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# A Biodiversity Conservation Act for Western Australia

Consultation Paper



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Government of  
Western  
Australia

December, 2002

# Foreword

Previous page

Top: Snappy gums, Karijini National Park.

Photo – Cliff Winfield

Bottom: The Dirk Hartog

Island black and white subspecies of the white-winged fairy-wren.

Photo – Babs & Bert Wells

Right: Star sun orchid.

Photo – Andrew Burbidge

Below: Scott National Park.

Photo – Department of Conservation and Land Management

Western Australia is internationally renowned for the diversity of its plants, animals and ecosystems, and the southwest of the State is recognised as one of the world's 25 biodiversity hotspots.

At a time when the world is losing species and their habitats at an increasing rate, we have a particular responsibility to conserve this biodiversity.

It is important that Western Australia has effective legislation to assist us in our efforts to achieve this goal.

It has been recognised for some time that our principal biodiversity conservation legislation, the *Wildlife Conservation Act 1950*, is outdated and does not provide an adequate legislative basis for biodiversity conservation in this State.

This Government is determined to act to bring biodiversity conservation in Western Australia into the 21st century. We aim to introduce a Biodiversity Conservation Bill to the Parliament by late 2003 or early 2004. Between now and then we will be engaging in a public consultation process to develop the best possible Bill to put to the Parliament.

Comment on this consultation paper will be an important first step in the public consultation process, and we urge interested organizations and members of the public to provide a response to the consultation paper.



