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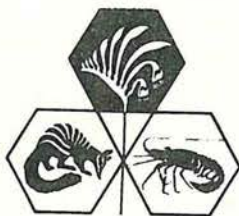
Department of Biodiversity,
Conservation and Attractions

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FLORA

WILDLIFE CONSERVATION ACT

AMENDMENT ACT 1979



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DEPARTMENT OF FISHERIES AND WILDLIFE
108 ADELAIDE TERRACE
PERTH W.A.

WILDLIFE CONSERVATION.

AN ACT to amend the Wildlife Conservation Act, 1950-1977 and the Wildlife Conservation Act Amendment Act, 1976.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Wildlife Conservation Act Amendment Act, 1979*.

Short title and citation.

(2) In this Act the Wildlife Conservation Act, 1950-1977 is referred to as the principal Act.

10 Approved for Reprint 10th April, 1973 and amended by Acts Nos. 67 of 1975 and 34 of 1977.

(3) In this Act the Wildlife Conservation Act Amendment Act, 1976 is referred to as the amending Act.

(4) The principal Act as amended by this Act may be cited as the *Wildlife Conservation Act, 1950-1979*.

Commence-
ment.

2. This Act shall come into operation on the day that the Wildlife Conservation Act Amendment Act, 5 1976 comes into operation.

Repeal.

3. The Native Flora Protection Act, 1935-1938 is hereby repealed.

Section 6
amended.

4. Section 6 of the principal Act is amended—

(a) by adding after the interpretation “close season” the following interpretation—

“Crown land” means all land other than private land; ;

(b) by adding after the interpretation “fauna” the following interpretation—

“flora” means any plant (including any wildflower, palm, shrub, tree, fern, creeper or vine) which is—

(a) native to the State; or

(b) declared to be flora pursuant to subsection (4) of this section,

and includes any part of flora and all seeds and spores thereof; ;

(c) by deleting the interpretation “indigenous flora”;

(d) by adding after the interpretation “open season” the following interpretation—

“private land” means any land that has been or may hereafter be alienated from the Crown for any estate of freehold, or is or may hereafter be the subject of any conditional purchase agreement, or of any lease or concession with or without a right of acquiring the fee simple thereof other than for pastoral or timber purposes; ;

by deleting the interpretation “nature reserve” and substituting the following interpretation—

“nature reserve” means land reserved to Her Majesty, or disposed of, under the Land Act, 1933 or any other Act, for the conservation of flora or fauna;

- (e) by adding immediately before the interpretation "skin" the following interpretation—

"protected flora" means, any flora for the time being declared to be protected flora for the purposes of this Act; ;

- (f) by deleting the word "Fauna" in line one of the interpretation "the Fund" and substituting the word "Wildlife";

- (g) by adding after the interpretation "to take" the following interpretation—

"to take" in relation to any flora includes to gather, pluck, cut, pull up, destroy, dig up, remove or injure the flora or to cause or permit the same to be done by any means;

- (h) by adding after subsection (1) the following subsection—

(1a) Where any fauna or flora is taken in any part of the State where the fauna or flora is protected, that fauna or flora shall continue to be protected notwithstanding that it may have been removed from that part of the State to another part where the same species, class or description of fauna or flora is not protected. ; and

- (i) by adding at the end thereof the following subsections—

(4) The Minister may—

- (a) by notice published in the *Government Gazette* declare any class or description of plant (including any wildflower, palm, shrub, tree, fern, creeper or vine) specified in the notice which is not native to the State

to be flora for the purposes of this Act in any part or parts of the State specified; and

- (b) by notice so published vary or revoke any notice published under paragraph (a) of this subsection.

(5) Notwithstanding anything to the contrary contained in the preceding provisions of this section any plant (including any wildflower, palm, shrub, tree, fern, creeper or vine) which is a declared plant within the meaning of the Agriculture and Related Resources Protection Act, 1976 throughout the whole of the State or in any part of the State, shall not be flora for the purposes of this Act throughout the State or in that part of the State, as the case requires.

