants or animals or fish involved;
- (f) whether or not the activity is of a commercial nature;
- (g) breeding/propagation controls and disposal of progeny or products;
- (h) record keeping and reporting requirements;
- (i) identification of animals, plants or fish;
- (j) environmental monitoring requirements;
- (k) whether the plant or animal or fish is declared as a protected native animal or native plant, a species with special protection status, or a prohibited or controlled organism;
- (l) whether the plant or animal or fish has been recommended for declaration as vulnerable or endangered.

(3) For the purposes of determining an application from a body corporate, the Conservator shall be satisfied, based on reasonable grounds, that the officers or employees of the body corporate possess such qualifications and experience as is necessary to undertake the proposed activity.

Selling

10. For the purposes of determining an application relating to the sale of a native animal or native plant, the Conservator shall have regard to the availability of the species in commercial trade and the effect such trade could have on native populations within the Territory and Australia.



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Scientific purposes

11. For the purposes of determining an application relating to scientific research, the Conservator may require information to be provided in relation to the scope and nature of the project, including:

- (a) details of the scientific study;
- (b) fate of any animals including disposal of any carcase, remains or products;
- (c) land from which any animal or plant is proposed to be taken;
- (d) place or places where any animal is to be kept;
- (e) supporting documentation and other relevant information.

Animals and live fish

12. When determining an application for a licence relating to animals or live fish, the Conservator shall have regard to:

- (a) the degree of unintended mortality of animals or fish that is likely to occur;
- (b) in the case of an application for a licence to sell native animals - the extent, if any, to which the applicant, for the purpose of carrying on the activity of selling animals of that kind, proposes to deal in animals raised in captivity;
- (c) in the case of an application for a licence to sell an animal or import an animal into the Territory - the likelihood of the animal escaping from captivity or becoming a feral or noxious animal;
- (d) in the case of an application for a licence to sell live fish or import live fish into the Territory -
 - (i) the likelihood of the fish becoming a threat to the continuance of a species of fish already found in waters of the Territory; and
 - (ii) the likelihood of the fish having any other harmful effect whatsoever;
- (e) in the case of an application for a licence to keep animals or live fish - the place at which the animals or live fish are proposed to be kept and the suitability of the facilities at that place for the keeping of the animals or fish in question;



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- (f) in the case of an application for a licence to sell or keep animals or live fish - the qualifications and experience possessed by the applicant relating to the handling, keeping or breeding of animals or fish of the kind to which the application refers;
- (g) in the case of an application for a licence to export an animal or live fish from the Territory - the degree to which exportation of animals or fish of the species to which the application relates is likely to threaten the continuance in the Territory of that, or another, species of animal or fish;
- (h) in the case of an application for a licence to take a native animal or kill a native animal -
 - (i) the purpose of the activity;
 - (ii) the method by which the animal will be taken or killed;
 - (iii) the method of disposal of any carcase, remains or product;
 - (iv) the qualifications and experience possessed by the applicant relating to the science of zoology or animal husbandry;
- (i) in the case of an application for a licence to import or export an animal or live fish - the means by which the animal will be transported.

Release of live fish

13. In the case of an application for a licence to release a live fish into waters in the Territory, the Conservator shall have regard to:

- (a) the stream catchment in which the waters occur and whether the kind of fish is established within the waters of that catchment or of the Territory;
- (b) the source of the fish in relation to its genetic characteristics and freedom from disease;
- (c) the likelihood of the fish becoming established in waters of the Territory;
- (d) the likelihood of the fish escaping from a holding facility or in some other way entering waters other than those into which it is proposed to be released;
- (e) whether the proposed release site is public or private waters;
- (f) the likelihood of the fish having any other harmful effect whatsoever.



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Release of animals from captivity

14. In the case of an application to release an animal from captivity, the Conservator shall have regard to:

- (a) the place proposed for release of the animal;
- (b) the likelihood of the animal being able to survive or breed in the wild following its release;
- (c) the potential for the animal to have a detrimental impact upon the natural environment, including other animals or plants and their conservation requirements;
- (d) the source of the animal in relation to its genetic characteristics and freedom from disease;
- (e) the likelihood of the animal having any other harmful effect whatsoever.

Keep for rehabilitation

15.(1) In the case of an application for a licence to keep an animal for rehabilitation purposes, the Conservator shall have regard to:

- (a) the general well-being of the animal in captivity;
- (b) the likelihood of the animal being able to survive in the wild following its rehabilitation;
- (c) the effect on the natural environment of releasing the animal following its rehabilitation;

and shall be satisfied, based on reasonable grounds, that the applicant:

- (d) possesses qualifications and experience relevant to keeping an animal of the kind proposed; and
- (e) has the facilities and is able to apply the handling techniques that are conducive to the animal being successfully reintroduced to the wild.

