



THIRTY-NINTH PARLIAMENT

REPORT 35

**STANDING COMMITTEE ON ENVIRONMENT AND
PUBLIC AFFAIRS**

**INQUIRY INTO THE SANDALWOOD INDUSTRY
IN WESTERN AUSTRALIA**

Presented by Hon Simon O'Brien MLC (Chairman)

May 2014

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“1. Environment and Public Affairs Committee

- 1.1 An *Environment and Public Affairs Committee* is established.
- 1.2 The Committee consists of 5 members.
- 1.3 The functions of the Committee are to inquire into and report on –
 - (a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;
 - (b) any bill referred by the House; and
 - (c) petitions.
- 1.4 The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecologically sustainable development and the minimisation of harm to the environment.
- 1.5 The Committee may refer a petition to another committee where the subject matter of the petition is within the competence of that committee.
- 1.6 In this order “**environment**” has the meaning assigned to it under section 3(1), (2) of the *Environmental Protection Act 1986*.”

Members as at the time of this inquiry:

Hon Simon O'Brien MLC (Chairman)

Hon Stephen Dawson MLC (Deputy Chair)

Hon Brian Ellis MLC

Hon Paul Brown MLC

Hon Samantha Rowe MLC

Staff as at the time of this inquiry:

Irina Lobeto-Ortega (Advisory Officer (Legal))

Amanda Gillingham (Research Officer)

Margaret Liveris (Committee Clerk)

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

lcco@parliament.wa.gov.au

Website: <http://www.parliament.wa.gov.au>

ISBN 978-1-922047-75-5

Government Response

This Report is subject to Standing Order 191(1):

Where a report recommends action by, or seeks a response from, the Government, the responsible Minister or Leader of the House shall provide its response to the Council within not more than 2 months or at the earliest opportunity after that time if the Council is adjourned or in recess.

The two-month period commences on the date of tabling.

CONTENTS

GOVERNMENT RESPONSE

EXECUTIVE SUMMARY, FINDINGS AND RECOMMENDATIONS i

EXECUTIVE SUMMARY i

FINDINGS AND RECOMMENDATIONS ii

CHAPTER 1 REFERENCE AND PROCEDURE 1

THE PETITION AND INTERIM REPORT 1

THIS INQUIRY 1

CHAPTER 2 SANDALWOOD IN WESTERN AUSTRALIA 3

History of the resource 3

Santalum spicatum: a Western Australian floral asset 3

Plantation sandalwood 6

CHAPTER 3 GOVERNMENT REGULATION AND LICENSING OF THE INDUSTRY 9

Department of Parks and Wildlife 9

Powers of wildlife officers under the *Wildlife Conservation Act 1950* 9

Forest Products Commission 11

Licences to harvest sandalwood 11

Crown land 11

Private property 12

Harvest limits set by Order in Council 12

Licences to sell sandalwood 14

Sandalwood Transport Authority Notices 14

OTHER AGENCIES INVOLVED IN THE SANDALWOOD INDUSTRY 15

Western Australia Police 15

Commonwealth border agencies 17

Australian Customs and Border Protection Service (ACBPS) 17

Department of Agriculture 17

PROBLEMS WITH THE OVERLAP IN RESPONSIBILITIES BETWEEN AGENCIES 18

Concerns identified in the submissions 18

Concerns identified by the Committee 19

Powers of wildlife officers under the *Wildlife Conservation Act 1950* 19

A model approach: Department of Fisheries compliance officers 21

Powers of Fisheries and Marine Officers under legislation 22

Training and law enforcement culture at the Department of Fisheries 24

Magnitude of penalties for illegal fishing plus additional penalties 24

Lessons that can be learned from the Department of Fisheries compliance model

..... 25

CHAPTER 4 MANAGEMENT OF SANDALWOOD HARVESTING CONTRACTS.. 27

The tender process	27
Regeneration conditions	27
Pastoralists' concerns	28
The tender documents	29
Existing contracts and renewals in 2016	30
CHAPTER 5 SUSTAINABILITY OF SANDALWOOD	33
THE CURRENT STATE OF THE RESOURCE IN WA	33
CURRENT RESEARCH INTO <i>SANTALUM SPICATUM</i>	34
THE ORD ALTERNATIVE: THE EMERGENCE OF PLANTATION SANDALWOOD AND TFS	35
SANDALWOOD IN THE FUTURE	36
CHAPTER 6 ILLEGAL HARVESTING AND CRIMINAL ACTIVITY IN THE SANDALWOOD INDUSTRY	39
ILLEGAL HARVESTING IN THE <i>SANDALWOOD ACT 1929</i> AND OTHER STATUTES	39
Inadequate penalties	39
Opportunistic criminals	40
Seized sandalwood is returned to the market	41
A NEW APPROACH: PROSECUTING SANDALWOOD THEFT USING THE CRIMINAL CODE	42
Sandalwood crime in the Criminal Code	42
Stealing	42
Receiving or being in possession of stolen property	43
Recent operations	43
CHAPTER 7 REVIEW OF SANDALWOOD LEGISLATION.....	45
THE <i>SANDALWOOD ACT 1929</i> , <i>WILDLIFE CONSERVATION ACT 1950</i> AND THE <i>FOREST PRODUCTS ACT 2000</i>	45
Urgent need for legislative reform	45
A new biodiversity Act?	46
APPENDIX 1 SANDALWOOD LEGISLATION.....	49
<i>Sandalwood Act 1929</i>	49
<i>Sandalwood Regulations 1993</i>	50
<i>Wildlife Conservation Act 1950</i>	51
<i>Conservation and Land Management Act 1984</i>	55
<i>Forest Products Act 2000</i>	56
<i>Criminal Code Act Compilation Act 1918</i>	60
<i>Fish Resources Management Act 1994</i>	62
APPENDIX 2 REGULATION OF THE SANDALWOOD INDUSTRY IN WESTERN AUSTRALIA.....	63

EXECUTIVE SUMMARY, FINDINGS AND RECOMMENDATIONS

EXECUTIVE SUMMARY

- 1 Native sandalwood (*Santalum spicatum*) has been an important export product in Western Australia since the mid-19th century. As sandalwood harvesting kills the tree, sustainable management of the resource into the future requires careful management and retention of seed stocks.
- 2 The regulation of the native sandalwood industry is complex and relies on several out-dated statutes, including the *Sandalwood Act 1929* and the *Wildlife Conservation Act 1950*. The interaction of two Ministers and their respective agencies has also created a legislative regime that can be, at times, overly bureaucratic and inconsistent.
- 3 Contract management and the tender process has created frustration amongst pastoralists. The sandalwood industry has developed to such an extent that government assistance may not be necessary going forward.
- 4 The industry faces serious challenges in the future, as the current rate of harvest is not sustainable and could lead to the resource ultimately being wiped out across the State. Further research is required to explore the emergence of plantation sandalwood and synthetics as alternatives to the native wood.
- 5 Criminal activity is rife in the industry, with the combination of low penalties, limited access to harvesting contracts and the isolated environment in which sandalwood grows leading to opportunistic illegal harvesting. The future of sandalwood prosecutions should provide for penalties akin to those prescribed in the Criminal Code for stealing, to more effectively deter would-be criminals.
- 6 New biodiversity legislation should strengthen the enforcement powers of the relevant officers to combat black market sandalwood and to reinforce sustainability measures to protect the resource. The *Wildlife Conservation Act 1950* is the oldest statute of its kind in Australia and is in urgent need of reform.

FINDINGS AND RECOMMENDATIONS

7 Recommendations are grouped as they appear in the text at the page number indicated:

Page 13

Recommendation 1: The Committee recommends that the Minister for the Environment immediately review the *Sandalwood (Limitation of Removal of Sandalwood) Order 1996* with a view to reducing the quantity of sandalwood that may be harvested from both Crown and private land.

Page 16

Finding 1: The Committee finds that, whilst Western Australia Police's involvement in sandalwood enforcement may detract from its core functions, there is no question that the agency's presence has a strong deterrent effect against potential criminal activity.

Page 16

Finding 2: The Committee finds that Western Australia Police should, where necessary, continue to provide support to the lead regulatory agency tasked with enforcing sandalwood legislation.

Page 19

Recommendation 2: The Committee recommends that the sole responsibility for regulating and licensing the sandalwood industry in Western Australia be vested in a single agency.

Page 21

Recommendation 3: The Committee recommends that the Minister for Environment amend section 20 of the *Wildlife Conservation Act 1950* to provide consistency to the powers of search and seizure in commercial and residential premises or commit to clarifying these powers in the drafting of new biodiversity legislation.

Page 21

Recommendation 4: The Committee recommends that the Minister for Environment insert a power of arrest for wildlife officers in the drafting of new biodiversity legislation.

Page 26

Recommendation 5: The Committee recommends that the responsible Minister and agency place a stronger emphasis on fostering a compliance culture amongst enforcement officers supervising the sandalwood industry.

Page 28

Recommendation 6: The Committee recommends that all harvesting contracts include a mandatory condition requiring contractors to comply with regeneration and sustainability measures.

Page 30

Recommendation 7: The Committee recommends that the Forest Products Commission (or a future responsible agency) review the documentation that it provides to prospective tender applicants in 2014 and the format in which the information is provided, with a view to simplifying the process.

Page 31

Recommendation 8: The Committee recommends that the Forest Products Commission reassess the level of assistance available to local manufacturers when it considers new agreements to purchase sandalwood in 2016.

Page 37

Finding 3: The Committee finds that the current rate of harvest of native sandalwood is not sustainable and could lead to the resource ultimately being wiped out across WA.

Page 37

Finding 4: The Committee finds that the industry and Forest Products Commission face challenges in the transition from native sandalwood to the emerging plantation sandalwood market.

Page 37

Finding 5: The Committee finds that further research is required to explore the emergence of plantation sandalwood and synthetics as viable alternatives to the native resource.

Page 40

Finding 6: The Committee endorses the former Committee's recommendation in its Report 29 and finds that the penalties currently available under the *Sandalwood Act 1929* are grossly inadequate to deter criminal activity and should be substantially increased.

Page 40

Recommendation 9: The Committee requests that the Minister representing the Minister for Environment advise the Legislative Council why Recommendation 1 of Report 29 *Interim Report Inquiry into the Sandalwood Industry in Western Australia* has not been implemented.

Page 41

Recommendation 10: The Committee recommends that the Minister for Environment review the process of auctioning illegally harvested sandalwood as outlined in section 20A of the *Wildlife Conservation Act 1950* to address the problems identified in this report.

Page 43

Finding 7: The Committee finds that, regardless of the outcome of cases currently before the courts, the size of penalties prescribed under the Criminal Code is far more likely to deter criminal activity in relation to sandalwood than those prescribed under the *Sandalwood Act 1929*.

Page 47

Recommendation 11: The Committee recommends that the Minister representing the Minister for Environment advise the Legislative Council of the progress of implementing the government's commitment to replace the *Wildlife Conservation Act 1950* with new biodiversity legislation.

CHAPTER 1

REFERENCE AND PROCEDURE

THE PETITION AND INTERIM REPORT

- 1.1 Petition 152 was originally tabled in the Legislative Council on 20 March 2012 and referred to the Standing Committee on Environment and Public Affairs of the 38th Parliament, pursuant to the Legislative Council's Standing Order 101(6).
- 1.2 After making preliminary inquiries in accordance with the standard procedure for dealing with petitions¹, the previous Committee resolved to commence a formal inquiry into the sandalwood industry in Western Australia on 19 September 2012. The Committee held hearings and received evidence from key stakeholders in the second half of 2012 as it progressed its inquiry.
- 1.3 The background to that inquiry and its Terms of Reference are set out in detail in the previous Committee's *Interim Report in relation to the Sandalwood Industry in Western Australia* (**Interim Report**), which was tabled on 27 November 2012.²
- 1.4 The Committee tabled the report prior to the commencement of the Parliamentary summer recess and in the lead-up to the 2013 Western Australian State election. The Interim Report highlighted the significant issues that quickly emerged from the Committee's preliminary investigation into sandalwood harvesting in this State and recommended that the Committee continue its inquiry during the 39th Parliament with suggested Terms of Reference.³

THIS INQUIRY

- 1.5 A new Committee membership was established following the March 2013 State election. The Committee of the 39th Parliament resolved on 7 August 2013 to accept the recommendation of the previous Committee in the Interim Report and effectively continue that inquiry. The Committee resolved to inquire into:
 - a) the roles of the Department of Environment Regulation, the Department of Parks and Wildlife and the Forest Products Commission in the management and commercialisation of sandalwood;

¹ The standard procedure is set out in: Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, Report 20, *Overview of Petitions*, 20 August 2010, pp2-3.

² Parliament of Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, Report 29, *Interim Report in relation to Inquiry into the Sandalwood Industry in Western Australia*, 27 November 2012, pp1-2.

³ *Ibid*, p5, available from <http://www.parliament.wa.gov.au/env>.

- b) how future contracts for the harvesting, marketing and selling of sandalwood can be managed to ensure that all sectors of the industry remain viable and sustainable and the returns to the State are maximised;
 - c) the management of wild sandalwood, including monitoring of the resource and regeneration;
 - d) the government resources required to effectively detect and prosecute the illegal harvesting and exporting of sandalwood, including the transport, storage, purchase, possession and identification of the sandalwood resource; and
 - e) a review of all relevant legislation pertaining to the sandalwood industry.
- 1.6 The Committee held hearings with stakeholders and relevant government departments during 2013 and 2014 and conducted a site visit to the Wescorp sandalwood processing facility in Canning Vale. Further submissions were received in 2013 and these have assisted the Committee to focus its attention on the significant issues facing the sandalwood industry in Western Australia.
- 1.7 The Committee extends its appreciation to all those witnesses and organisations who have provided their time and evidence throughout the course of this inquiry.



