



**Minister for Environment; Disability Services; Electoral Affairs
Deputy Leader of the Legislative Council**

Your Ref: A776035
Our Ref: 62-16430

Hon Adele Farina
Chair
Standing Committee on Public Administration
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005



Adele
Dear Ms ~~Farina~~

Thank you for your correspondence, received in this office on 5 September 2019, seeking advice on term of reference (c) to the Inquiry into Private Property Rights.

In relation to the Environment portfolio and licences, permits and authorisations granted by legislation administered by the Department of Water and Environmental Regulation (DWER) and the Department of Biodiversity Conservation and Attractions (DBCA), I am advised that they do not grant ownership to anything or create property rights.

The applicable legislation includes the *Environmental Protection Act 1986*, *Environmental Protection (Noise) Regulations 1997*, *Contaminated Sites Act 2003* administered by DWER, and the *Conservation and Land Management Act 1984*, *Biodiversity Conservation Act 2016*, *Swan and Canning Rivers Management Act 2006*, and *Botanic Gardens and Parks Authority Act 1998* administered by the DBCA.

The issue of property rights was considered at the time of the Commonwealth Personal Property Securities Bill (now *Personal Properties Securities Act 2009*). The Department's position (covering legislation administered by both the Departments in my Environment portfolio) was that these statutory authorisations are principally regulatory in their function, and only incidentally, if at all, give rise to a proprietary right. These are not defined as personal property under the Bill, and the characterisation of a statutory authorisation as personal property does not create rights or claims which a licensee would not otherwise have.

Information on authorisations is at Attachment 1 for DWER and Attachment 2 for DBCA.

Yours sincerely

Hon Stephen Dawson MLC
MINISTER FOR ENVIRONMENT

Att.

25 SEP 2019

Department of Water and Environmental Regulation licences, permits and authorities for the Environment portfolio

Legislation	Part	Division	Section	Instrument	Right created	Right to compensation	Property right
<i>Environmental Protection Act 1986</i>	IV - Environmental Impact Assessment	2. Implementation of Decisions	45	Implementation agreement or decision	Authorises the implementation of a proposal in accordance with conditions	No	No
	V - Environmental Regulation	2. Clearing of native vegetation	51E	Clearing permit	Authorises clearing of native vegetation in accordance with the terms and conditions of the permit	No	No
	V - Environmental Regulation	3. Works Approvals and Licences	54 57	Works Approval Licence	Authorises the occupier to construct or change a prescribed premises in accordance with a works approval Authorises the occupier to emit or discharge to the environment in accordance with the conditions of the licence	No	No
<i>Environmental Protection (Noise) Regulations 1997</i>	2 - Allowable noise emissions	2. Various premises and activities 3 Motor sport venues 4. Shooting venues	13 14A 16AA 16BA	Approved noise management plan Construction sites Waste collection and other works Motor sport venue Shooting venue	Exempts noise emitted from premises from the prescribed standard for noise emissions where works are carried out in accordance with an approved noise management plan	No	No

Legislation	Part	Division	Section	Instrument	Right created	Right to compensation	Property right
	2 - Allowable noise emissions	6. Where standard cannot reasonably be met	17	Approval to allow emission of noise to exceed or vary from prescribed standard	Authorises the approval holder to emit noise that exceeds or varies from the prescribed standard for noise emissions for the duration of the approval and subject to any conditions of the approval	No	No
	2 - Allowable noise emissions	7. Sporting, cultural and entertainment events	18 19B	Approved sporting, cultural and entertainment events Approved venues for sporting, cultural and entertainment events	Authorises noise emissions from approved events, and notifiable events at approved venues, to exceed the prescribed standard for noise emissions subject to conditions	No	No
<i>Contaminated Sites Act 2003</i>	7 - Contaminated sites auditors	1. Accreditation	69	Accreditation as a contaminated sites auditor	Authorises a person to practice as a contaminated sites auditor in Western Australia	No	No

Department of Biodiversity, Conservation and Attractions licenses, permits and authorities for the Environment portfolio