(2) For the purposes of paragraph 15.(1), keeping for rehabilitation includes dependant juvenile or orphaned progeny of an animal.


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Plants and native timber

16.(1) In the case of an application for a licence to take a native plant, the Conservator shall have regard to:

- (a) the purpose for which the plant is required;
- (b) the qualifications and experience possessed by the applicant relating to the science of botany or horticulture;
- (c) the effect the taking of the plant will have on the area in which the plant is growing; and in the case where the application is to take seed from a native plant, the effect of such taking on the ecological or biological welfare of the plant or the community in which it occurs;

(2) In the case of an application for a licence to fell, damage or remove native timber, the Conservator shall have regard to:

- (a) the effect of the felling, damage or removal on the land to which the application relates;
- (b) the conservation requirements of the native timber species or the ecological community with which it is associated; and
- (c) the management objectives for the land concerned.

Excavation in a wilderness area

17.(1) In the case of an application for a licence to excavate in a wilderness area, the Conservator shall have regard to:

- (a) the objectives of the relevant archaeological investigation including any expected contribution to the understanding of Aboriginal prehistory or Australian history in general;
- (b) the archaeological qualifications and experience of the applicant.

(2) A licence to take a plant for the purposes of an archaeological investigation need not have botanical or horticultural expertise as a consideration if it is integral to an authorised excavation.



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SPECIAL CONSIDERATIONS FOR DECLARED ITEMS

Protected native animals and protected native plants

Licensing constraints:

18.(1) The Conservator shall not grant a licence which authorises any person to take a protected native animal or a protected native plant unless satisfied, based on reasonable grounds, that the taking:

- (a) is required to be done for a scientific, educational, non-commercial propagative or other similar purpose;
- (b) is required to be done for the purpose of protecting persons or property and will be conducted in a way that will, so far as is practicable, keep to a minimum any impact on the species concerned;
- (c) is merely incidental to other acts and will not appreciably reduce the survival or recovery in the wild of the species concerned; or
- (d) is of particular significance to Aboriginal tradition and will not appreciably reduce the survival or recovery in the wild of the species concerned.

(2) For the purposes of paragraph 18.(1)(d), Aboriginal tradition means the body of traditions, observances, customs and beliefs of Aboriginal people that are, or have been, associated with the ACT and region.

(3) The Conservator shall not grant a licence to take a protected native animal or protected native plant for the purposes of sale or trade.

Relevant Considerations

19.(1) For the purposes of determining an application for a licence in relation to a protected native animal or a protected native plant, the Conservator shall have regard to:

- (a) the grounds upon which the animal or plant is declared and whether -
 - (i) there is potential for or actual excessive exploitation of the wild population;
 - (ii) commercial supplies of the species are limited or of high value (or some other related market force prevails) and illegal taking from the wild is a matter of concern;
 - (iii) there is reason to manage commercial use of the species to enhance its regional or national conservation or to control its establishment in the wild outside its natural range;


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- (iv) the species is locally rare or uncommon;
 - (v) the species is threatened with extinction or is suspected to be threatened with extinction;
 - (vi) the species is a critical component of an ecological community that is threatened with extinction or is suspected to be threatened with extinction;
- (b) any affect the activity may have on a naturally occurring population of the animal or plant in the Territory and region;
- (c) in the case of an animal - whether it is captive-bred and the progeny of lawfully obtained parents;

and shall be satisfied, based on reasonable grounds, that the plant or animal concerned is lawfully obtained.

(2) For the purposes of determining an application to take a protected native animal or protected native plant, the Conservator shall have regard to a requirement that:

- (a) in the case of an application provided for in paragraph 18.(1)(a) -
- (i) the applicant has appropriate knowledge, scientific training and experience in the field of zoology or animal husbandry, in the case of an animal, or botany or horticulture in the case of a plant;
 - (ii) the applicant is associated with a scientific or educational institution or a professional or non-profit community organisation, with the competence and purpose to take advantage of the biological characteristics of the species; and
 - (iii) the purpose for which the animal or plant is taken -
 - is genuinely related to the conservation requirements of the species in question or another species; or
 - is dependant upon the biological characteristics of the species;
- (b) in the case of an application to undertake an activity provided for in paragraph 18.(1)(b) or paragraph 18.(1)(c) - there is adequate provision for monitoring of the effects of the activity on the conservation requirements of the species;