Figure 1. Sandalwood branches ready for processing at Wescorp sandalwood processing facility, Canning Vale, Western Australia (Photo taken during Committee site visit to Wescorp facility, 14 August 2013)

CHAPTER 2

SANDALWOOD IN WESTERN AUSTRALIA

Native sandalwood has been an important export product for WA for over 150 years

Sandalwood is currently facing a sustainability crisis which could result in 100 years with no wild sandalwood being available for harvest

Regeneration studies and new plantations in the North West of WA will help ensure the success of the industry into the future

History of the resource

- 2.1 Native Western Australian sandalwood has been exported since the early days of Western Australian settlement: first to Chinese merchants in South East Asia in 1844 for use as incense and then to other parts of Asia and mainland China. Sandalwood quickly became Western Australia's first significant export economy, with export values being considerably more than wool prices at the time.⁴
- 2.2 More than 50 000 tonnes of sandalwood from the Western Australian Wheatbelt were exported in the final decade of the 1800s, which gives some indication of the large scale harvesting that was occurring at the time.⁵ From the mid-19th century onwards, harvesting of native sandalwood continued to develop to the point where legislation was introduced in 1929 to ensure that the industry could operate sustainably and ensure that the quality of the harvest continued.⁶

Santalum spicatum: a Western Australian floral asset

- 2.3 Sandalwood is an aromatic wood that is prized for its oil and has religious and cultural significance in Asian cultures and in Buddhism. Sandalwood oil, commercially extracted from the heartwood of the tree, is used in the manufacture of perfume and cosmetics as well as decorative carvings. Once the oil has been distilled from the timber, the sandalwood chips (known as 'spent charge') are ground into powder to produce incense (either in the form of joss sticks or agarbatti).⁷
- 2.4 Indian sandalwood (*Santalum album*) is traditionally the most valuable variety of sandalwood and the most sought after in the industry due to its aroma and oil yield,

⁴ Forest Products Commission, 'The Good Oil: Western Australian Sandalwood' factsheet, November 2004, p4.

⁵ P Jones, 'Sandalwood re-visited in Western Australia', *Sandalwood Research Newsletter*, 12, 2001, p3.

⁶ The legislative framework and government involvement in the sandalwood industry is discussed in more detail in CHAPTER 7 of this report.

⁷ Only high grade green (living) logs, butts and roots are suitable for distillation. The remainder, dead wood and smaller green wood, is mainly used for the incense industry.

but there are other significant oil-producing species, including Western Australian sandalwood.⁸ Native sandalwood (*Santalum spicatum*) is indigenous to this State and is a unique variety of the tree, with no known growers overseas.⁹

- 2.5 Native sandalwood occurs naturally across much of the State, but is concentrated in the Wheatbelt/Rangelands area.

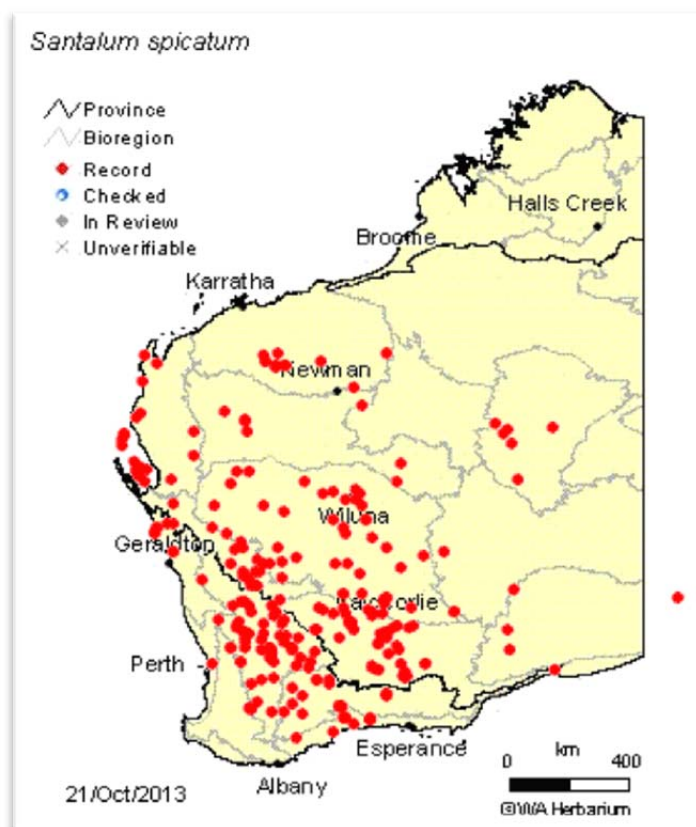


Figure 2. Sandalwood distribution across Western Australia. Image used with the permission of the Western Australian Herbarium, Department of Parks and Wildlife, <http://florabase.dpaw.wa.gov.au/browse/profile/2359> (viewed on 4 November 2013)

- 2.6 Although sandalwood faces many threats in Western Australia¹⁰, the arid climate of our State's inland areas is ideal for sandalwood to thrive. Sandalwood requires a host

⁸ There are six species of sandalwood that are commercially harvested in international markets: *S. album* (native to Indian subcontinent), *S. yasi* (native to Fiji, Tonga), *S. austrocaledonicum* (native to New Caledonia, Vanuatu), *S. macgregorii* (native to Papua New Guinea, Indonesia), *S. spicatum* and *S. lanceolatum* (native to Australia): S Subasinghe, 'Sandalwood Research: A Global Perspective', *Journal of Tropical Forestry and Environment*, Vol. 3, No. 1, 2013, p3.

⁹ M Clarke, *Australia's Sandalwood Industry: An overview and analysis of research needs: A report for the Rural Industries Research and Development Corporation*, December 2006, p11.

¹⁰ Threats include: livestock grazing over many decades, feral animals (including goats) and the localised extinction of the woylie: Mr John Tredinnick, Director Forest Operations, Forest Products Commission, *Transcript of Evidence*, 26 September 2012, p2.

plant to survive and is slow-growing, often taking 100 years to reach maturity.¹¹ Harvesting (known as ‘pulling’) kills the tree as it is normally pulled from the ground by its roots. Sustainable harvesting therefore requires careful management and retention of seed stocks.

- 2.7 Operation Woylie is an ongoing research program run by the Forest Products Commission (FPC) which commenced in 2007 to improve seed germination and the establishment of sandalwood in its wild environment. The woylie is a small marsupial which feeds on sandalwood seeds, collecting and hoarding them in shallow diggings up to 80 metres away from the original tree, similar to the way that squirrels store acorns (‘scatter-hoarding’). Not all the seeds that the woylie buries are revisited, therefore germinating with winter rains and reseeding the trees naturally.¹²
- 2.8 FPC invests approximately \$500 000 per year into its regeneration and sustainability research programs.¹³ This research includes an investigation into the minimum amount of rainfall required to stimulate germination in native sandalwood, discussed further at paragraph 5.7, below.
- 2.9 The slow-growing nature of sandalwood means that the extent of the last 100 years of damage to sandalwood stock will not be apparent until well into the future, which only increases the importance of sustainability measures now:

Mr McNamara: [T]he last 100 years of impacts in the rangelands have meant there will be a decline of sandalwood. We must remember that the sandalwood that is out there now is a reflection of what happened 100 or 200 years ago, so in 200 or 100 years’ time the sandalwood resource will reflect the status of regeneration now.¹⁴

- 2.10 Further discussion of factors which affect the sustainability of sandalwood and management of the resource into the future can be found at CHAPTER 5, below.
- 2.11 Western Australian sandalwood has become an increasingly lucrative resource, with corresponding market price increase, both as a result of illegal harvesting and the

¹¹ Forest Products Commission, ‘The Good Oil: Western Australian Sandalwood’ factsheet, November 2004, p4 and IG Kealley, *Management of Sandalwood*, Department of Conservation and Land Management, October 1991, pp1-3.

¹² Forest Products Commission, ‘The Good Oil: Western Australian Sandalwood’ factsheet, November 2004, p6.

¹³ Letter from Mr John Tredinnick, Director Forest Operations, Forest Products Commission, 19 October 2012, p6.

¹⁴ Mr Keiran McNamara, Director General, Department of Environment and Conservation, *Transcript of Evidence*, 24 October 2012, p9.

diminishing supply of other sandalwood varieties on the international market.¹⁵ This has had both positive and negative flow-on effects, ranging from a greater focus on plantation sandalwood in our State's north to an increase in illegal harvesting of Western Australian sandalwood.

- 2.12 Figures provided by the former Department of Environment and Conservation reveal that the illegal harvest of sandalwood can present a profitable opportunity for those willing to engage in criminal activity¹⁶:

	Legal sale Australia	Illegal sale Australia
Green sandalwood (Small green logs, green logs & butts)	\$9,500 - 15,000 per tonne	\$5,000 - 7,000 per tonne
Dead sandalwood (dead logs & large pieces)	\$9,400 - \$14,800 per tonne	\$2,000 - 5,000 per tone
Ground blends/low grade pieces	\$3,000 - \$8,000	N/A
Oil	\$1,100/kg (<i>Santalum spicatum</i>)	No market known in Australia

Plantation sandalwood

- 2.13 Experimental growing of Indian sandalwood first occurred in Kununurra in 1983 and was closely followed by plantations of native Western Australian sandalwood in 1987 by FPC and the former Department of Conservation and Land Management.¹⁷
- 2.14 Whilst plantation-grown sandalwood (both Indian and native varieties) has its own corresponding benefits and problems¹⁸, to ensure the sustainability of our native

¹⁵ Poaching of Indian sandalwood (*S. album*) is a major problem in the Indian sandalwood industry, with estimates of up to 75% of sandalwood that leaves the southern Indian state of Kerala being smuggled wood: M Clarke, *Australia's Sandalwood Industry: An overview and analysis of research needs: A report for the Rural Industries Research and Development Corporation*, December 2006, pp4-5.

¹⁶ Table reproduced from Submission No. 28 from Department of Environment and Conservation, 22 October 2012, p7. Further discussion of illegal harvesting of sandalwood and criminal activity is at CHAPTER 6, below.

¹⁷ M Clarke, *Australia's Sandalwood Industry: An overview and analysis of research needs: A report for the Rural Industries Research and Development Corporation*, December 2006, pp8-12.

sandalwood industry, plantations must become a viable alternative to sourcing wood from the wild.

- 2.15 The Committee has heard evidence during this inquiry that if the current rate of harvest of native sandalwood continues (without an operational plantation sandalwood industry) there will come a time when the State is left with no wild sources of sandalwood while we wait for regeneration programs to become effective:

The CHAIRMAN: Looking in perpetuity, are we always going to ideally have access to wild sandalwood for essential blending purposes?

Mr Sawyer: My thoughts are probably not, certainly not live or green harvested wood ... with the population structure as it stands at the moment, there will definitely be a gap between when the current resource of living trees finishes and when the regeneration that is finally now having some success and being established in the rangelands gets to an age in that wild environment that can enable that next growth to be harvested. So there is almost undoubtedly a gap in time there at some point.

The CHAIRMAN: How big will that gap in time be, do you think?

*Mr Sawyer: Possibly 100 years.*¹⁹

¹⁸ Plantation sandalwood can have low survival and yield rates and will still be slow to grow to full oil-producing maturity, which can affect quality: T McConnon, 'Sandalwood company happy despite low harvest', ABC Rural, 20 September 2013, <http://www.abc.net.au/news/2013-09-20/tfs-happy-with-sandalwood-harvest/4970344> (viewed on 20 September 2013).

¹⁹ Hon Simon O'Brien MLC, Chairman, Standing Committee on Environment and Public Affairs and Mr Benjamin Sawyer, Manager Sandalwood Branch, Forest Products Commission, *Transcript of Evidence*, 21 August 2013, p3.

CHAPTER 3

GOVERNMENT REGULATION AND LICENSING OF THE INDUSTRY

The interaction of two Ministers and their respective agencies and four pieces of legislation has created a complex and inconsistent legislative regime that controls the sandalwood industry

There should be one powerful agency responsible for the sustainable regulation of the resource into the future

Responsible officers should be given greater statutory powers to more effectively combat the illegal harvest of sandalwood

Department of Parks and Wildlife

3.1 The agency with primary responsibility for the licensing of sandalwood harvesting was previously the Department of Environment and Conservation (**DEC**), which had responsibility for administering three of the four main statutes that govern the sandalwood industry:

- the *Sandalwood Act 1929*;
- the *Conservation and Land Management Act 1984* (**CALM Act**); and
- the *Wildlife Conservation Act 1950*.²⁰

3.2 On 1 July 2013, DEC was split into two agencies, each with a different focus and legislative obligations. The Department of Parks and Wildlife (**DPaW**) is responsible for nature conservation and the oversight of national parks and protected flora and fauna in the State, which makes it the lead agency now for sandalwood licensing.²¹ The three statutes named above are now administered by DPaW.²²

Powers of wildlife officers under the Wildlife Conservation Act 1950

3.3 The Committee has heard evidence that wildlife officers may exercise the following powers under section 20 of the *Wildlife Conservation Act 1950* (**WCA**):

²⁰ FPC administers the fourth relevant statute, the *Forest Products Act 2000* and is mainly responsible for the commercial sale and production of sandalwood (discussed below). FPC is also involved, however, in harvesting contracts.

²¹ The new Department of Environment Regulation is responsible for environmental regulation, approvals and appeals processes and the prevention of pollution under the *Environmental Protection Act 1986* (and other associated statutes). It does not have a lead role in the management of the sandalwood resource.

²² Further consideration of the future of sandalwood regulation is in CHAPTER 7 of this report.

- the power to take possession and control of weapons and other things used in the commission of an offence against the Act: section 20(2)(a);
- the power to stop, detain and search any vehicle and enter upon and search any land or premises without a warrant (not including residential premises): section 20(2)(b);
- the power to enter onto and search residential premises upon application for a warrant from a Justice of the Peace: section 20(3A).

3.4 The Committee has heard from DPaW that there is no specific compliance training given to officers who deal with sandalwood monitoring:

***Mr Morrison:** Most of the training in sandalwood is learnt on the job. When wildlife officers join, they go through a formal training program that gives them a broad base to compliance training. Sandalwood is a small component of a wildlife officer's role and is not dealt with specifically in the process of that training course. They tend to get specific training and mentoring by officers when they join our branch.*

...

***The CHAIRMAN:** The sense that I am getting here is that there is a large department with general duties and powers spread over very many officers, but you also have a smaller core group that Mr Morrison referred to earlier, which is specifically involved in what we might call enforcement, the investigation of possible offences and prosecutions.*

***Mr Morrison:** That is correct. That is a good summary of the situation.*

***The CHAIRMAN:** Is there a name for that group?*

***Mr Morrison:** The Nature Protection Branch.²³*

3.5 Further discussion of the enforcement powers of wildlife officers in the Nature Protection Branch occurs at paragraph 3.47, below.

²³ Hon Simon O'Brien, Chairman, Standing Committee on Environment and Public Affairs and Mr Kevin Morrison, Acting Manager, Nature Protection Branch, Department of Parks and Wildlife, *Transcript of Evidence*, 11 December 2013, p3.