Legislation	Part	Division	Section/ regulation	Instrument	Right created	Right to compensation	Property right
<i>Conservation and Land Management Act 1984</i>	VIII	1. State forests, timber reserves, and certain Crown land	88	Permit/ licence	Authorises the taking of forest produce (honey, beeswax) from Crown land (Part VIII, Division 2 and associated actions	No	No
			97	Lease	Authorises the granting of a lease within State forest or timber reserve	No	No
			97A	Licence	Authorise a person to enter and use land within State forest or a timber reserve	No	No
		2. Other land	99A	Licence	Authorises the taking of forest produce (honey, beeswax) from Crown land and associated actions	No	No
			100	Lease	Authorises the granting of a lease	No	No
			101	Licence	Authorises a person to enter and use any land to which this Division applies	No	No

Legislation	Part	Division	Section/ regulation	Instrument	Right created	Right to compensation	Property right
Conservation and Land Management Regulations 2002	8A – Apiary permits and licences	N/A		Permit/ licence	Authorises a person who holds an apiary permit or licence to occupy/ enter and use land for the purpose of operating an apiary	No	No
	7	3 – Commercial operations licences	94	Licence	Authorises a person to sell goods or services or undertake an activity for a commercial purpose	No	No
		4 – Rental mooring licence		Licence	Authorises a person to use a rental mooring by a specified vessel for a specified period	No	No
		5 – Private mooring licence		Licence	Authorises a person to install, own or control a mooring in a private mooring licence area	No	No

Legislation	Part	Division	Section/ regulation	Instrument	Right created	Right to compensation	Property right
<i>Biodiversity Conservation Act 2016</i>	III	1. Threatened species	40	Ministerial authorisation	Authorises the taking or disturbance of threatened flora and threatened fauna from private property or Crown land	No	No
		2. Threatened ecological communities	45	Ministerial authorisation	Authorises the modification of listed threatened ecological communities on private property or Crown land	No	No

Legislation	Part	Division	Section/ regulation	Instrument	Right created	Right to compensation	Property right
Biodiversity Conservation Regulations 2018	4	4 – Bioprospecting licence	Regulation 72	Bioprospecting licence	Authorises the taking of flora or fauna for bioprospecting	No	No
		Division 3 – Flora licences	Regulation 64	Crown land supplier's licence	Authorises the supply of flora taken from Crown land	No	No
		Division 2 – Fauna licences	Regulation 29	Fauna causing damage licence	Authorises the taking of fauna causing damage	No	No
			Regulation 38	Fauna dealing (general dealer's) licence	Authorises the dealing of fauna by general dealers	No	No
			Regulation 39	Fauna dealing (pet dealer's) licence	Authorises the dealing of pets by pet dealers	No	No
			Regulation 30	Fauna disturbing (commercial interaction) licence	Authorises disturbing fauna for commercial purposes	No	No
			Regulation 32	Fauna disturbing (feeding) licence	Authorises disturbing fauna by feeding	No	No
			Regulation 31	Fauna disturbing (other purposes) licence	Authorises the disturbance of fauna for other purposes	No	No
			Regulation 41	Fauna exporting licence	Authorises the export of fauna	No	No
			Regulation 40	Fauna importing licence	Authorises the import of fauna	No	No

Legislation	Part	Division	Section/ regulation	Instrument	Right created	Right to compensation	Property right
Biodiversity Conservation Regulations 2018	4	Division 2 – Fauna licences	Regulation 34	Fauna possessing (breeding) licence	Authorises the breeding of fauna in certain circumstances	No	No
			Regulation 33	Fauna possessing (display) licence	Authorises the display of fauna	No	No
			Regulation 37	Fauna processing licence	Authorises the processing of fauna at a fauna processing establishment	No	No
			Regulation 35	Fauna possessing (other purposes) licence	Authorises the possession of fauna in particular circumstances	No	No
			Regulation 36	Fauna possessing (pet keeper's) licence	Authorises the possession of category B and C species (pets)	No	No
			Regulation 27	Fauna taking (biological assessment) licence	Authorises the taking of fauna in the circumstances where a biological assessment is required	No	No
			Regulation 23	Fauna taking (commercial products) licence	Authorises the taking of commercial fauna products	No	No