*Geoff Gallop*

Dr Geoff Gallop MLA

Premier of Western Australia



*Judy Edwards*

Dr Judy Edwards MLA

Minister for the Environment and Heritage

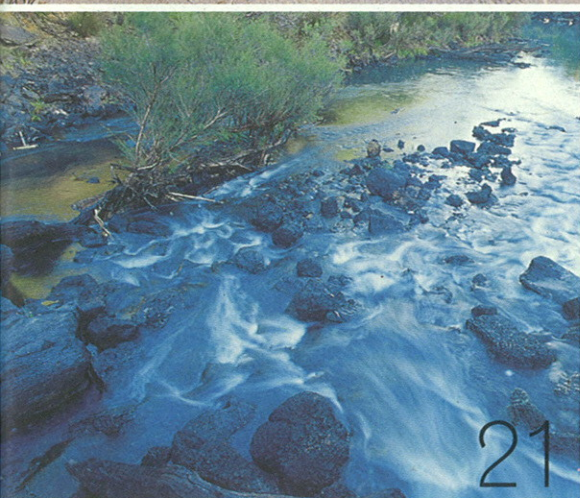


Government of  
Western  
Australia



THE LIBRARY  
DEPARTMENT OF CONSERVATION  
& LAND MANAGEMENT  
WESTERN AUSTRALIA

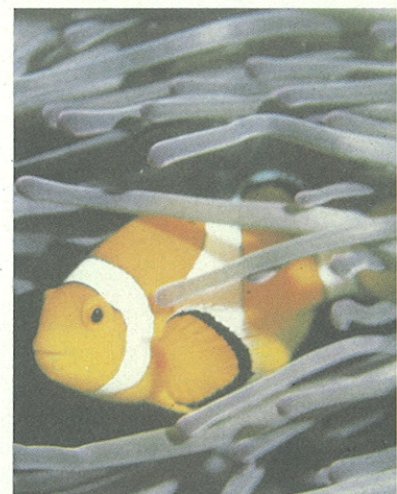
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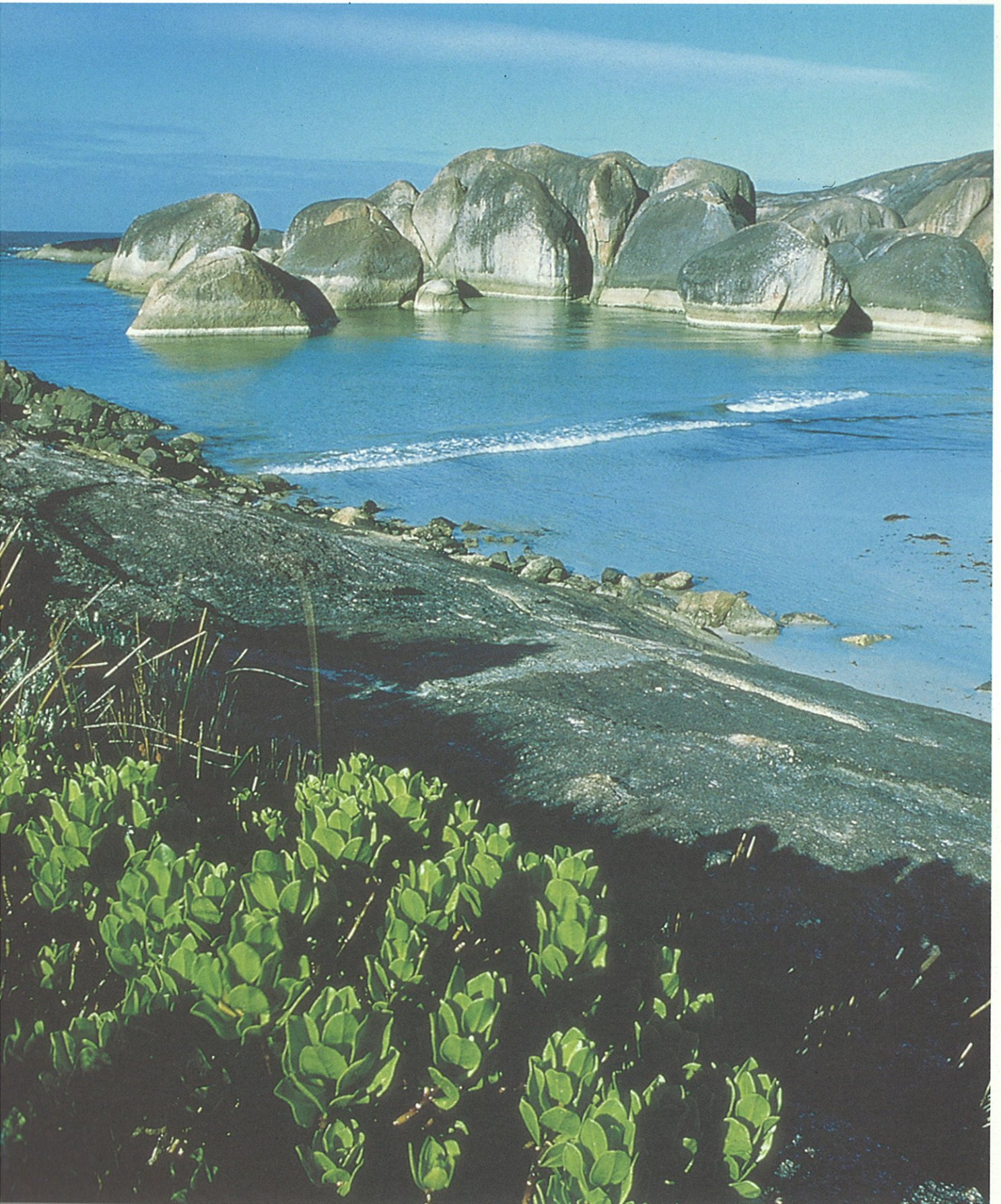


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Top left: Mt Bradshaw.  
Photo - Department of Conservation and Land Management  
Centre left: Rainbow bee-eater.  
Photo - Babs & Bert Wells  
Bottom left: Blackwood River.  
Photo - Chris Garnett

Below: Clownfish.  
Photo - C. Flemming, courtesy of the Department of Fisheries





# Introduction: Biodiversity Conservation

## Why we need new biodiversity conservation legislation

Biodiversity is the variety of life forms: the different animals, plants and microorganisms, their genes and the ecosystems of which they are a part.

We all benefit from the conservation of biological diversity, as such diversity is vital in supporting all life on Earth.

It provides the ecological functions and processes (or ecosystem services) on which we depend and it has scientific and educational value. It also has its own intrinsic value.

Worldwide, biodiversity is under threat. Indeed, many biologists suggest that the planet is in the midst of a mass extinction event that is the fastest in the Earth's history.

In Western Australia, we have a particular responsibility to protect biodiversity because of what we have, and what we could lose.

For example, the south west of Western Australia has been identified as one of 25 global biodiversity "hotspots" due to the large number of species of plants and animals, the extent to which they are restricted to the region, and the significant threats to the region's biodiversity.

For the purposes of this consultation paper, biodiversity conservation is seen as the combination of actions targeting the protection, restoration and sustainable use of our native plants, animals and other native organisms.

All of our natural biodiversity is important and it is our responsibility to ensure that our biodiversity is conserved and passed onto our children for them to value, appreciate and respect.

There is a range of legislation that is relevant to human impacts on biodiversity. This includes legislation relating to the conservation reserve system, fishing, land clearing and environmental impact assessment.

However, the principal Western Australian legislation relating directly to biodiversity conservation remains the *Wildlife Conservation Act 1950*.

It has been recognised for some time that the *Wildlife Conservation Act* is out of date and in need of reform.

The Government made a priority commitment prior to the last election to introduce modern biodiversity conservation legislation.