Forest Products Commission

3.6 The commercial harvest of all forest products on Crown land is managed by FPC under the contract provisions of Part 8 of the *Forest Products Act 2000*. Section 10 of the *Forest Products Act 2000* provides, amongst other things, that it is a function of the FPC to enter into contracts to sell forest products as well as to promote the sustainable use of indigenous forest products located on public land.

3.7 There appears to be an unavoidable tension between FPC's dual role in exploiting forest products to make a profit (consistent with its strategic development plan and statement of corporate intent) while ensuring:

(a) the long-term viability of the forest products industry; and

(b) the principles of ecologically-sustainable forest management are applied in the management of indigenous forest products located on public land.²⁴

3.8 The *Forest Products Act 2000* seeks to address this tension by requiring FPC to give priority to its strategic development plan and statement of corporate intent over the application of the principles of ecologically sustainable forest management.²⁵ The Committee is concerned that the FPC is inherently conflicted in its role as both exploiter and protector of indigenous forest products (including sandalwood) in this State.

Licences to harvest sandalwood

Crown land

3.9 Sandalwood that grows on Crown land (including pastoral leases) is a State resource and belongs to the Crown by virtue of section 23A of the WCA. Several different statutes intersect when applying for a licence to harvest the wood:

- section 3(1) of the *Sandalwood Act 1929*;
- a 'Commercial Purposes (CP) Licence', issued by DPaW, pursuant to sections 23B and 23C of the WCA²⁶; and

²⁴ *Forest Products Act 2000*, section 12(1).

²⁵ *Forest Products Act 2000*, section 12(4). Note also that any directions that the Minister may give pursuant to section 14 of the Act will also prevail if there is a conflict or inconsistency with the two concepts in subsections 12(1)(a) and (b) of the Act.

²⁶ FPC or other agents of the Crown are exempt from the licensing requirement, as section 23A of the Act vests all property in protected flora on Crown land in the Crown.

- a licence to harvest forest produce on CALM-managed lands (including State forests and unallocated Crown land) is required according to section 88(1) of the CALM Act.
- 3.10 Commercial harvesting from conservation estates (such as national parks or reserves) is not permitted under a CP licence. Harvesting on Crown land is through production contracts with FPC, with contractors being allocated quotas and regions in which to pull the sandalwood.

Private property

- 3.11 Sandalwood that occurs naturally on private land is the property of the landowner. A licence is still required in most circumstances to harvest sandalwood on private land under section 3(1) of the *Sandalwood Act 1929*.
- 3.12 Where the wood is pulled by the owner or occupier of the land or with the land owner's permission, however, section 23D(1) of the WCA provides that no licence is required under that Act (unless the sandalwood is intended to be sold – see paragraph 3.20).
- 3.13 'Private property' for these purposes is a broad definition and includes the following²⁷:

Land Tenure	Consent required
Freehold (eg farmland)	Land owner/authorised agent
Crown land reserve the subject of Native Title (determined or claim covered by ALT special lease for the use and benefit of aboriginal people, or another form of lease from the vested authority that allows exclusive use for aboriginal people.	ALT (if an ALT lease), or other vested authority (if applicable). And the Aboriginal corporate body, as the lessee
Unallocated Crown land the subject of Native Title (determined or claim) with Crown lease that is to an Aboriginal corp./persons	The Aboriginal corporate body, as the lessee

Harvest limits set by Order in Council

- 3.14 Volume restrictions apply for the harvest of green (living) sandalwood on Crown land and are also imposed by DPaW under licence conditions for the harvest of sandalwood on private property.²⁸

²⁷ Table reproduced from 'Flora Licensing Information Sheet Sandalwood – Private Property (S1)', 8 October 2013, Department of Parks and Wildlife, p2, available from <http://www.dpaw.wa.gov.au/plants-and-animals/licences-and-permits/135-flora-licences>.

²⁸ Section 2 of the *Sandalwood Act 1929* provides that the Governor, by Order in Council, can restrict the size of the harvest from both Crown land and private property.

- 3.15 The current Order in Council is almost 18 years old (published on 12 November 1996) and limits the wild harvest to 1500 tonnes of green and 1500 tonnes of dead sandalwood per financial year (a total of 3000 tonnes). Further to this restriction, in accordance with an inter-agency agreement between CALM and FPC, 300 tonnes is allocated to private property and the remaining 2700 tonnes is to be from Crown land (with each allocation divided 50:50 between green and dead sandalwood).²⁹
- 3.16 The Committee has heard evidence that the limits set in the 1996 Order in Council are too high for the continued, sustainable harvest of wild sandalwood:

Mr McNamara: We do say in our submission that in, I think, the 1991 document Mr Kealley^[30] recommended limits are not as high as what the Order-in-Council says ... I think the only conclusion one can have is that the wild resource of sandalwood cannot be harvested at its current levels and be done so sustainably.³¹

- 3.17 Based on the evidence of leading researchers and from one of the agencies which previously had primary responsibility for regulating the sustainable harvest of sandalwood, the Committee strongly believes that the current Order in Council is out of date and damaging to the future of the industry.³²

Recommendation 1: The Committee recommends that the Minister for the Environment immediately review the *Sandalwood (Limitation of Removal of Sandalwood) Order 1996* with a view to reducing the quantity of sandalwood that may be harvested from both Crown and private land.

- 3.18 To further complicate the licensing framework for harvesting, Crown land sandalwood is also subject to the *Forest Products Act 2000* which provides for the harvest and sale of sandalwood under production contracts (through a tender process). These contracts are separate from licences granted under the *Sandalwood Act 1929*, but operate in conjunction with a licence issued under section 23C(1) of the WCA. Contractors are allocated quotas in a specific region and may enter onto pastoral land in their contract region to harvest the sandalwood.³³

²⁹ Submission No. 28 from Department of Environment and Conservation, 19 October 2012, p3.

³⁰ IG Kealley, *Management of Sandalwood*, Department of Conservation and Land Management, October 1991, p19.

³¹ Mr Keiran McNamara, Director General, Department of Environment and Conservation, *Transcript of Evidence*, 24 October 2012, p8.

³² The issue of the sustainability of the Order in Council is discussed further below, in CHAPTER 5.

³³ *Forest Products Act 2000*, section 60(1). Of 31 production contracts in place, 20 are held by pastoralists: Letter from Hon Terry Redman, Minister for Forestry, 6 August 2012, p2. These contracts are due to expire in 2016.

- 3.19 A flowchart outlining the regulation of sandalwood in Western Australia is included in this report at Appendix 2. The tender process is discussed further in CHAPTER 4.

Licences to sell sandalwood

- 3.20 A Commercial Producer's (PN) licence from DPaW is required to sell sandalwood that has been harvested from private property.³⁴
- 3.21 The confusing situation arises where several Acts intersect and various licences may therefore be required to harvest wild sandalwood on Crown land: one under the *Sandalwood Act 1929* and one under the WCA to specifically harvest the wood for commercial purposes. A production contract under the *Forest Products Act 2000* could then also be entered into with FPC to sell the wood commercially.
- 3.22 The various licensing requirements are summarised in table format, below³⁵:

	Sandalwood on Crown land	Sandalwood on private land
Licence to harvest	s3(1)(b) <i>Sandalwood Act 1929</i>	s3(1)(b) <i>Sandalwood Act 1929</i>
Licence to sell	s23C(1)(a) <i>Wildlife Conservation Act 1950</i>	s23D <i>Wildlife Conservation Act 1950</i>

- 3.23 The maximum penalty for removing sandalwood without a licence under the *Sandalwood Act 1929* is a fine of \$200, whilst failing to comply with the WCA can result in a maximum penalty of \$4000 with the possibility of the person's licence being cancelled. Further discussion of offences and penalties related to sandalwood is at CHAPTER 6, below.

Sandalwood Transport Authority Notices

- 3.24 There are very few controls built into legislation to regulate the possession and transportation of sandalwood.³⁶ In 2012, the former DEC introduced new conditions for licences under the *Sandalwood Act 1929* as well as the CP licence that required licensees to obtain Sandalwood Transport Authority Notices (STAN) before removing harvested wood for sale.
- 3.25 The Committee has verified that DPaW continues to rely on STAN to verify sandalwood quantities that are dealt with during delivery and at purchase. All consignments of sandalwood must be accompanied by a STAN when in transit and any vehicle detected carrying sandalwood may be stopped and inspected, by either

³⁴ *Wildlife Conservation Act 1950*: section 23D(2).

³⁵ Compiled with the assistance of the Nature Protection Branch, DPaW.

³⁶ Submission No. 28 from Department of Environment and Conservation, 22 October 2012, p7.

- DPaW or police officers.³⁷ The Nature Protection Branch of DPaW inspects the premises of sandalwood buyers to compare the amounts of wood on hand to STAN which have been issued to harvesters who sold wood to that buyer during the licence period.
- 3.26 DPaW has detailed internal processes in place relating to the processing and monitoring of STAN and any discrepancies between the amounts of sandalwood recorded on a STAN and that purchased by a dealer are investigated in line with DPaW's Enforcement and Prosecution Policy.³⁸
- 3.27 Despite these processes and the efforts of DPaW, the Committee has heard that illegally-harvested sandalwood continues to be transported throughout and often, out of, Western Australia to buyers who are willing to risk prosecution to profit from this resource.

OTHER AGENCIES INVOLVED IN THE SANDALWOOD INDUSTRY

Western Australia Police

- 3.28 During the course of this inquiry, the Committee heard evidence of an ongoing police investigation into the illegal harvesting of sandalwood in the Wheatbelt and Goldfields. The investigation first began in April 2012 as a result of cooperation between the former DEC and the Western Australia Police.³⁹ Seven individuals are currently facing charges of stealing sandalwood from pastoral land, pursuant to section 378 of the *Criminal Code Act Compilation Act 1918 (Criminal Code)*. For further discussion of illegal sandalwood harvesting, see CHAPTER 6, below.
- 3.29 Western Australia Police's involvement in this enforcement activity with DEC then continued as the scale of the illegal activity became apparent:

Mr Smalpage: [W]hilst it was being managed by DEC as illegal harvesting under the Sandalwood Act, we probably had limited interest in it, but when you look at the volumes of numbers, the quantity of wood and the substantive value of it, essentially the legal opinion, in our view, is that they are assets of the state of Western Australia, and if it is capable of being stolen, then it probably does

³⁷ Letter from Hon Albert Jacob MLA, Minister for Environment, 10 March 2014, p1.

³⁸ *Ibid*, p2.

³⁹ Western Australia Police, *Sandalwood Stealing Charges: Wheatbelt & Goldfields-Esperance Districts*, News Release, 30 May 2013, available from: <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=P1oS9PltHOk%3D&tabid=1488>.

*raise its head into a criminal nexus, if you like, and we would take probably further action than we historically have.*⁴⁰

- 3.30 Prior to this involvement, Western Australia Police did not routinely liaise with the government departments responsible for the enforcement of sandalwood legislation⁴¹, but maintained working relationships at a local level. Western Australia Police does not intend to take over the policing of the sandalwood industry into the future:

*Mr Smalpage: I can relay the commissioner's view, which is that we should concentrate on core business. Crime is our core business ... there are no plans to create a sandalwood theft squad in WA Police at all.*⁴²

- 3.31 Whilst the Committee cannot comment on the criminal prosecutions which are underway, the Committee has heard evidence that this intense level of police involvement in the industry may not be sustainable past the current investigations:

*Mr Smalpage: [F]rom a policing point of view, sometimes we are seen to be the ones who, "If you want the heavy hands in, send the cops in", which we are quite happy to do when it meets our aims, but we do not want to detract upon stopping child sex abuse, robberies or crimes of violence against other citizens if another government agency can exercise its existing powers in a broader context.*⁴³

- 3.32 The Committee accordingly makes the following findings in regard to the continuing reliance on Western Australia Police in the sandalwood industry:

Finding 1: The Committee finds that, whilst Western Australia Police's involvement in sandalwood enforcement may detract from its core functions, there is no question that the agency's presence has a strong deterrent effect against potential criminal activity.

Finding 2: The Committee finds that Western Australia Police should, where necessary, continue to provide support to the lead regulatory agency tasked with enforcing sandalwood legislation.

⁴⁰ Mr Murray Smalpage, Acting Assistant Commissioner Regional WA, Western Australia Police, *Transcript of Evidence*, 11 September 2013, p3.

⁴¹ This includes the *Sandalwood Act 1929*, the *Wildlife Conservation Act 1950* and the *Conservation and Land Management Act 1984*.

⁴² *Ibid*, p4.

⁴³ *Ibid*, p6.

Commonwealth border agencies*Australian Customs and Border Protection Service (ACBPS)*

- 3.33 The Committee has confirmed that the ACBPS has little involvement in the regulation of sandalwood products at border control points around the State. Detailed information for all import/export consignments is reported to the ACBPS electronically and inspections are only undertaken where the ACBPS identifies a particular risk factor.⁴⁴

Department of Agriculture

- 3.34 The lead agency at the Commonwealth level with oversight of the import and export of wood products is the Department of Agriculture (formerly the Department of Agriculture, Forestry and Fisheries).
- 3.35 The Committee has heard from the Department of Agriculture (DOA) that, apart from inspections relating to requirements under the *Quarantine Act 1908* (Cth) and *Export Control Act 1982* (Cth), DOA requires that wild sandalwood being exported from Australia carry an export licence under the *Export Control (Unprocessed Wood) Regulations* (Cth). A step in DOA issuing a licence to an exporter under these regulations is to request harvest licence documents issued by the relevant State authority: this includes a licence under the *Sandalwood Act 1929*.⁴⁵
- 3.36 DOA also enforces the *Illegal Logging Prohibition Act 2012* (Cth), which aims to regulate timber products at two key points of entry into the Australian timber market: at the border and at timber processing plants where domestically-sourced raw logs are first processed (which is most relevant to the processing of wild native sandalwood). Regulations will come into effect from November 2014 that will specify due diligence requirements and which timber products are subject to those requirements.⁴⁶
- 3.37 The Committee has therefore found that, whilst there are checks and processes in place at the Commonwealth agency level for the inspection and sustainable export of sandalwood, the main responsibility for the protection of the resource lies with the State. There is currently considerable bureaucracy and overlap in the licensing of sandalwood at the State level, however, which could be overcome by a new approach to the regulation of the industry.

