

**Government response to the report of the Panel to review the Department of
Conservation and Land Management's Prosecution Policy and Guidelines and
administrative procedures relating to prosecutions.**

On 18 November 2003 I announced a review of the Department of Conservation and Land Management's Prosecutions Policy and Guidelines and the administrative procedures relating to prosecutions. The review was initiated in response to the significant level of interest in several Department of Conservation and Land Management (CALM) prosecution actions in the latter half of 2003.

Mr Peter Johnston, Barrister and Senior Fellow, Faculty of Law, University of Western Australia, chaired the review panel. Other panel members were Dr Mike Bamford, consultant wildlife ecologist and Mr Shane O'Donoghue, senior commercial program officer, Fisheries Management Services Division, Department of Fisheries.

The Terms of Reference for the review were:

"To advise the Minister for the Environment whether changes are required to CALM's Prosecutions Policy Guidelines and administrative procedures and practices for compliance and enforcement, in order to ensure that they support the department's statutory functions to administer the provisions of the CALM Act and the Wildlife Conservation Act and are fair, consistent and in the public interest."

Submissions were sought from stakeholder organisations identified by the panel as having an interest in the policy or the review. Submitters were subsequently invited to address the panel if they believed this would be beneficial.

This document constitutes the Government response to the Report of the Panel to Review the Department of Conservation and Land Management's Prosecutions Policy and Guidelines and Administrative Procedures Relating to Prosecutions.

I would like to acknowledge the comprehensive work of the Panel in conducting the review. I welcome the Panel's well-considered recommendations for a range of improvements to the policy and administrative procedures. I would also like to acknowledge those individuals and organisations that have provided submissions to the Panel.

It is worthy of note that the report does not find any major flaws in CALM's policy and practices.

Both the Executive Director of CALM and myself will ensure that the Panel's recommendations result in concrete action.

Judy Edwards

Dr Judy Edwards MLA
MINISTER FOR THE ENVIRONMENT

Response to individual Panel recommendations

Recommendation 1.

The Panel therefore recommends:

1. *A CALM prosecution advisory panel be established, to assist in determining whether, in the public interest, particular prosecutions should be commenced;*
2. *Consideration be given to appointing as the third member a person external to the Department. This should be a person with the status, experience and independence of a retired magistrate.*

The Government supports and will establish a CALM prosecution advisory panel. This will involve CALM consulting with other agencies with 'similar' prosecution functions (e.g. Departments of Environment, Fisheries and Agriculture) and the State Solicitor's Office. Consideration will be given to appointing a person external to the Department.

Recommendation 2.

The Panel therefore recommends that the definition of "to take" in the respective Acts administered by CALM be amended to express more relevantly the essential elements of notion not incompatibly with the common understanding of the term.

The Government agrees that the definition of 'to take' should be amended. This is proposed in the drafting instructions for a new Biodiversity Conservation Act to repeal and replace the Wildlife Conservation Act 1950. Similar amendment to the Conservation and Land Management Act 1984 will also be sought.

Recommendation 3.

The Panel recommends that if a new Biodiversity Conservation Act were not to be implemented for some time, separate consideration should be given to amend the definition of "to take" in the WC Act in the interim.

The Government supports this recommendation, however a new Biodiversity Conservation Act is a high priority.

Recommendation 4.

The Panel recommends that CALM seek advice and assistance from the State Solicitor's Office and the Police Media Section concerning ways in which it may more extensively communicate with the media and public about prosecutions.

The Government supports this recommendation and discussions have commenced.

Recommendation 5.

Accordingly, the Panel recommends that:

1. *CALM develop and implement a system of internal review to enable a person to raise matters arising from all enforcement actions other than prosecutions.*

2. *Letters of Warning and Infringement Notices should contain advice regarding the system of internal review.*
3. *All enforcement actions across CALM should be recorded to permit CALM to monitor these actions to ensure consistency and accountability.*

The Government accepts this recommendation and implementation will commence upon release of the Panel's report.

Recommendation 6.

The Panel recommends that the Minister for the Environment consider whether CALM decisions to revoke or refuse licenses under the Acts administered by CALM, particularly where prior convictions may be taken into account, should be subject to a process of internal and/or external independent review.

The Government supports the intent of this recommendation. This will be met by the establishment of, in the first instance, an appropriate internal review process within CALM and subsequently through the establishment of a State Administrative Tribunal. Amendments to the Acts administered by CALM will be required.

Recommendation 7.

The Panel recommends that any revised Prosecution Policy and Guidelines should be regularly reviewed (without prescribing a particular period).

The Government supports this recommendation.

Recommendation 8.

The Panel recommends that:

- 1) *CALM replace its current Prosecution Policy and Guidelines with the following instruments:*
 - i) *An Enforcement and Prosecution Policy;*
 - ii) *An Enforcement Management Policy and Framework;*
 - iii) *Standard Operating Procedures.*
- 2) *At least the first of these instruments should be available to the public.*

The Government supports this recommendation.

Recommendation 9.

The Panel recommends that the Minister consider whether the legislation administered by CALM should contain a statement of the statutory objectives of the legislation.

Consideration will be given to this recommendation in the finalisation of drafting instructions for the Biodiversity Conservation Act and subsequently when there is an opportunity for amendment of the CALM Act.

Recommendation 10.

Further, the Panel recommends that a statement to the following effect be included in the Guidelines.

"A significant factor in assessing whether, in the public interest, to initiate or withdraw a prosecution should be the statutory objectives behind the legislation administered by the Department. The extent to which a prosecution will serve the purpose of maintaining public respect and support for the protection and conservation of biodiversity, flora and fauna and the regulation of the use of public lands and marine areas, should be the primary consideration in a decision to prosecute."

The Government supports the intent of this recommendation. CALM's revised documents will be finalised after consultation with the State Solicitor's Office and the Director of Public Prosecutions, and the statement proposed would be subject to this consultation process.

Recommendation 11.

The Panel recommends CALM consider adopting the alternatives and additions suggested in Appendix G to this Report. These alternative criteria elaborate some aspects of the public interest statement proposed in the previous recommendation.

The Government supports the intent of this recommendation. CALM's revised documents will be finalised after consultation with the State Solicitor's Office and the Director of Public Prosecutions, and the alternatives and additions suggested would be subject to this consultation process.

Other.

The text at p.15 and Appendix H contain some suggestions for administrative improvements. Although not the subject of a specific recommendation by the Panel, CALM will examine those suggestions and act on them as appropriate.