Legislation	Part	Division	Section/ regulation	Instrument	Right created	Right to compensation	Property right
Biodiversity Conservation Regulations 2018	4	Division 2 – Fauna licences	Regulation 24	Fauna taking (commercial purposes) licence	Authorises the taking of fauna for commercial purposes	No	No
			Regulation 26	Fauna taking (dangerous fauna) licence	Authorises the taking of fauna that pose a danger	No	No
			Regulation 28	Fauna taking (relocation) licence	Authorises the taking and relocation of fauna	No	No
			Regulation 25	Fauna taking (scientific or other purposes) licence	Authorises the taking of fauna for scientific or other purposes	No	No
		Division 3 – Flora licences	Regulation 69	Flora dealing licence	Authorises the dealing of flora	No	No
			Regulation 69	Flora dealing (sandalwood) licence	Authorises the dealing of sandalwood	No	No
			Regulation 71	Flora exporting (sandalwood) licence	Authorises the export of sandalwood	No	No
			Regulation 66	Flora processing licence	Authorises the processing of flora at a flora processing establishment	No	No
			Regulation 70	Flora processing (sandalwood) licence	Authorises the processing of sandalwood	No	No

Legislation	Part	Division	Section/ regulation	Instrument	Right created	Right to compensation	Property right
Biodiversity Conservation Regulations 2018	4	Division 3 – Flora licences	Regulation 68	Flora supplying (sandalwood) licence	Authorises the supply of sandalwood	No	No
			Regulation 62	Flora taking (biological assessment) licence	Authorises the taking of flora for biological assessment processes	No	No
			Regulation 60	Flora taking (commercial purposes) Crown land licence	Authorises the taking of flora for commercial purposes from Crown land	No	No
			Regulation 61	Flora taking (other purposes) Crown land licence	Authorises the taking of flora for other purposes from Crown land	No	No
			Regulation 67	Flora taking (sandalwood) licence	Authorises the taking of sandalwood from Crown land or private property	No	No
			Regulation 63	Private land supplier's licence	Authorises the supply of flora from private land	No	No

Legislation	Part	Division	Section/ regulation	Instrument	Right created	Right to compensation	Property right
<i>Botanic Gardens and Parks Authority Act 1998</i>	Part 3 – Functions and Powers	N/A	s.10(2)(b)	Lease or licence	Authority has the power to grant a lease or licence that is consistent with its functions, on such terms and conditions as it thinks fit	No	No
			s.10 (2)(h)	Patent, patent rights, design rights, copyright or similar rights	Authority has the power to apply for, obtain and hold (whether alone or jointly with any other person) any patent, patent rights, design rights, copyright or similar rights	Would depend on nature of contract	Would depend on nature of contract
			s.10(2)(l)(iii)	Contract or licence	The Authority has the power to enter into a contract or arrangement with a person or body for the commercial exploitation of the rights referred to in paragraph (h)	Would depend on specifics of licence or contract	Would depend on specifics of licence or contract

Legislation	Part	Division	Section/ regulation	Instrument	Right created	Right to compensation	Property right
<i>Swan and Canning Rivers Management Act 2006</i>	4A	N/A	s.29	Lease	Authorises the granting of a lease of land that is part of the River reserve	No	No
	4A		s 32	Licence	Authorises the granting of a licence over the River reserve	No	No
	5		s.70	Development approval	Approves development within the Swan Canning Development Control Area	Yes – s.89 provides that an owner of private land may obtain compensation for injurious affection if development is refused, approved in modified form, or is approved subject to a restriction or condition that is unacceptable	No

Legislation	Part	Division	Section/ regulation	Instrument	Right created	Right to compensation	Property right
Swan and Canning Rivers Management Regulations 2007	2	Division 2 – Regulation of works, acts and activities that are not “development”	Regulation 9 – 16C	Permit	Grants a permit to carry out any activity for which a permit is required under these regulations	No	No
	3		Regulation 16 – 26	Permit	Grants a permit to carry out any activity for which a permit is required under these regulations	No	No
	4		Regulation 27	Permit	Grants a permit to carry out any activity for which a permit is required under these regulations	No	No