⁴⁴ Letter from Mr Geoff Johannes, Acting National Director, Cargo and Trade Division, Australian Customs and Border Protection Service, 4 November 2013, pp1-2.

⁴⁵ Letter from Fran Freeman, First Assistant Secretary, Department of Agriculture, 4 October 2013, p3.

⁴⁶ *Ibid*, p2.

PROBLEMS WITH THE OVERLAP IN RESPONSIBILITIES BETWEEN AGENCIES

- 3.38 The interaction between up to five government agencies and differing licensing requirements has resulted in confusion, tension and a lack of transparency in the sandalwood industry. The sandalwood licensing regime contains inconsistent and overlapping requirements on the one hand whilst falling short of providing adequate provisions to effectively manage the resource on the other. The legislation which is intended to protect sandalwood is so out-dated that it precedes sustainable harvesting principles.
- 3.39 Several recurring themes have emerged throughout the course of hearing from stakeholders and gathering evidence. The Committee has listened to the community's concerns and believes that these must be addressed in order to revive public confidence in the sandalwood industry and promote its sustainable management into the future.
- 3.40 The Committee further urges the Minister for Environment and the Minister for Forestry to encourage greater liaison and interaction between their respective agencies to reduce the layers of bureaucracy that currently exist in the sandalwood industry.

Concerns identified in the submissions

- 3.41 The Committee has heard evidence that the quotas assigned to some licence holders are unfair and that pastoralists with licences are forced to sell harvested sandalwood to FPC at reduced rates.⁴⁷ The Committee has also heard the frustration expressed by licence holders, in that holding a licence will not necessarily guarantee access to the timber to harvest.⁴⁸
- 3.42 The over-regulation and overly bureaucratic nature of the industry is a key concern among many stakeholders and FPC is often seen as stifling the development of the industry for its own gain.⁴⁹ The monopoly that is perceived to exist between FPC and Wescorp (as marketers and processors of sandalwood for FPC) also concerns many in the industry.⁵⁰

⁴⁷ Submission No. 3 from Steve Darley, Austoils Pty Ltd, 2 May 2012.

⁴⁸ Submission No. 4 from Stephen Fry, Santaleuca Forestry, 6 June 2012.

⁴⁹ Submission No. 22 from TFS Corporation Ltd, 19 October 2012, Submission No. 12 from John Day, The Paperbark Co, 25 September 2012, Submission No. 13 from Stephen Darley, AustOils Pty Ltd, 4 October 2012.

⁵⁰ Submission No. 3 from Steve Darley, AustOils Pty Ltd, 2 May 2012, Submission No. 4 from Stephen Fry, Santaleuca Forestry, 6 June 2012, Submission No 1 from Hon Wendy Duncan MLC, Member for Mining and Pastoral, 26 April 2012. Wescorp, amongst others, is also concerned at the contractual monopoly that exists between FPC and MRA (Mt Romance Australia): Submission No. 8 from Wescorp Group of Companies, 30 August 2012.

- 3.43 Pastoralists are frustrated at the damage caused to their land by unsustainable harvesting by contractors⁵¹ and there is significant concern from all sides of the industry at the increase in illegal harvesting of sandalwood and the lack of strong penalties for this crime.⁵²

Concerns identified by the Committee

- 3.44 The Committee believes that the sandalwood industry should be regulated by one agency with broad powers to manage the resource. Management of Western Australian sandalwood should include not only oversight of the licensing regime, but also enforcement of the relevant legislation and promotion of the sustainable harvest of sandalwood into the future.
- 3.45 The Committee is concerned that the intersecting responsibilities of both FPC and DPaW mean that neither agency has a clear mandate to manage this important State floral resource.
- 3.46 FPC is, in its own words, a *contract management agency*⁵³, and is responsible for marketing and tendering processes, whilst enforcement and licensing is dealt with by DPaW (along with other agencies). The Committee has heard evidence that the various agencies enjoy productive working relationships at a departmental level, but remains concerned that the disconnect in responsibilities can lead to stakeholder confusion and mismanagement of the resource.

Recommendation 2: The Committee recommends that the sole responsibility for regulating and licensing the sandalwood industry in Western Australia be vested in a single agency.

Powers of wildlife officers under the *Wildlife Conservation Act 1950*

- 3.47 The Committee has heard that DPaW wildlife officers have wide-ranging powers in the WCA with regard to enforcement.⁵⁴ The Committee has also heard, however, that there is a perception in the community that DPaW does not have the legislative power to take action to prevent or otherwise deal with illegal sandalwood harvesting:

⁵¹ Submission No. 25 from Bart Jones, Edjuna Station, 19 October 2012, Submission No. 26 from Julian Jones and on behalf of Burchell Jones, Hampton Hill Station, 19 October 2012, Submission No. 16 from Don North, Riverina Station, 16 October 2012, Submission No. 18 from Ian Tucker, Adelong Station, 16 October 2012, Submission No. 11 from Keith Mader, Walling Rock Station, 13 September 2012.

⁵² Further discussion of the penalty regime and criminal offences for stealing sandalwood is in CHAPTER 6 of this report.

⁵³ Mr John Tredinnick, Director Forest Operations, Forest Products Commission, *Transcript of Evidence*, 26 September 2012, p10.

⁵⁴ Mr Kevin Morrison, Acting Manager, Nature Protection Branch, Department of Parks and Wildlife, *Transcript of Evidence*, 11 December 2013, pp4-5.

Mr Smalpage: *[T]here is a general reluctance by anyone except police to exercise those types of powers because they feel they are not trained or have a good neighbour policy or whatever. The industry often sees itself as there to help the industry, not to police it.*⁵⁵

- 3.48 This is despite the powers in section 20 of the WCA, which make it clear that a wildlife officer has powers of seizure, detention, stop and search and powers of entry for actual or suspected offences against that Act.⁵⁶ The Committee asked DPaW if the work of wildlife officers would benefit from having a power to arrest enshrined in legislation:

The CHAIRMAN: *[A]re there any powers that you do not have that might benefit officers and their operations?*

Mr Morrison: *Yes, there are. For a start, we do not have the power of arrest. The power of arrest previously existed, but it was dropped when the legislation was amended some time back. That would certainly be of value ... If we relate it to a sandalwood scenario, we are currently dealing with people from interstate who have come here to illegally harvest sandalwood, and although we might catch them with the sandalwood, by the time the matter reaches court, they are back home in Queensland or somewhere else and we have to look at extradition and that sort of thing.*⁵⁷

- 3.49 The Department also identified a discrepancy in the legislation regarding the search and seizure powers that wildlife officers currently have in section 20 of the WCA:

Mr Morrison: *We also need to make a direct connection between our general power of search and our search warrant powers because there is a disconnect between the two. On the one hand, under the general power of search we can only search for things that have been used in the commission of an offence, whereas under the search warrant powers, which apply only to a residence, we can search for anything that may afford evidence as to the commission of an offence. In other words, if we went onto a person's property, we could look for only fauna or flora or a chainsaw or something like that that has been used in the commission of an offence. If we are searching a house*

⁵⁵ Mr Murray Smalpage, Acting Assistant Commissioner Regional WA, Western Australia Police, *Transcript of Evidence*, 11 September 2013, p6.

⁵⁶ This includes the unauthorised taking of sandalwood from Crown or private land, respectively: sections 23B(1) and 23D(1) of the *Wildlife Conservation Act 1950*.

⁵⁷ Hon Simon O'Brien, Chairman, Standing Committee on Environment and Public Affairs and Mr Kevin Morrison, Acting Manager, Nature Protection Branch, Department of Parks and Wildlife, *Transcript of Evidence*, 11 December 2013, p5.

*under a warrant, we could look at seizing perhaps the person's smart phone, computer et cetera that may not have been used in the commission of the offence but are very likely to contain evidence that may led to the establishment of the offence. We are at a bit of a disadvantage when we enter commercial premises. It is not a residence; therefore, our general powers apply, and if there is documentation et cetera in that commercial residence, we cannot seize it or do anything with it, which puts us at a big disadvantage.*⁵⁸

- 3.50 The Committee notes the confusion and constraint that is created by the situation above and considers that a review of the WCA is a timely opportunity to clarify the search and seizure powers that may be exercised by wildlife officers in DPaW, as well as consider the return of a power of arrest to the department.

Recommendation 3: The Committee recommends that the Minister for Environment amend section 20 of the *Wildlife Conservation Act 1950* to provide consistency to the powers of search and seizure in commercial and residential premises or commit to clarifying these powers in the drafting of new biodiversity legislation.

Recommendation 4: The Committee recommends that the Minister for Environment insert a power of arrest for wildlife officers in the drafting of new biodiversity legislation.

A model approach: Department of Fisheries compliance officers

- 3.51 The Committee has drawn a comparison with fisheries officers employed under the provisions of the *Fish Resources Management Act 1994*, as this agency has frequently been mentioned as an example of a 'best practice' approach to enforcement and community reputation.
- 3.52 The Committee has heard that the Department of Fisheries has worked over the past 40 years to develop its compliance activities and enforcement strategies in order to protect an industry which is worth more than \$1.5 billion per year to this State.⁵⁹
- 3.53 Whilst the recreational fishing industry is larger and more developed than native sandalwood harvesting⁶⁰, parallels can be drawn between the two: both are

⁵⁸ Mr Kevin Morrison, Acting Manager, Nature Protection Branch, Department of Parks and Wildlife, *Transcript of Evidence*, 11 December 2013, p5.

⁵⁹ Department of Fisheries, 'Enforcement and Education: Presentation to Legislative Council Committee on Environment and Public Affairs', 27 November 2013, p2. Figures also available from Department of Fisheries, *Annual Report 2012/13*, p7.

State-owned resources and are vulnerable to over-harvesting and both suffer from a black market which threatens to undermine the legal industry. The Department of Fisheries has, in fact, observed that:

Mr John LOOBY: *it [the sandalwood industry] looks similar to the old black market days that we had for abalone and lobster.*⁶¹

Powers of Fisheries and Marine Officers under legislation

3.54 There are approximately 120 Fisheries and Marine Officers (**FMO**) currently employed within Western Australia, covering an area from Broome to Esperance. This figure also includes nine FMO employed within the Serious Offences Unit, who receive high level training in law enforcement and covert operations.⁶²

3.55 FMO employed by the Department of Fisheries have extensive powers under the department's principal Act as well as from other law enforcement statutes. Part 16 of the *Fish Resources Management Act 1994* (**FRMA**) sets out the powers that FMO can exercise in the course of their duties. The Committee notes that these powers include the following:

- the power to arrest a person without a warrant in certain circumstances: section 192⁶³;
- the power to enter and search non-residential premises: section 184;
- the power to enter and search residential premises with a warrant: section 185 including the use of reasonable force if necessary: section 187(1);
- the power to seize things related to the commission of an offence under the Act, including fish, fishing gear, money, boats or other evidence of the offence: section 193; and
- the power to require persons to disclose certain information, with a penalty of \$10 000 for refusing to do so without a reasonable excuse: section 189.

⁶⁰ There are an estimated 740 000 participants in the recreational fishing industry in WA: Department of Fisheries, *Enforcement and Education: Presentation to Legislative Council Committee on Environment and Public Affairs*, November 2013, p2.

⁶¹ Mr John Looby, Manager Compliance and Regional Support, Department of Fisheries, *Transcript of Evidence*, 27 November 2013, p2.

⁶² *Ibid*, p7.

⁶³ According to the department, Fisheries and Marine Officers have standing instructions not to exercise this power unless absolutely necessary. The arrest power is used as a *useful tool* for officers, rather than as a deterrent and the Committee has heard that this power would likely be useful for officers of the Department of Parks and Wildlife as well: Mr John Looby, Manager Compliance and Regional Support, Department of Fisheries, *Transcript of Evidence*, 27 November 2013, p10.

- 3.56 The Committee notes that these powers are similar to those of wildlife officers under section 20 of the WCA, with the exception of the power of arrest.
- 3.57 FMO also have significant powers under other legislation, most notably the *Surveillance Devices Act 1998* and the *Criminal Investigation (Covert Powers) Act 2012*.
- 3.58 FMO who are employed in the Serious Offences Unit of the department are included in the class of law enforcement officers prescribed for the purposes of installing, using or maintaining surveillance devices in the course of their employment.⁶⁴ The Committee has heard evidence that these powers are predominately used to listen to fishing boat communications and use tracking technology to monitor boat movements.⁶⁵
- 3.59 Officers of the Serious Offences Unit also have significant powers contained in the *Criminal Investigation (Covert Powers) Act 2012*, specifically in relation to FMO engaging in criminal activity for the purposes of conducting undercover operations for illegal fishing.⁶⁶ The Committee has heard that there is a link between trafficking in black market fish (especially rock lobster and dhufish) and organised crime, often resulting in fish being traded for firearms or drugs.⁶⁷
- 3.60 The Committee has heard that prior to the proclamation of the *Criminal Investigation (Covert Powers) Act 2012*, FMO from the Serious Offences Unit were involved in covert operations by way of exemptions to the FRMA, signed off by the Commissioner of Police. The department advised that using the powers in the *Criminal Investigations (Covert Powers) Act 2012* now ensures greater accountability for the actions of FMO whilst undercover.⁶⁸

⁶⁴ Section 3(1) of the FRMA defines *law enforcement officer* and regulation 4(f) of the *Surveillance Devices Regulations 1999* includes fisheries officers of the Serious Offences Unit in that definition. Wildlife officers employed under section 45 of the *Wildlife Conservation Act 1950* are also designated law enforcement officers for the purposes of using surveillance devices.

⁶⁵ The department advised, however, that this surveillance power does not extend to conducting telephone intercepts: Mr John Looby, Manager Compliance and Regional Support, Department of Fisheries, *Transcript of Evidence*, 27 November 2013, p4.

⁶⁶ Sections 27 and 28 of the *Criminal Investigations (Covert Powers) Act 2012* deal with law enforcement officers who are involved in *controlled operations* (commonly known as undercover operations) and the protection from criminal responsibility for any offences committed whilst undercover.

⁶⁷ Mr John Looby, Manager Compliance and Regional Support, Department of Fisheries, *Transcript of Evidence*, 27 November 2013, p8. The Committee also notes the discussion in relation to Fisheries and Marine Officers engaging in criminal offences for the purpose of catching illegal fishers in the report of the Uniform Legislation and Statutes Review Committee which considered the Bill: Report 69, *Criminal Investigation (Covert Powers) Bill 2011*, 6 March 2012, pp13-20.