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- (c) in the case of an application to undertake an activity provided for in paragraph 18.(1)(c) - a requirement that the proposed activity is not inconsistent with an Action Plan; and
 - (d) in the case of an application to undertake an activity provided for in paragraph 18 (1)(d) - a requirement that the applicant is a recognised member of the Aboriginal community of the ACT and region.
- (3) When considering an application to keep a protected native animal, the Conservator shall have regard to:
- (a) the applicant's qualifications and experience in relation to keeping an animal of the kind concerned; and
 - (b) the place it is to be kept, the facilities to be used in relation to the animal's requirements for space, shelter, protection from predators, security against escape and any other matter related to the animal's general welfare, its potential to impact upon the natural environment or its potential to pose a health or safety risk in the community.

Species with special protection status

Licensing constraints

20.(1) The Conservator shall not grant a licence which authorises any person to do any act in relation to a species which has special protection status unless satisfied, based on reasonable grounds, that the act specified in the licence:

- (a) is required to be done for a scientific, educational, propagative or other similar purpose;
- (b) is required to be done for the purpose of protecting persons or property and will be conducted in a way that will, so far as is practicable, keep to a minimum any impact on the species concerned;
- (c) is merely incidental to other acts and will not appreciably reduce the survival or recovery in the wild of the species concerned; or
- (d) is of particular significance to Aboriginal tradition and will not appreciably reduce the survival or recovery in the wild of the species concerned.

(2) For the purposes of paragraph 20.(1)(d), Aboriginal tradition means the body of traditions, observances, customs and beliefs of Aboriginal people that are, or have been, associated with the ACT and region.



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Relevant considerations

21.(1) For the purpose of determining an application for a licence in relation to a species with special protection status, the Conservator shall have regard to:

- (a) the world-wide, Australian and regional survival of the wild population of the species and the impact of the proposed activity on the ecological communities or ecosystems of which the species forms a part;
- (b) the grounds upon which the species is declared;
- (c) in the case of an application to undertake an activity provided for in paragraph 20.(1)(a) - a requirement that -
 - (i) the applicant has appropriate knowledge, scientific training and experience to undertake the proposed activity, and is associated with a recognised scientific research organisation, or a professional or non-profit community organisation involved in scientific research;

the application is supported by the institution's chief executive officer; and

the proposed activity is genuinely related to the conservation requirements of the species or another species which has special protection status; or has a genuine scientific purpose dependant upon the biological characteristics of the species;
 - (ii) the proposed activity is related to a plant or animal, or its progeny, that was lawfully obtained (and in the case of an animal - captive-bred), and the applicant has -
 - the appropriate knowledge and experience to successfully undertake the proposed activity; and
 - in the case of an application to keep an animal - facilities conducive to its continued well-being; or
 - (iii) the applicant is associated with a recognised non-profit community organisation involved in the rehabilitation of native animals and has demonstrated competence and experience in the keeping of the taxa;
- (d) in the case of an application to undertake an activity provided for in paragraph 20.(1)(b) or paragraph 20.(1)(c) - there is adequate provision for monitoring of the effects of the activity on the conservation requirements of the species;
- (e) in the case of an application to undertake an activity provided for in paragraph 20.(1)(c) - a requirement that the proposed activity is not inconsistent with an Action Plan; and


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(f) in the case of an application to undertake an activity provided for in paragraph 20.(1)(d) - a requirement that the applicant is a recognised member of the Aboriginal community of the ACT and region.

(2) Where there is a threat of a serious or irreversible effect on the ability of the species to survive or recover in the wild, lack of full scientific certainty will not be used as a reason for postponing a decision to prevent a decline in that ability.

Prohibited and controlled organisms

Relevant considerations

22.(1) In the case of an application for a licence to possess a prohibited organism, the Conservator shall have regard to:

- (a) the grounds upon which the organism is declared;
- (b) the affect possession of the organism may have on conservation requirements of native plants and native animals and ecological communities of the Territory; and
- (c) the likelihood of possession of the organism having any other harmful effect whatsoever.

(2) In the case of an application for a licence to undertake a prescribed action in relation to a controlled organism, the Conservator shall have regard to:

- (a) the grounds upon which the organism is declared;
- (b) the affect the action may have on conservation requirements of native plants and native animals and ecological communities of the Territory; and
- (c) the likelihood of the action having any other harmful effect whatsoever.


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