(6) The Minister may—

- (a) by notice published in the *Government Gazette* declare any class or description of flora to be protected flora for the purposes of this Act, either throughout the whole of the State or in such part or parts of the State as are specified in the notice;

(b) by notice so published, declare—

- (i) all flora; or
- (ii) all flora other than such classes or descriptions of flora as are specified in the notice,

in such part or parts of the State as is or are specified in the notice to be protected flora for the purposes of this Act; and

- (c) by notice so published, vary or revoke any notice published under paragraph (a) or (b) of this subsection.

5. Section 9 of the principal Act is repealed and re-enacted as follows—

Section 9
repealed and
re-enacted.

Relationship
to the Crown,
government
departments
and Local
authorities
and other
persons exer-
cising rights
or duties.

9. (1) The provisions of this Act relating to flora bind the Crown.

(2) Where in relation to a provision of this Act relating to flora a matter arises, or may arise, with respect to any right, power or authority of, or the discharge of any duty by, a government department or a local authority, the following provisions apply—

- (a) where the matter relates to a government department—the Minister charged with the administration of the government department may consult with the Minister;
- (b) where the matter relates to a local authority—the local authority shall refer the matter to the Minister charged with the administration of the Local Government Act, 1960, who may consult with the Minister;
- (c) where the Ministers agree, the Minister shall give such directions as are agreed to as a result of those consultations;
- (d) where the Ministers do not agree the matter shall be referred to the Governor; and
- (e) the Governor may finally and conclusively determine the matter and effect shall be given to any such determination.

(3) Where in relation to a provision of this Act relating to flora a matter arises, or may arise, with respect to the exercise of any right or the performance of any duty or obligation conferred or imposed on a person, not being a government department or local authority, by or under any Act or agreement to which the State is a party and which is ratified or approved by an Act the matter shall be finally and conclusively determined by the Minister upon a written application by that person to the Minister and effect shall be given to that determination.

(4) In this section—

“government department” includes any instrumentality of the Crown in the right of the State, whether a corporation, agency or other authority.

6. Section 15 of the principal Act is amended— Section 15 amended.

- (a) by deleting the word “No” in line one of subsection (4) and substituting the passage “Subject to section twenty-three D of this Act, no”; and
- (b) by adding after the word “fauna” in line three of subsection (5) the words “or flora”.

7. Section 17C of the principal Act is amended— Section 17C amended.

- (a) by deleting the word “Fauna” where it occurs in line two of subsection (1) and in line three of subsection (2) and substituting the word “Wildlife”, in both cases;
- (b) by deleting the word “and” appearing immediately after paragraph (d) of subsection (3);
- (c) by deleting the passage “Act.” appearing at the end of paragraph (e) of subsection (3) and substituting the passage “Act; and”; and
- (d) by adding at the end thereof the following paragraph—
 - (f) the money received as fees for licenses issued under section twenty-three C and twenty-three D of this Act and the money received as royalties payable for the taking of protected flora on Crown land.

Section 17E
amended.

8. Subsection (1) of section 17E of the principal Act is amended by adding after the word "fauna" where it occurs in line four and again in line five, the words "and flora".

Section 20
amended.

9. Section 20 of the principal Act is amended by adding after the word "fauna" where it occurs—

- (a) firstly and secondly in paragraph (a) of subsection (2);
- (b) three times in paragraph (b) of subsection (2);
- (c) three times in subsection (2a); and
- (d) in line one of subsection (4),

the words "or flora", in each case.

Section 20A
amended.

10. Subsection (1) of section 20A of the principal Act is amended by adding after the word "fauna" where it occurs in line three and again in line five, the words "or flora", in both cases.

Section 23
amended.

11. Subsection (1) of section 23 of the principal Act is amended by adding after the word "fauna", twice occurring, the words "or flora", in both cases.