⁶⁸ Mr John Looby, Manager Compliance and Regional Support, Department of Fisheries, *Transcript of Evidence*, 27 November 2013, p5.

Training and law enforcement culture at the Department of Fisheries

- 3.61 The Committee has heard that the Department of Fisheries has a long history of being involved in law enforcement and liaises closely with Western Australia Police in its staff training and use of systems technology. The department has advised that good cooperation exists between the two agencies, which extends to the provision of operational support, but that the department understands that police operations always take priority.⁶⁹
- 3.62 The Committee has heard from the department that FMO are given significant training, including additional courses and qualifications as the need arises. The department also has internet resources related to recruitment that the general public can access, including an online questionnaire and detailed information advising of additional vocational training that FMO will receive.⁷⁰
- 3.63 The department attributes its reputation for strong compliance practice to its culture of law enforcement as well as encouraging voluntary compliance by the industry where possible. The licence to fish is treated as a valuable asset, therefore the threat of losing the licence works as an effective deterrent to criminal behaviour.

Magnitude of penalties for illegal fishing plus additional penalties

- 3.64 The Committee notes that an aspect of the Department of Fisheries' reputation for strong compliance and enforcement can be attributed to the high penalties that are enshrined in the FRMA. If the magnitude of legislative penalties is an indicator of a the seriousness of an offence, then clearly the fisheries industry is a valuable resource in Western Australia, as demonstrated by the following offences relating to illegal fishing in the FRMA.
- 3.65 Part 15A of the FRMA was inserted into the Act in 2011 as a means of combatting black market fish trading in Western Australia.⁷¹ The offence of fish trafficking in section 155 of the FRMA is triggered when a person *traffics* in a *commercial quantity* of *priority fish* (all defined terms in sections 153 and 154, see Appendix 1). The penalties imposed by this offence are significant:
- individuals face a maximum fine of \$400 000 and imprisonment for four years (first offence), with imprisonment increasing to 10 years for second or subsequent offences;

⁶⁹ Mr John Looby, Manager Compliance and Regional Support, Department of Fisheries, *Transcript of Evidence*, 27 November 2013, p8.

⁷⁰ <http://www.fish.wa.gov.au/About-Us/Careers/Pages/Becoming-A-Fisheries-And-Marine-Officer.aspx>, (viewed on 29 November 2013).

⁷¹ Department of Fisheries, *New fish trafficking offence and new infringements*, Media Release, 29 June 2013, available from <http://www.fish.wa.gov.au/About-Us/Media-releases/Pages/New-fish-trafficking-offence-and-new-tier-of-infringements.aspx> (viewed on 28 November 2013).

- bodies corporate can be fined up to \$800 000.
- 3.66 Both individuals and bodies corporate are also liable for additional penalties under section 222 of the FRMA, discussed further at paragraph 3.69, below.
- 3.67 The Committee has previously discussed the need to regulate the illegal harvest of sandalwood at paragraph 3.24, above. There still appears to be a gap in the monitoring process for sandalwood, where buyers of the illegally harvested wood are not sufficiently monitored nor liable for any statutory penalty, which is of great concern to the Committee.
- 3.68 Section 173 of the FRMA makes it an offence to sell or purchase any fish taken unlawfully, again with high penalties in place for both individuals and for a body corporate:
- individuals: \$20 000 and imprisonment for 12 months plus the penalty in section 222 of the FRMA;
 - bodies corporate: \$40 000 plus the penalty in section 222 of the FRMA.
- 3.69 Section 222 of the FRMA imposes a huge additional penalty over and above the statutory amount in certain provisions of the Act, including for fish trafficking and the sale and purchase of illegal fish, discussed above. This is a mandatory penalty which a court must impose and can be up to 10 times the value of the fish involved.⁷²
- 3.70 In the Committee's opinion, these strict penalties available under FRMA demonstrate not only the importance of fish as a natural resource to be protected, but can also work as a deterrent to would-be illegal fishers, who may be considering profiting from illegal activity. This is certainly an approach which could be applied to benefit the sandalwood industry and protect our native sandalwood species.

Lessons that can be learned from the Department of Fisheries compliance model

- 3.71 Having examined the approach taken to enforcement and the culture of the Department of Fisheries, the Committee has identified several key points which could be applied to DPaW to strengthen the enforcement powers of wildlife officers. A more robust approach to compliance could result in decreased illegal harvesting of sandalwood (as well as other native flora) and a more sustainable legal harvest, along the lines of the Department of Fisheries' statement:

⁷² Section 222(3A)(b) requires the court to be satisfied that it would not be *harsh, oppressive or not otherwise in the interests of justice* to impose the 10 times value additional penalty. Otherwise, the court must still impose the additional penalty, but at a rate less than 10 times, but at least equal to the value of the fish.

*Mr John LOOBY: We take the view that we can never, ever stop the black market ... but the approach we take is that we never want it established here as a right or something that people are comfortable doing. Once it becomes a right and established, it is very hard to dig out. We always accept that there will be some people who are doing it, but we are going to try to make regular examples of people doing it.*⁷³

3.72 The Committee believes that the Department of Fisheries has been successful due to four key concepts in its approach to compliance:

- A culture of law enforcement and support at senior management levels.
- Regular up-skilling and training of FMO to adapt to new situations.
- Strong enforcement powers supported by relevant legislation with high penalties.
- Regulation at every step of the industry, from fishers to buyers.⁷⁴

3.73 The Committee strongly believes that these four concepts could be strategically implemented within DPaW to support the work of wildlife officers involved in the regulation of the sandalwood industry. The Committee accordingly urges the Minister for Environment to consider implementing a training model similar to the Department of Fisheries for wildlife officers within DPaW.

Recommendation 5: The Committee recommends that the responsible Minister and agency place a stronger emphasis on fostering a compliance culture amongst enforcement officers supervising the sandalwood industry.

⁷³ Mr John Looby, Manager Compliance and Regional Support, Department of Fisheries, *Transcript of Evidence*, 27 November 2013, p11.

⁷⁴ The idea of regulating sandalwood buyers as well as sellers is discussed throughout this report, but further at CHAPTER 7, below.

CHAPTER 4

MANAGEMENT OF SANDALWOOD HARVESTING CONTRACTS

Sandalwood harvesting is managed through a tender process which is confusing and overly bureaucratic

Harvesting contracts should include conditions that require contractors to comply with regeneration requirements, which benefits the sustainability of the resource

The level of government assistance provided to the industry should be reviewed

The tender process

- 4.1 The harvesting and sale of sandalwood on Crown land is managed by FPC pursuant to the *Forest Products Act 2000* and through a government tender process. FPC also awards private treaties (a one-to-one contract) to contractors and sandalwood buyers. The amount of sandalwood that can be collected under contract/tender is set by DPaW, but allocated by FPC. The Committee has heard evidence that FPC enters into a private treaty in addition to tenders only where it considers that this would be in the best interests of the State.⁷⁵

Regeneration conditions

- 4.2 FPC has also advised that there are regeneration conditions placed on smaller scale private harvesting contracts in an attempt to strengthen the sustainability of the resource:

*Mr Sawyer: In that case, the Forest Products Commission has entered small-scale, 10 to 20-tonne per year, deadwood-only harvesting contracts, which require very little equipment that would otherwise be typically associated with green harvest. Contingent with that is a regeneration program that pastoralists then commit to managing their livestock around.*⁷⁶

- 4.3 Contractors can be required to plant a minimum of 12 fresh sandalwood seeds beneath nearby host trees for each sandalwood tree harvested, reminiscent of the woylie's scatter-hoarding behaviour.⁷⁷ The Committee agrees with this emphasis on regeneration strategies, even in smaller sized contracts, and believes that conditions

⁷⁵ Mr John Tredinnick, Director Forest Operations, Forest Products Commission, *Transcript of Evidence*, 26 September 2012, pp4-5.

⁷⁶ Mr Ben Sawyer, Sandalwood Manager, Forest Products Commission, *Transcript of Evidence*, 26 September 2012, p5.

⁷⁷ See paragraph 2.7, above. Application forms produced by DPaW encourage contractors to scatter 20%, or a minimum of 50 intact seeds under the former canopy of any tree that has been pulled.

such as these serve to keep sustainability in the minds of both harvesters and the public in Western Australia, but should be made mandatory for all contractors.

Recommendation 6: The Committee recommends that all harvesting contracts include a mandatory condition requiring contractors to comply with regeneration and sustainability measures.

Appendix 10 - Sandalwood production by the FPC from Crown land

Product type	2009–10	2010–11	2011–12
	(tonnes)	(tonnes)	(tonnes)
Green (excl. roots & 3rd grade)	1,239	1,139	997
Roots	242	207	182
3rd grade green	304	320	293
Dead	786	867	1061
Bark	-	50	-
Total	2,571	2,583	2,533

Note: Branch wood and 56 per cent of the roots are additional to the volume ' of green wood licenced to the Forest Products Commission (1,350 tonnes).

Figure 3. Sandalwood production figures from 2009-2012, reproduced from Forest Products Commission, Annual Report 2011-12, p122, available from <http://www.fpc.wa.gov.au/> (viewed on 15 November 2013)

Pastoralists' concerns

4.4 The Committee has also heard of frustration and uncertainty from pastoralists as a result of the tender process and management of the resource by FPC. Many submissions have raised the issue that pastoralists are not involved in the management of sandalwood and are frequently passed over for harvesting tenders in favour of contractors who simply do not have the investment in the land that pastoralists do.⁷⁸

4.5 FPC has submitted to the Committee that:

The FPC has basically an open policy to any pastoralist; in fact, we actually try to encourage it. We have written articles in the 'Pastoral

⁷⁸ See for example: Submission No. 4 from Stephen Fry, Santaleuca Forestry, 6 June 2012, Submission No. 11 from Keith Mader, Walling Rock Station, 13 September 2012, Submission No. 16 from Don North, Riverina Station, 16 October 2012, Submission No. 17 from Rolf Meeking, 16 October 2012, Submission No. 18 from Ian Tucker, Adelong Station, 16 October 2012, Submission No. 25 from Bart Jones, Edjuna Station, 19 October 2012.

*Lines' magazine, for example, to encourage pastoralists to become involved with sandalwood harvesting at that private treaty level. We have got an officer based in Carnarvon who actively is working in the supply areas that we have in those regions to basically involve pastoralists in sandalwood harvesting at that level. Beyond that, pastoralists are encouraged to participate in the tender process for those larger contracts that involve a bigger investment of capital.*⁷⁹

- 4.6 The Committee has not received any verifiable evidence of bias or mismanagement by FPC of the tender process itself and has confirmed the independence and monitoring of the tender process, as run by the Department of Finance through its Tenders Office. Despite this, the Committee acknowledges the concerns of pastoralists and is concerned that the unnecessary complexity of the process may be resulting in uncertainty and dissatisfaction amongst the sandalwood community.

The tender documents

- 4.7 The Committee has examined the suite of tender documents provided to prospective tenderers⁸⁰ and has observed that the length and complexity of the documentation may be a barrier to interested pastoralists participating in the tender process. The tender documents (in excess of 240 pages) comprise the application for tender, together with attachments detailing contractual conditions, the Sandalwood Operations Manual published by FPC and other important documents related to the sandalwood industry.
- 4.8 The Committee has been advised that FPC provides ongoing assistance to prospective tenderers and the Tenders WA website also contains useful information regarding the tender process, including a contact person for each tender.⁸¹
- 4.9 The Committee has heard evidence that it appears to be the same applications *year in and year out* who win tenders to pull sandalwood in the Goldfields region and that some applicants feel discouraged as a result of the complicated tender process.⁸²
- 4.10 The Committee is concerned that this seems to be an overly bureaucratic process for what is essentially a decision on an agricultural resource. The submissions reveal that pastoralists feel that the process has lost sight of their interests and is biased towards contractors who are familiar with the way that governments operate, rather than the best way to harvest sandalwood.

⁷⁹ Mr Ben Sawyer, Sandalwood Manager, Forest Products Commission, *Transcript of Evidence*, 26 September 2012, p5.

⁸⁰ The Committee acknowledges the cooperation of FPC in providing copies of previously published tender documents from the 2011 sandalwood tender process.

⁸¹ <http://www.tenders.wa.gov.au/> (viewed on 7 November 2013).

⁸² Submission No. 15 from Wendy Boyle, 11 October 2012, pp1-3.

- 4.11 FPC will soon be seeking new tenders for the harvest and sale of sandalwood commencing in June 2014 and the Committee strongly urges FPC to review both the documents that it produces in support of tender applications and the method itself prior to next calling for tenders.

Recommendation 7: The Committee recommends that the Forest Products Commission (or a future responsible agency) review the documentation that it provides to prospective tender applicants in 2014 and the format in which the information is provided, with a view to simplifying the process.

Existing contracts and renewals in 2016

- 4.12 The new tender process will commence in June 2014 and the contract between FPC and Mount Romance Australia (MRA) is due to end in 2016. The previous Committee heard evidence in 2012 regarding the MRA contract and the particular conditions imposed when the contract was first entered into:

Hon LYNN MacLAREN: It has been alleged that the FPC, which was formerly CALM, has been and continues to subsidise the Mt Romance oil extraction business at the direct cost of more than \$5 million per annum. What are your views on this?

Mr Tredinnick: If Mt Romance are being supplied at a discount to the international market, then you might call that a subsidy. I think that the purpose of that contract was to support domestic oil processing and get that industry started, but with a recognition that as we move forward, the prices need to approach the international market. So, it was a subsidy for the purpose of developing the domestic market, if you want to call it a subsidy ... Under the Act, we have a requirement to make a profit and make a return to government, but that sits very much parallel with an industry development objective and that is something we try to balance. It is not our task to make as much profit as we possibly can at the expense of local industry development. We need to balance those two things. I suppose the structure of the Mt Romance contract is trying to do that.⁸³

- 4.13 The MRA contract was initially signed on 1 July 2004 (and amended in 2008⁸⁴), meaning that not only has the company been enjoying a 'subsidy' (as referred to

⁸³ Hon Lynn MacLaren, Member, Standing Committee on Environment and Public Affairs and Mr John Tredinnick, Director Forest Operations, Forest Products Commission, *Transcript of Evidence*, 26 September 2012, pp8-9.

⁸⁴ Letter from Mr John Tredinnick, Director Forest Operations, Forest Products Commission, 19 October 2012, p2.

above), but also beneficial contractual terms over a significant period of time. This Committee explored the issue further in 2013:

***Hon BRIAN ELLIS:** You said that there will probably still need to be a subsidy ... Why would you think there would need to be a subsidy?*

***Mr Tredinnick:** The objective of what we are doing is to encourage local industry development. At the time of the MRA contract it was not possible for them to pay the international equivalent price and still produce a profitable product. They needed to develop their technology, develop their markets, such that they increased the value of the product they sell. They could not afford to pay export parity price.*

***Hon BRIAN ELLIS:** I understand all that, but they have had that subsidy for quite a while, and I thought it might have got to a stage where there is no need for subsidy.⁸⁵*

- 4.14 The Committee understands that MRA has developed its business over the past eight years to the point where it is a world leader in the production of sandalwood and therefore could not be said to still require assistance from the State. MRA was acquired by Tropical Forestry Services (TFS) in August 2008 for \$28.4 million.⁸⁶ In view of these changes, it would seem appropriate for government to review the level of assistance provided to this industry.

Recommendation 8: The Committee recommends that the Forest Products Commission reassess the level of assistance available to local manufacturers when it considers new agreements to purchase sandalwood in 2016.

⁸⁵ Hon Brian Ellis, Member, Standing Committee on Environment and Public Affairs and Mr John Tredinnick, Director Forest Operations, Forest Products Commission, *Transcript of Evidence*, 21 August 2013, pp2-3.

⁸⁶ TFS Corporation Ltd, *Annual Report 2008*, p6. TFS are also global leaders in Indian and plantation sandalwood and have recently received \$49 million from a sovereign wealth fund in the Middle East to plant 600 hectares of Indian sandalwood in the Northern Territory: ABC Rural, Matt Brann, *Middle East money expanding Top End sandalwood*, 5 November 2013, <http://www.abc.net.au/news/2013-11-05/middle-east-investment-into-tfs/5068810> (viewed on 5 Nov 2013).

CHAPTER 5

SUSTAINABILITY OF SANDALWOOD

The current rate of harvest of native sandalwood is not sustainable and could lead to the resource ultimately being wiped out across WA

The industry and FPC face challenges in the transition from native sandalwood to the emerging plantation sandalwood market

Further research is required to explore the emergence of plantation sandalwood and synthetics as viable alternatives to the native resource

THE CURRENT STATE OF THE RESOURCE IN WA

- 5.1 The Committee has learned from experts that Western Australian sandalwood is facing serious threats to the future of the resource. The nature of sandalwood trees is such that harvesting green (live) logs yields the highest amount of heartwood and oil, but the process kills the tree, thereby affecting the population with every tree harvested.⁸⁷
- 5.2 The slow growth rate of sandalwood, together with the tree's specific regeneration requirements, has resulted in sandalwood declining across the rangelands.⁸⁸ Native sandalwood is affected by many risk factors, including grazing by feral animals, fire and conflicting land uses (including mining and agriculture).
- 5.3 The Committee has heard that there are three challenges facing the native sandalwood industry into the future, two of which directly relate to the sustainability of the resource:

*Mr Tredinnick: We need to continue with the successful regeneration program that the FPC has put in place ... We also need to manage a transition from an industry which is based at the moment almost solely on wild, native sandalwood to one that is based on a lesser amount of native sandalwood over time but supplemented by plantation-grown sandalwood.*⁸⁹

⁸⁷ Illegal harvesters will often cut the tree off at the base, leaving the butt and root material (which contain even higher oil yields) to die underground, further affecting the sustainability and future of the trees.

⁸⁸ Submission No. 28 from Department of Environment and Conservation, 19 October 2012, p10.

⁸⁹ Mr John Tredinnick, Director Forest Operations, Forest Products Commission, *Transcript of Evidence*, 26 September 2012, p2. The third of these challenges relates to combatting the illegal harvest of native sandalwood, which is covered in greater detail in CHAPTER 6 of this report.

- 5.4 The amount of sandalwood harvested annually is determined by an Order in Council and is outlined in FPC's *WA Sandalwood industry development plan 2008-2020*.⁹⁰ WA's native sandalwood industry is sensitive to international factors, such as the continuing decline of traditionally dominant markets in India, Indonesia and the Pacific.
- 5.5 As the global market shifts its gaze ever southward to our own sandalwood, this places increasing pressure on the establishment of sustainable practices on a wide scale as part of the effective management of the resource. The Committee has heard that Western Australia has the potential to be a world leader in both developing alternatives to native sandalwood, whilst simultaneously working to ensure that the trees that continue to grow in WA are sustainably harvested for the future.

CURRENT RESEARCH INTO *SANTALUM SPICATUM*

- 5.6 Successful growth of native sandalwood is dependent on many factors, including the host plant's suitability and difficulties with re-seeding faced by the trees. The length of time required by the tree to reach maturity (up to 100 years, refer to paragraph 2.6, above) also affects the prospects of sustainably maintaining the resource in the wild. These factors are well-known in the industry and are often attributed to land use change and increased European settlement.
- 5.7 Ongoing research conducted by FPC, however, has identified a lack of resilience in the species to drought as another contributing factor affecting the sustainable establishment of native sandalwood in semi-arid and arid regions of the State.⁹¹ This research also found that soil preparation treatments or soil cultivation will not have any effect on germination and survival without a minimum threshold of 264mm of annual rainfall as:

the importance of late-summer rain associated with tropical depressions extending to the southern rangelands is proposed to have three additionally important functions in sandalwood regeneration ...

*the rain cracks and breaks down the seed shell to prepare seed for germination ... establishes soil moisture levels ... and provides moisture to assist seedling survival during summer.*⁹²

⁹⁰ Refer to paragraph 3.15 for the current Order in Council harvest figures. See also *WA Sandalwood industry development plan 2008-2020*, Forest Products Commission, December 2008, http://www.fpc.wa.gov.au/content_migration/assets/documents/plantations/industry_plans/sandalwood_idp.pdf.

⁹¹ B Sawyer, *Sandalwood (Santalum spicatum) establishment in the semi-arid and arid regions of Western Australia*, *The Rangeland Journal*, vol 35, 18 March 2013, pp109-115.

⁹² *Ibid*, p114.

- 5.8 This research was a driving factor in seeding programs being implemented in the rangelands sandalwood area. It is apparent, however, that the species will continue to struggle to survive and prosper in areas of the State which are low in rainfall, thus making the development of plantation sandalwood crucial to the future of the industry.

THE ORD ALTERNATIVE: THE EMERGENCE OF PLANTATION SANDALWOOD AND TFS

- 5.9 The first trials of plantation sandalwood in the tropical north of the State were with *S. album* in the early 1990s, near Kununurra and the Ord River area. This climate, with its high, intense rainfall seasons and fertile soil, seems to be an ideal alternative for sandalwood than WA's arid rangelands.



Figure 4. Sandalwood plantations in WA's Ord (Source: ABC Rural, Tyne McConnon, 4 March 2014, available from <http://www.abc.net.au/news/2014-03-04/sandalwood-plantations-ord/5298228>)

- 5.10 The main player in the plantation industry in WA at the moment is TFS, with approximately 7600 hectares of Indian sandalwood in the north of Australia (including the Northern Territory) being managed by the company, 2400 hectares of which are owned by TFS. The first harvest of Indian sandalwood from TFS plantations in Kununurra occurred in September 2013, with yields failing to meet expectations due to the low survival rate of the trees.⁹³

⁹³ ABC Rural online, 'Sandalwood company happy despite low harvest', Tyne McConnon, 20 September 2013, <http://www.abc.net.au/news/2013-09-20/tfs-happy-with-sandalwood-harvest/4970344>, (viewed on 20 September 2013).

- 5.11 Whilst the future of sandalwood clearly lies with a greater reliance on plantation stock (as well as a managed transition from native to plantation), the Committee notes that the effects of this early harvest on the viability and marketability of the resource will continue to be played out over the coming years and in future harvests:

Hon Brian ELLIS: How do you get the balance right, because plantation sandalwood is not as high a quality as the wild, and if you do allow plantation sooner, then does that diminish the whole overall product?

Mr Sawyer: ... To rush our plantation wood too early into the market would require dilution somehow into the wild resource. I think that would seriously jeopardise the reputation of WA sandalwood in the market ... If the Western Australian production was diluted with inferior effectively [sic] young sapwood into its wild resource, I think we would risk damaging our own markets and reputation of the highest quality sandalwood.⁹⁴

- 5.12 TFS has, however, recently announced that the September harvest has already produced sufficient oil to fulfil its first supply agreement for pharmaceutical grade Indian sandalwood oil, which bodes well for the future of plantation sandalwood.⁹⁵

SANDALWOOD IN THE FUTURE

- 5.13 As sandalwood continues to feature in the manufacture of cosmetics, perfumes and the agarbatti industries, demand for the oil will only increase and therefore sustainable harvesting is essential for the long term future of the industry in Western Australia.
- 5.14 The Committee notes that breakthroughs in the field of genetic engineering have the potential to boost oil production in native trees and create a synthetic alternative to the natural oil. Findings from the University of Western Australia's Faculty of Science suggest that *Santalum spicatum* genes could be manipulated to produce trees that always produce oil and at double the current yields.⁹⁶ These alternatives to traditional harvesting of native sandalwood and plantation stock can only add further streams to

⁹⁴ Hon Brian Ellis, Member, Standing Committee on Environment and Public Affairs and Mr Benjamin Sawyer, Manager Sandalwood Branch, Forest Products Commission, *Transcript of Evidence*, 21 August 2013, p2.

⁹⁵ ASX Media Release, 'First order for oil under new supply agreement', 5 March 2014, http://www.tfsltd.com.au/library/file/ASX%20Announcements/140305_ASX%20Release%20First%20Order%20050314%20FINAL.pdf (viewed on 5 March 2014).

⁹⁶ Australian Geographic Online, 'Genetic secrets of sandalwood unlocked', Natsumi Penberthy, 19 September 2013, <http://www.australiangeographic.com.au/news/2013/09/genetic-secrets-of-sandalwood-unlocked/> (viewed on 20 September 2013). Full report available from PLOS ONE: 'Biosynthesis of Sandalwood Oil: *Santalum album* CYP76F Cytochromes P450 Produce Santalols and Bergamotol', 18 September 2013.

the industry and can provide security of supply to attract long-term and sustainable markets.⁹⁷

- 5.15 The Committee is of the view that plantation wood will inevitably become the main source of sandalwood in the future in Western Australia, even if native sandalwood is sustainably managed from now on. Growing Indian sandalwood in WA is more lucrative due to international demand and the prestige associated with *S. album*, which may have the unintended, yet positive, effect of making the illegal harvest of our native sandalwood a less profitable criminal enterprise.

Finding 3: The Committee finds that the current rate of harvest of native sandalwood is not sustainable and could lead to the resource ultimately being wiped out across WA.

Finding 4: The Committee finds that the industry and Forest Products Commission face challenges in the transition from native sandalwood to the emerging plantation sandalwood market.

Finding 5: The Committee finds that further research is required to explore the emergence of plantation sandalwood and synthetics as viable alternatives to the native resource.

⁹⁷ University of Western Australia Media Release, 'Breakthrough discovery could result in fragrant golden harvest', 19 September 2013, <http://www.news.uwa.edu.au/201309196071/business-and-industry/breakthrough-discovery-could-result-fragrant-golden-harvest> (viewed on 20 September 2013).

CHAPTER 6

ILLEGAL HARVESTING AND CRIMINAL ACTIVITY IN THE SANDALWOOD INDUSTRY

The combination of low penalties, limited access to harvesting contracts and the isolated environment in which sandalwood grows has led to opportunistic illegal harvesting of sandalwood

Stolen sandalwood is returned to the market and sold at auction, potentially at a profit to illegal harvesters

The future of sandalwood prosecutions should provide for penalties akin to those prescribed in the Criminal Code for stealing, which carry harsher penalties and possibly a greater deterrent effect

ILLEGAL HARVESTING IN THE SANDALWOOD ACT 1929 AND OTHER STATUTES

Inadequate penalties

- 6.1 In its Interim Report, the previous Committee highlighted the grossly inadequate penalties available for offences under the current sandalwood legislation.⁹⁸ The Committee recommended that the Government, as a matter of priority, review the legislation governing the sandalwood industry, with a view to increasing the maximum penalties prescribed for the illegal harvesting of wild sandalwood.⁹⁹
- 6.2 The illegal harvesting of wild sandalwood attracts a maximum penalty of:
- \$200 under section 3 of the *Sandalwood Act 1929*;
 - \$4000 under section 26 of the WCA; and
 - \$10 000 or one year imprisonment under section 103(1) of the CALM Act (for unlawful taking of sandalwood on CALM lands).¹⁰⁰
- 6.3 Since the commencement of the previous Committee's inquiry in 2012, evidence and submissions have repeatedly raised the issue that the current penalties for illegally harvesting sandalwood are inadequate and do not reflect the true value of the resource:

***Mr McNamara:** ... we will not necessarily achieve the stopping of an illegal activity just by increasing penalties ... but clearly penalties of*

⁹⁸ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, Report 29, *Interim Report Inquiry into the Sandalwood Industry in Western Australia*, 27 November 2012.

⁹⁹ *Ibid*, p4.

¹⁰⁰ Submission No. 28 from Department of Environment and Conservation, 22 October 2012, pp1-3, 7-8, footnote 6 in Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, Report 29, *Interim Report Inquiry into the Sandalwood Industry in Western Australia*, 27 November 2012, p4.

*\$4000 and \$10 000 are less than the value of the product. We need a penalty that is commensurate or has the right relativity with the value of the product.*¹⁰¹

- 6.4 Not only are the quanta of penalties ineffective indicators of the true value of sandalwood, the Committee has heard that there is no offence in the current legislation for being in possession of illegally taken sandalwood.¹⁰² The STAN process goes some way to monitoring the transportation of sandalwood to legal buyers, but the penalties are low in relation to the profit that can be made from illegal product, making it a lucrative crime to be involved in.

- 6.5 The former Committee in its Interim Report made the following recommendation:

The Committee recommends that the Government, as a matter of urgency, review the legislation governing the sandalwood industry, with a view to increasing the maximum penalties prescribed for the illegal harvesting of wild sandalwood.

Finding 6: The Committee endorses the former Committee's recommendation in its Report 29 and finds that the penalties currently available under the *Sandalwood Act 1929* are grossly inadequate to deter criminal activity and should be substantially increased.