Section 23A
added.

12. The principal Act is amended by adding after section 23 a new section as follows—

Property in
protected
flora on
Crown
land.

23A. (1) The property in protected flora on Crown land, until lawfully taken, is, by virtue of this Act, vested in the Crown.

(2) The provisions of subsection (1) of this section do not entitle any person to compensation.

13. The principal Act is amended by adding a section as follows— Section 23B added.

23B. (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 license issued to him under section twenty-three C of this Act. Protected flora on Crown land not to be taken without a license

(2) In any proceedings for an offence against subsection (1) of this section 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. 35

14. The principal Act is amended by adding a section as follows— Section 23C added.

23C. (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 license to take protected flora on Crown land— Licenses to take protected flora.

- (a) for commercial purposes; or
- (b) for scientific purposes or any prescribed purpose,

and the Minister may issue or refuse to issue such a license.

(2) Until revoked a license issued authorises the license holder, subject to such terms and conditions as are specified in the license, 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.

(3) Without limiting the terms or conditions which may be included in a license issued under this section, the terms and conditions on which a license to take protected flora for commercial purposes may be granted may include terms or conditions—

- (a) providing that flora taken under the authority of the license be charged with payment of royalties to the Conservator of Wildlife by the license holder at such rate or rates as are specified in the terms or conditions;
- (b) requiring the license holder to ensure that any protected flora taken pursuant to the license is marked, tagged or otherwise made identifiable as flora taken by him.

(4) Any royalties payable pursuant to the terms or conditions of a license issued under this section—

- (a) shall be paid by the Conservator of Wildlife into the Fund; and
- (b) may be sued for and recovered by the Conservator as a debt due to him in his capacity as such.

(5) The Minister may at any time, by notice in writing served on a person to whom a license has been issued under this section, revoke the license, but the revocation does not affect any liability or obligation incurred by the person prior to the revocation.

15. The principal Act is amended by adding a section as follows—

Section 23D added.

23D. (1) A person shall not take any protected flora on private land unless—

Taking and sale of protected flora on private land.

- (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) of this section 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 license or a nurseryman's license issued under this section;

(b) the flora—

(i) if taken by a person who is the holder of a commercial producer's license—is of a class or description specified in his license and is taken from the private land specified in the license; and

(ii) if taken by a person who is the holder of a nurseryman's license—is of a class or description specified in his license and has been grown and cultivated by him on the private land specified in the license; and

(c) the flora is marked, tagged or otherwise identified in accordance with the terms and conditions of his license.

(3) Any owner or occupier of private land may on payment of the prescribed fee apply to the Minister for the issue to him of a commercial producer's license or a nurseryman's license.

(4) An application under subsection (3) of this section shall be in the prescribed form and shall specify—

- (a) the land to which the application relates;
- (b) the classes or descriptions of flora to which the application relates.

(5) Subject to subsection (6) of this section, the Minister shall issue a license to any person who has made an application in accordance with the provisions of this section, but the license shall be issued subject to such conditions as, having regard to the conservation of protected flora, the Minister considers fit, which conditions shall be endorsed upon or attached to the license.

(6) The Minister may—

- (a) by notice in writing served on the person, revoke any license issued under this section if the person to whom the license has been issued is convicted of any offence against this Act; and
- (b) refuse to issue a license to a person who has been convicted of an offence against this Act.

Section 23E added.

16. The principal Act is amended by adding a section as follows—

Dealings in protected flora.

23E. (1) A person shall not sell any protected flora unless—

- (a) the sale is lawful by virtue of the provisions of section twenty-three C or twenty-three D of this Act; 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;
- (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 paragraph (b) of subsection (1) of this section shall retain the record for not less than twelve months and produce it on demand to a wildlife officer.

17. The principal Act is amended by adding a section as follows—

Section 23F added.

23F. (1) In this section “rare flora” means flora for the time being declared to be rare flora for the purposes of this section.

Rare or endangered species of flora.