Recommendation 9: The Committee requests that the Minister representing the Minister for Environment advise the Legislative Council why Recommendation 1 of Report 29 *Interim Report Inquiry into the Sandalwood Industry in Western Australia* has not been implemented.

Opportunistic criminals

- 6.6 The nature of the illegal harvesting market has been described as a *smash-and-grab* approach, where individuals:

go in with a four-wheel-drive vehicle or a vehicle and a trailer or a small truck, and chainsaws, and they will cut the tree off at ground level, take the best quality logs only – so all the roots and butts are

¹⁰¹ Mr Kieran McNamara, Director General, Department of Environment and Conservation, *Transcript of Evidence*, 24 October 2012, p4. See also the table at paragraph 2.12, above.

¹⁰² *Ibid*, p2.

*left behind – and the majority of the branch wood is left behind. They are really creaming the best quality material out.*¹⁰³

- 6.7 DEC further described the difficulties with apprehending illegal harvesters:

*Illegal harvesting is a clandestine activity, generally conducted in remote locations and offenders go to great lengths to avoid detection. Illegal harvesters often use concealed transport, deliveries and storage, laundering under the guise of legitimate licences or plantation sources, and processing the unlawfully sourced material into a form where accounting for the origin of the source sandalwood is difficult. Offenders are rarely cooperative with investigators.*¹⁰⁴

Seized sandalwood is returned to the market

- 6.8 The Committee has heard that illegally harvested sandalwood is disposed of through a form of auction (outlined in section 20A of the WCA, see Appendix 1) where offers are sought from three potential buyers, with the successful bidder being required to demonstrate the best price and that they possess the necessary equipment to collect the wood.¹⁰⁵
- 6.9 The Committee is concerned that this process creates an opportunity for illegally harvested sandalwood to be purchased back by those involved in the illegal harvesting of the resource, at a lower price than on the legitimate market.¹⁰⁶ Further, the amounts seized are not subtracted from the total harvest quota for that year, which raises serious concerns regarding the sustainability of the resource and equity for legitimate harvesters of the wood.
- 6.10 The Committee observes that it seems illogical to allow illegal harvesters to not only profit from the proceeds of illegal activity, but also damage the industry and the future of the resource itself.

Recommendation 10: The Committee recommends that the Minister for Environment review the process of auctioning illegally harvested sandalwood as outlined in section 20A of the *Wildlife Conservation Act 1950* to address the problems identified in this report.

¹⁰³ Mr Ian Kealley, Regional Manager Goldfields, Department of Environment and Conservation, *Transcript of Evidence*, 24 October 2012, p10.

¹⁰⁴ Letter from Mr Keiran McNamara, Director General, Department of Environment and Conservation, 9 November 2012, p2.

¹⁰⁵ *Ibid*, p3.

¹⁰⁶ *Ibid*, p3.

A NEW APPROACH: PROSECUTING SANDALWOOD THEFT USING THE CRIMINAL CODE

Sandalwood crime in the Criminal Code*Stealing*

- 6.11 The Committee has heard evidence of the emergence of a new approach to tackle the illegal harvest of native sandalwood. Previous prosecutions have focused on the offence of illegally taking sandalwood in breach of section 3(1) of the *Sandalwood Act 1929* (or, more commonly, breaches of contractual licence conditions). The preferring of charges under the Criminal Code, which is currently being tested in court (see below), seems to be a logical next step in reducing the illegal harvest of native sandalwood. Western Australia Police advised the Committee that:

*What prompted that [Western Australia Police's involvement in the prosecution of illegal harvesting] ... was that initial involvement from WA Police where we were pouring significant resources in predominately for an offence under the Sandalwood Act ... From a coordinated approach from WA Police, we made some inquiries through my colleagues ... to see whether it was appropriate that we can actually prefer some criminal charges, perhaps bring some greater penalties involved as a general deterrent to offenders who want to flout the laws of Western Australia. The initial aim was, that if we can deter would-be criminals, we would actually see a reduction on our workload.*¹⁰⁷

- 6.12 Section 371(1) of the Criminal Code defines stealing as where:

A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person any property, is said to steal that thing or that property.

- 6.13 As sandalwood variously belongs to the Crown or to a private landowner, it is property which is capable of being stolen. The stealing can be effected by the pulling of the tree or, as has been described to the Committee, in the *smash-and-grab* chainsaw method favoured by many illegal harvesters.
- 6.14 The general charge of stealing in section 378 of the Criminal Code is an indictable offence with a punishment of seven years imprisonment, which is a much more onerous penalty than that available under the *Sandalwood Act 1929*.

¹⁰⁷ Mr Murray Smalpage, Acting Assistant Commissioner Regional WA, Western Australia Police, *Transcript of Evidence*, 11 September 2013, p2.

Receiving or being in possession of stolen property

- 6.15 Throughout this report, the Committee has highlighted the gap in sandalwood monitoring with regard to those who are at the end of the illegal harvesting process: the buyers/receivers of the stolen wood. There is, however, a way to pursue those who ultimately profit from the illegal pulling of sandalwood through the Criminal Code.
- 6.16 Section 414 of the Criminal Code creates an offence where a person receives any property obtained by means of any act constituting an indictable offence, if the person knew this to be the case. Section 428, on the other hand, only requires that a person is in possession of a thing capable of being stolen¹⁰⁸ and that *thing* is reasonably suspected to be stolen or otherwise unlawfully obtained. The question of establishing reasonable suspicion is a question for the courts, however, and is beyond the scope of this report.

Recent operations

- 6.17 In conjunction with DEC (and now DPaW), Western Australia Police conducted a series of investigations into sandalwood stealing in the Wheatbelt and Goldfields-Esperance districts during 2012 and 2013. The extent and dollar value of the operation that was commenced by DEC led to Western Australia Police becoming involved which, in turn, led to the research and advice referred to above.
- 6.18 The amounts involved in these thefts are substantial: the alleged perpetrators were found with various quantities of sandalwood ranging from 4.7 tonnes to 24 tonnes: in total, more than 100 tonnes of sandalwood to the value of in excess of \$1.1 million.¹⁰⁹
- 6.19 In a further development, an individual was recently charged with being in possession of approximately 200 tonnes of stolen sandalwood pursuant to section 414 of the Criminal Code, with an estimated value of \$1.5 million.¹¹⁰
- 6.20 As at the tabling of this report, these criminal prosecutions are currently before the courts.

Finding 7: The Committee finds that, regardless of the outcome of cases currently before the courts, the size of penalties prescribed under the Criminal Code is far more likely to deter criminal activity in relation to sandalwood than those prescribed under the *Sandalwood Act 1929*.

¹⁰⁸ See section 371 of the Criminal Code (Appendix 1, below).

¹⁰⁹ Western Australia Police, *Sandalwood Stealing Charges: Wheatbelt & Goldfields-Esperance Districts*, News Release, 30 May 2013, available from: <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=P1oS9PItHOK%3D&tabid=1488>.

¹¹⁰ Western Australia Police, *Sandalwood Seizure – Charges*, News Release, 3 December 2013, available from <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=0TTvwJ2CAP0%3d&tabid=1488>.

CHAPTER 7

REVIEW OF SANDALWOOD LEGISLATION

Western Australia's Wildlife Conservation Act 1950 is in need of urgent and substantial reform: it is the oldest statute of its kind still being used in Australia

New legislation should strengthen enforcement powers to combat illegal harvesting and remove the overlap and inconsistencies between the four statutes currently in force

Almost two years have passed since the announcement of a new biodiversity act for Western Australia

THE SANDALWOOD ACT 1929, WILDLIFE CONSERVATION ACT 1950 AND THE FOREST PRODUCTS ACT 2000

Urgent need for legislative reform

- 7.1 Much of the Committee's investigation into the sandalwood industry in this State has centred on the difficulties created by the overlapping and often out-dated legislation that governs the resource. The Committee has heard evidence that the various statutory licence regimes, offences and departmental responsibilities cause confusion amongst stakeholders and do nothing to strengthen measures to protect the resource:

Mr Sharp: We are seeking views about whether we try to consolidate the management of sandalwood under one act rather than spread it across three acts and under different circumstances. It would be a consolidation with a significant increase in penalties – that is a beneficial way to go.

The CHAIRMAN: Would that also help your wildlife officers who are equipped with general but wide-ranging powers to deal with a whole lot of flora and fauna issues?

*Mr Sharp: Yes, it would, if there are much more significant penalties and consolidation in the one act. That would be preferential.*¹¹¹

- 7.2 In its submission to the previous inquiry in 2012, DEC outlined various options for legislative reform of the sandalwood industry.¹¹² The former department refers to the

¹¹¹ Hon Simon O'Brien, Chairman, Standing Committee on Environment and Public Affairs and Mr Jim Sharp, Acting Director General, Department of Parks and Wildlife, *Transcript of Evidence*, 11 December 2013, p6. Refer also to paragraph 3.47, above.

¹¹² Submission No. 28 from Department of Environment and Conservation, 22 October 2012, pp127-137 (Attachment 6).

legislative regime in its submission as requiring *urgent change* due to *significant ambiguities, omissions and inconsistencies*.¹¹³

7.3 Several options are outlined in the former department's submission, including:

- repealing the *Sandalwood Act 1929* in its entirety and incorporating sandalwood licensing into either the WCA, the CALM Act, the *Forest Products Act 2000* or the *Environmental Protection Act 1986*;
- retaining a stand-alone *Sandalwood Act 1929*, with amendments; or
- retaining a stand-alone *Sandalwood Act 1929*, with amendments, but linked to either the WCA, the CALM Act, the *Forest Products Act 2000* or the *Environmental Protection Act 1986*.¹¹⁴

7.4 The previous Committee noted the concerns raised in the submission at the commencement of the inquiry in 2012 and this Committee concurs with the view that there is a pressing need for statute reform.

A new biodiversity Act?

7.5 In October 2012, the former Minister for Environment, Hon Bill Marmion, announced an election commitment to introduce new biodiversity legislation as a matter of priority to replace the *oldest biodiversity conservation legislation still in force anywhere in Australia* and provide *greater levels of protection to Western Australia's unique flora and fauna*.¹¹⁵ In July 2013, the current Minister for Environment, Hon Albert Jacob, then advised the Committee that *the Government is working to implement the above commitment*.¹¹⁶

7.6 The Committee has heard evidence on several occasions that a new biodiversity conservation act would provide greater capacity to manage sandalwood, both in terms of combatting illegal activity as well as dealing with the sustainability of the resource.¹¹⁷ The Committee also heard from DEC that, as recently as June 2013, the

¹¹³ Submission No. 28 from Department of Environment and Conservation, 22 October 2012, pp128-129.

¹¹⁴ *Ibid*, pp131-135.

¹¹⁵ Ministerial Media Statement, 'New act to protect threatened species', Hon Bill Marmion, Minister for the Environment and Hon Colin Barnett, Premier, 31 October 2012, available from <http://www.mediastatements.wa.gov.au/Pages/StatementDetails.aspx?StatId=6683&listName=StatementsBarnett> (viewed on 21 June 2013).

¹¹⁶ Letter from Hon Albert Jacob, Minister for Environment, 23 July 2013, p2.

¹¹⁷ Mr John Tredinnick, Director Forest Operations, Forest Products Commission, *Transcript of Evidence*, 26 September 2012, p14; Mr Jim Sharp, Acting Director General, Department of Parks and Wildlife, *Transcript of Evidence*, 19 June 2013, pp3 and 5; Mr Murray Smalpage, Acting Assistant Commissioner Regional WA, Western Australia Police, *Transcript of Evidence*, 11 September 2013, p4; Mr Jim Sharp, Acting Director General, Department of Parks and Wildlife, *Transcript of Evidence*, 11 December 2013, p6.

Department was still focused on preparing the draft legislation and *getting government support and a government priority for drafting a biodiversity conservation act*.¹¹⁸

- 7.7 As at the time of this report being tabled in 2014, the Committee has not yet seen any significant action being taken to introduce new biodiversity legislation into the Western Australian Parliament.

Recommendation 11: The Committee recommends that the Minister representing the Minister for Environment advise the Legislative Council of the progress of implementing the government's commitment to replace the *Wildlife Conservation Act 1950* with new biodiversity legislation.



Hon Simon O'Brien MLC
Chairman
6 May 2014

¹¹⁸ Mr Gordon Wyre, Acting Deputy Director General Parks and Conservation, Department of Environment and Conservation, *Transcript of Evidence*, 19 June 2013, p2.

APPENDIX 1

SANDALWOOD LEGISLATION

Sandalwood Act 1929

3. Licences

- (1) No person shall pull or remove sandalwood —
- (a) from Crown land, except under a licence granted pursuant to regulations under the principal Act; or
 - (b) from alienated land, unless such person (being the grantee or lessee thereof, or a person lawfully claiming under him) is authorised to do so by a licence in the prescribed form granted to him by the CEO under this Act.

Penalty: \$200.

- (1a) Subsection (1)(b) does not apply to sandalwood grown on a plantation.

[(2) deleted]

- (3) The granting of licences under subsection (1)(b) shall be in the order of priority of application, and the allocation to each licensee of the quantity of sandalwood to be pulled or removed under licence shall be determined by the Minister.
- (4) In this section the words *alienated land* mean and include any land granted by the Crown for an estate in fee simple and any land held on conditional purchase or other lease or tenure under the provisions of the *Land Administration Act 1997*, or the *Mining Act 1904* ², but shall not include any land granted or demised subject to the reservation to the Crown of sandalwood thereon.

[Section 3 amended by No. 113 of 1965 s. 8; No. 74 of 1996 s. 5; No. 59 of 2000 s. 51; No. 70 of 2003 s. 47; No. 28 of 2006 s. 218.]

*Sandalwood Regulations 1993***8. Restriction on sandalwood trees that may be pulled etc.**

- (1) Subject to subregulation (2), a licence does not authorise the pulling or removal of living sandalwood on or from Crown land where —
 - (a) the sandalwood tree is less than 400 millimetres in circumference when measured over the bark at a point approximately 150 millimetres above ground level; or
 - (b) the log of the sandalwood tree, when stripped of bark, has a circumference of less than 380 millimetres when measured at a point approximately 150 millimetres above ground level.
- (2) A licence may authorise the pulling or removal of living sandalwood on or from any part of land to which subregulation (1) applies if lawful authority has been given under any written law to clear that part of land.