(2) Where the Minister is of opinion that any class or description of protected flora is likely to become extinct or is rare or otherwise in need of special protection, he may, by notice published in the *Government Gazette* declare that class or description of flora to be rare flora for the purposes of this section throughout the State.

(3) The Minister may vary or revoke a notice published under subsection (2) of this section by subsequent notice or notices published in the *Government Gazette*,

(4) A person shall not, whether or not he is—

- (a) the holder of a license issued under this Act to take protected flora;
- (b) the owner or occupier of private land on which rare flora exists; or
- (c) authorised by the owner or occupier of land on which rare flora exists,

take any rare flora unless—

- (d) where he is not the holder of a license issued under this Act, he first obtains the consent thereto in writing of the Minister;

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(e) where he is the holder of a license issued under this Act, he first obtains the further consent thereto in writing of the Minister. .

(5) subsection repealed

(6) A person who takes any rare flora contrary to the provisions of this section is liable on conviction to a penalty not exceeding one thousand dollars.

(7) Where an owner or occupier of private land who has been refused consent to take rare flora on that land satisfies the Minister that he will suffer loss of use or enjoyment of the land by reason of that refusal, the Minister shall inform the Treasurer in writing accordingly and the owner or occupier shall be paid compensation for that loss at such rate or rates per annum as—

(a) is agreed between the owner or occupier and the Treasurer; or

(b) in default of agreement, is determined by a valuer appointed by agreement between the Treasurer and the owner or occupier, or in default of agreement on such an appointment, by a valuer appointed by the Minister,

for such period, not exceeding five years, as the loss continues. .

(8) Where compensation has been paid under subsection (7) of this section for a period of five years in respect of any particular land, the Minister shall not refuse an application by the owner or occupier of that land to take rare flora on that part of the land for the loss of use or enjoyment of which compensation has been so paid.

(9) Notwithstanding that compensation has been paid under subsection (7) of this section, whether for a period of five years or for a lesser period, for the loss of use or enjoyment of any land, that land may at any time be taken by the Governor under and subject to the Public Works Act, 1902 for any of the purposes of this Act.

Section 26 of the principal Act is amended by 10 repealing subsection (3) and substituting the following subsection— Section 26 of principal Act amended.

(3) All proceedings in respect of any such offences shall be taken by and in the name of the Director or by and in the name of any 15 person authorised in that behalf by the Director.

18. Subsection (1) of section 27 of the principal Act is amended by adding after the passage "fauna," in line one, the passage "flora,". Section 27 amended.

19. Section 27A of the principal Act is amended by adding after the word "fauna", where it occurs in— Section 27A amended.

(a) lines three, seven and eleven of subsection (1); and

(b) lines two and four of subsection (2),

the words "or flora", in each case.

20. Section 27B of the principal Act is amended by adding after the word "fauna" in line five the words "or flora". Section 27B amended.

21. Subsection (1) of section 28 of the principal Act is amended— Section 28 amended.

(a) by adding after the word "dealings" in line one of subparagraph (iv) of paragraph (an) the words "in protected flora or"; and

(b) by adding after the word "disposal" in line two of paragraph (c) the words "of protected flora or".

Miscellaneous
amendments.

22. The principal Act is amended as set out in the Schedule to this Act.

SCHEDULE.

Provision amended	Amendment
Section 10 (3) (b) (iii) ..	Delete "indigenous".
Section 11 (1)	Delete "indigenous".
Section 11 (2)	Delete "indigenous".
Section 12 (1)	Delete "indigenous".
Section 12 (2)	Delete "indigenous".
Section 12D (2) ..	Delete "indigenous" where three times occurring.
Section 13 (1)	Delete "indigenous".
Section 28 (1) (a)	Delete "indigenous".
Section 28 (1) (ab)	Delete "indigenous".
Section 28 (1) (a1)	Delete "indigenous".
Section 28 (1) (f)	Delete "indigenous".