[Regulation 8 amended in Gazette 3 May 1996 p. 1916.]

*Wildlife Conservation Act 1950***20A. Powers of disposal and proceeds of sale**

- (1) Where a wildlife officer or an officer authorised to receive royalty under section 18 or to receive fauna or flora or other things taken or seized pursuant to section 20 takes control of any fauna or flora, or the skin or carcass of any fauna, or any other thing likely, in his opinion, to suffer, deteriorate or perish if no action is taken to protect it, he may take such action by way of care, processing, sale or other disposal as appears to him to be reasonably necessary.
- (2) The payment of the charges and expenses attributable to any action taken by an officer under subsection (1) shall be deducted from any moneys thereby derived, and the net proceeds thereafter brought to account in accordance with the provisions of the *Financial Management Act 2006*, and dealt with according to law.

23B. Protected flora on Crown land not to be taken without licence

- (1) A person shall not on Crown land wilfully take any protected flora unless the taking of the protected flora is authorised by, and carried out in accordance with the terms and conditions of, a licence issued to him under section 23C.
- (2) In any proceedings for an offence against subsection (1) it is a defence for the person charged to prove that the taking occurred as an unavoidable incident or consequence in the performance of any right, power or authority conferred upon, or in the discharge of any duty or obligation imposed upon, the person by or under any Act or agreement to which the State is a party and which is ratified or approved by an Act or notwithstanding the fact that the performance of that right, power or authority, or the discharge of the duty or obligation, was exercised in a reasonable manner.

[Section 23B inserted by No. 86 of 1976 s. 13 (as amended by No. 28 of 1979 s. 5); amended by No. 57 of 1997 s. 132(23).]

23C. Licences to take protected flora on Crown land

- (1) Any person may, in the prescribed form containing or accompanied by the prescribed particulars and on payment of the prescribed fee, apply to the Minister for the issue to him of a licence to take protected flora on Crown land —
 - (a) for commercial purposes; or
 - (b) for scientific purposes or any prescribed purpose,and the Minister may issue or refuse to issue such a licence.
- (2) Subject to this section a licence issued authorises the licence holder, subject to such terms and conditions as are specified in the licence, to take for the purposes so specified on such areas of Crown land as are so specified and during such period or periods as are so specified, the classes or descriptions of protected flora so specified.
- (2a) Subject to subsection (5), a licence is valid from the date of issue for the period stated in the licence.

23D. Taking and sale of protected flora on private land

- (1) A person shall not take any protected flora on private land unless —
- (a) he is the owner or occupier of the private land; or
 - (b) he is authorised so to do by the owner or occupier of the private land.
- (1a) In any proceedings for an offence against subsection (1) it is a defence for the person charged to prove that the taking occurred as an unavoidable incident or consequence in the performance of any right, power or authority conferred upon, or in the discharge of any duty or obligation imposed upon, the person by or under any Act or agreement to which the State is a party and which is ratified or approved by an Act or notwithstanding the fact that the performance of that right, power or authority, or the discharge of the duty or obligation, was exercised in a reasonable manner.
- (2) A person shall not sell any protected flora taken by him on private land unless —
- (a) he is the holder of a commercial producer's licence or a nurseryman's licence issued under this section; and
 - (b) the flora —
 - (i) if taken by a person who is the holder of a commercial producer's licence — is of a class or description specified in his licence and is taken from the private land specified in the licence; and
 - (ii) if taken by a person who is the holder of a nurseryman's licence — is of a class or description specified in his licence and has been

grown and cultivated by him on the private land specified in the licence;
- and
- (c) the flora is marked, tagged or otherwise identified in accordance with the terms and conditions of his licence.
- (3) A person —
- (a) who is an owner or occupier of private land; or
 - (b) who is authorised to take any protected flora on private land by an owner or occupier of the private land,
- may on payment of the prescribed fee apply to the Minister for the issue to him of a commercial producer's licence or a nurseryman's licence.

23E. Dealings in protected flora

- (1) A person shall not sell any protected flora unless —
 - (a) the sale is lawful by virtue of the provisions of section 23C or 23D; or
 - (b) he purchased the flora from another person lawfully entitled to sell the flora to him and forthwith after the purchase he made or obtained a legible record of —
 - (i) the quantity and class or description of flora so purchased; and
 - (ii) the date of the purchase; and
 - (iii) the name and address of the person from whom he purchased the flora.
- (2) A person who makes or obtains a record pursuant to subsection (1)(b) shall retain the record for not less than 12 months and produce it on demand to a wildlife officer.

[Section 23E inserted by No. 86 of 1976 s. 16.]

26. Offences

- (1) Any person who contravenes or who fails to comply with any provisions of this Act or the regulations is guilty of an offence against this Act and is liable, if no other penalty be prescribed, to a maximum penalty of \$4 000 in the case of a contravention or failure to comply with a provision of the Act and of \$2 000 in the case of a contravention or failure to comply with a provision of a regulation, and any licence issued pursuant to the provisions of this Act and held by him may be cancelled.

*Conservation and Land Management Act 1984***88. Permits etc. for taking etc. forest produce, CEO's powers as to**

- (1) Subject to this Part, the CEO may —
 - (a) grant permits and licences to take; and
 - (b) contract on such terms and conditions as the CEO thinks fit for —
 - (i) the sale of; or
 - (ii) the doing by any person of any other act or thing in relation to,
forest produce on or from Crown land.
- (1a) Without limiting the generality of subsection (1)(b)(ii), the CEO may, under that subsection, enter into a contract with any person for that person to fell, cut, prepare, take, remove or measure forest produce on or from Crown land and deliver the forest produce to a buyer under a contract of sale or move the forest produce to a place where it can be collected by a buyer under a contract of sale.
- (2) No permit or licence shall be granted and no contract shall be entered into in respect of forest produce on any land in a State forest or timber reserve unless there is a management plan in force for that land.

*Forest Products Act 2000***10. Functions of Commission**

- (1) It is a function of the Commission —
- (a) to advise the Minister on matters relating to the production and yield of forest products;
 - (b) to advise the Minister on the commercial value and prices of forest products;
 - (c) to sell forest products by way of contract;
 - (d) to promote and encourage the development of the forest production requirements of the State, and to undertake any project or operation for that purpose;
 - (e) to acquire rights and powers, and accept obligations —
 - (i) under Commission sharefarming agreements; or
 - (ii) through the agency of the CALM Act CEO under CALM Act sharefarming agreements;
 - (f) to enter into a contract with any person for the doing by that person of anything that the Commission is authorised or required to do under a Commission sharefarming agreement;
 - (g) to maintain, or establish and maintain —
 - (i) plantations of forest products;
 - (ii) plant nurseries for the production of forest products; or
 - (iii) seed or propagation orchards of forest products;
 - (h) to enter into contracts with any person for the management of forest products;
 - (i) to enter into contracts with any person for the harvesting of forest products;
 - (j) to promote, and to advise the Minister in relation to, employment in, and development of, the forest products industry;
 - (k) for the purpose of ensuring that any stockpile of forest products is kept to a minimum, to enter into arrangements with the CALM Act CEO in relation to —
 - (i) the amount of forest products that can be stockpiled; and
 - (ii) the circumstances in which forest products can be stockpiled;
 - (l) to enter into a memorandum of understanding with the CALM Act CEO relating to the performance of the Commission's and that CEO's respective functions and any other matter prescribed under the CALM Act;

- (m) to monitor the cost of production of forest products, including the costs of services provided by the CALM Act CEO in respect of —
 - (i) the use, management and protection, for any purpose, of land on which forest products are located;
 - (ii) the management of forest products;
 - (iii) the harvesting of forest products;
 - (iv) the construction of roads or other infrastructure for the purposes of managing or harvesting forest products;
 - (v) silvicultural operations and other preparations before, and silvicultural operations after, the felling or cutting of forest products; and
 - (vi) regeneration of the forest products after felling or cutting;
- (n) to participate in the preparation of any management plan under Part V of the CALM Act in relation to land that is State forest or a timber reserve;
- (o) to provide the CALM Act CEO with records of the quantities and types of all forest products harvested on public land and, if applicable, the grade of forest products so harvested;
- (p) to advise the Minister as to the performance of the Minister's functions —
 - (i) under subsection (6a) of section 17 of the CALM Act in relation to a proposal under subsection (2) of that section to cancel or amend the purpose of a timber reserve or alter a boundary of a timber reserve; or
 - (ii) under section 62(1aa) of the CALM Act in relation to the classification, or changes to the classification, of areas within State forests and timber reserves as forest products temporary control areas;
- (q) to promote the sustainable use of indigenous forest products located on public land having regard to the provisions of relevant management plans;
- (r) to consult with, and provide advice to, the public and the forest products industry as to the policies and programmes of the Commission;
- (s) to carry out or cause to be carried out such study or research of or into a matter relating to a function of the Commission as the Minister may approve;
- (t) to develop and turn to account any technology, software or other intellectual property that relates to the function referred to in paragraph (s) and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights;

- (u) to provide services relating to the establishment, maintenance, management, harvesting and marketing of tree plantings, and products from tree plantings, on land that is not public land, and to charge fees for the provision of those services;
- (v) to provide equipment, facilities and systems associated with the performance of a function referred to in paragraph (u), and to charge for that provision; and
- (w) to promote and market the Commission and its activities.

12. Principles on which Commission is to act

- (1) The Commission in performing its functions must try to ensure that a profit that is consistent with the planned targets is made from the exploitation of forest products while ensuring —
 - (a) the long-term viability of the forest products industry; and
 - (b) the principles of ecologically sustainable forest management are applied in the management of indigenous forest products located on public land.
- (2) For the purposes of subsection (1)(b) the principles of ecologically sustainable forest management are —
 - (a) that the decision-making process should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
 - (b) that if there are threats of serious or irreversible environmental damage, the lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
 - (c) that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
 - (d) that the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making; and
 - (e) that improved valuation, pricing and incentive mechanisms should be promoted.
- (3) In subsection (1) —
planned targets means the operational and performance targets set out in the Commission's current strategic development plan and statement of corporate intent.
- (4) If there is any conflict or inconsistency between —
 - (a) the duty imposed by subsection (1) and a direction given by the Minister under section 14; or
 - (b) the duty imposed by subsection (1) and the duty imposed by section 11,the direction given under section 14, or the duty imposed by section 11, prevails.

Criminal Code Act Compilation Act 1918**370. Things capable of being stolen**

Every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

Every inanimate thing which is the property of any person, and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

Every tame animal, whether tame by nature or wild by nature and tamed, which is the property of any person, is capable of being stolen; but tame pigeons are not capable of being stolen except while they are in a pigeon-house or on their owner's land.

Animals wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in Western Australia, which are the property of any person, and which are usually kept in a state of confinement, are capable of being stolen, whether they are actually in confinement or have escaped from confinement.

Animals wild by nature, of a kind which is ordinarily found in a condition of natural liberty in Western Australia which are the property of any person, are capable of being stolen while they are in confinement and while they are being actually pursued after escaping from confinement, but not at any other time.

An animal wild by nature is deemed to be in a state of confinement so long as it is in a den, cage, sty, tank, or other small enclosure, or is otherwise so placed that it cannot escape and that its owner can take possession of it at pleasure.

Animals, which are the property of any person, are capable of being stolen while they are being reared by aquaculture in a place that is the property of, or under the control of, any person.

The term *animal* includes any living creature and any living aquatic organism other than mankind.

Wild animals in the enjoyment of their natural liberty are not capable of being stolen, but their dead bodies are capable of being stolen.

Everything produced by or forming part of the body of an animal capable of being stolen is capable of being stolen.

[Section 370 amended by No. 4 of 2004 s. 64.]

371. Term used: steal

- (1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person any property, is said to steal that thing or that property.

378. Penalty for stealing

Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 7 years.

414. Receiving stolen property etc.

Any person who receives any property which has been obtained by means of any act constituting an indictable offence, or by means of any act done at a place not in Western Australia which if it had been done in Western Australia would have constituted an indictable offence, and which is an offence under the laws in force in the place where it was done, knowing the same to have been so obtained, is guilty of a crime.

Alternative offence: s. 378, 409 or 428.

The offender is liable —

- (a) if the court is satisfied as to the act by means of which the property was obtained, to the penalty provided for the offence constituted by that act, or to imprisonment for 14 years, whichever is the lesser;
- (b) otherwise, to imprisonment for 14 years.

428. Possessing stolen or unlawfully obtained property

- (1) A person who is in possession of any thing capable of being stolen that is reasonably suspected to be stolen or otherwise unlawfully obtained is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.
- (2) It is a defence to a charge of an offence under subsection (1) to prove that at the time the accused was allegedly in possession of the thing, the accused had no reasonable grounds for suspecting that the thing was stolen or unlawfully obtained.

*Fish Resources Management Act 1994***Part 15A — Fish trafficking***[Heading inserted by No. 43 of 2011 s. 54.]***153. Terms used**

In this Part —

commercial quantity, of fish, means —

- (a) a quantity of fish that exceeds the quantity prescribed by or determined under the regulations; or
- (b) a quantity of fish the value of which exceeds the value prescribed by or determined under the regulations;

priority fish means —

- (a) fish of a species that is declared by the regulations to be a priority species; or
- (b) fish belonging to a group of 2 or more species that is declared by the regulations to be a priority group of species;

traffic, in fish, has the meaning given in section 154.*[Section 153 inserted by No. 43 of 2011 s. 54.]***154. Trafficking in fish defined**

- (1) A person traffics in fish if the person deals with fish in any of these ways —
 - (a) takes fish;
 - (b) is in possession or control of fish;
 - (c) sells or purchases fish;
 - (d) delivers fish to, or receives fish from, another person;
 - (e) processes fish;
 - (f) transports fish;
 - (g) conceals fish or any dealing with fish referred to in paragraphs (a) to (f);
 - (h) engages in conduct preparatory to any dealing with fish referred to in paragraphs (a) to (g).
- (2) A person traffics in fish if the person does any of these things in relation to any dealing with fish referred to in subsection (1) —
 - (a) controls, directs or supervises the dealing;
 - (b) provides facilities, finance or any other thing for the purpose of enabling or facilitating the dealing;
 - (c) enters into an agreement in relation to the dealing;
 - (d) is knowingly concerned otherwise in the dealing.

[Section 154 inserted by No. 43 of 2011 s. 54.]

REGULATION OF THE SANDALWOOD INDUSTRY IN WESTERN AUSTRALIA