Opposite page  
Elephant Rocks, William Bay  
National Park.  
Photo – Western Australian  
Tourism Commission

Above: *Acacia nervosa*.  
Photo – Andrew Crawford

Below: Splendid fairy-wren.  
Photo – Babs & Bert Wells





Above: Diamond Tree.  
Below: Bottle Bay.  
Photos - Department of  
Conservation and Land  
Management

It will deliver on this commitment by introducing a Biodiversity Conservation Bill to replace the Wildlife Conservation Act.

That Bill will have the object of providing for the protection and restoration of biodiversity, and the sustainable use of our native plants, animals and other organisms.

It will not seek to replace the *Conservation and Land Management Act 1984*, the legislation governing our conservation reserve system. But it will represent a major step forward in the conservation of biodiversity.

It is recognised that modern biodiversity conservation legislation is not, of itself, enough to meet biodiversity conservation goals.

A Biodiversity Conservation Strategy needs to be adopted, in order to set objectives and targets that can guide the use of the various instruments at Government's disposal, including biodiversity conservation legislation.

In recognition of this fact, the Biodiversity Conservation Act will require that a State Biodiversity Conservation Strategy be produced as soon as practicable after the Act has come into effect.



A particular goal of the Government will be for the proposed new Biodiversity Conservation Act to meet criteria for accreditation to allow State implementation of relevant parts of the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*. This would provide for greatly simplified and more certain application of biodiversity conservation controls from which the entire community would benefit.

## Matters on which public input is sought

Written submissions are sought on the content of the proposed Biodiversity Conservation Act, and in particular on the issues highlighted below.

People are encouraged to put forward innovative suggestions for the content of the Biodiversity Conservation Act that are consistent with the Government's objectives of conserving biodiversity and promoting the sustainable use of biological resources.

Your views are also sought on possible roles that the Conservation Commission of Western Australia and the Marine Parks and Reserves Authority may be given under the Biodiversity Conservation Act.

Under the *Conservation and Land Management Act* the State's terrestrial and marine conservation reserves are vested in these two bodies and their respective functions include providing advice to the Minister on the development of policies for the conservation of biodiversity throughout the State.

# Protection of biodiversity

## Overview

In order to provide the tools to adequately protect biodiversity, the new Act must be different from the present Wildlife Conservation Act in a number of respects. It must be wider in its application, be more open to community input and processes, contain more effective decision-making and enforcement mechanisms, incorporate mechanisms to facilitate community conservation efforts, and, as far as possible, address the root causes of biodiversity loss.

To these ends, it is proposed that the Biodiversity Conservation Act will:

- Strengthen special protection for identified threatened species, and extend this protection to threatened ecological communities
- Ensure that decisions to specially protect species and ecological communities are made in accordance with clear statutory criteria and on the basis of advice from an independent, expert Threatened Species and Communities Scientific Committee
- Place special restrictions on the circumstances in which licences to harm threatened species or ecological communities can be granted
- Include enhanced and more effective enforcement mechanisms, including increased penalties and the power for the Minister for the Environment and Heritage (the Minister) to issue conservation orders to ensure site specific protection of threatened species or ecological communities



Above: Stirling Range National Park  
Photo – Allan Rose

- Include controls on environmental pests and weeds and more effective controls on the importation of species that may become pests or weeds
- Provide greatly increased penalties for unauthorised exports of our unique animals, and extend export controls to plants and other biota
- Provide that the Minister may, on the recommendation of the Threatened Species and Communities Scientific Committee, list key threatening processes
- Provide that once a key threatening process is listed, regulations may be made to control that threatening process, where it is impacting on biodiversity conservation
- Provide statutory backing to nature conservation covenants under which landholders can voluntarily protect the biodiversity on their land in perpetuity.

These matters are dealt with in more detail below.

## What biota should the Act protect?

### Coverage of biota

It is intended that the new Act will be capable of protecting all of Western Australia's biodiversity, both by ensuring that native biota is used in a sustainable way, and by providing special protection to threatened biota.

The Wildlife Conservation Act is already broad in its application, due to the Act's wide definitions of fauna and flora.

The new Act will have a similarly broad application. It will apply to all Western Australia's native biota, including aquatic biota.

However, the Department of Fisheries will continue to be responsible for ensuring that the exploitation of fish resources is carried out in a sustainable manner by the commercial and recreational fishing sectors.



### Beyond species protection

Scientists usually explain biodiversity by describing it at three levels: genetic diversity, species diversity, and ecosystem diversity.

The Wildlife Conservation Act focuses on *species diversity*.

However, the new Act will better cater for genetic diversity within species by allowing for special protection to be given to any distinct population of biological entities that the Minister determines should be eligible for listing.

The protection of ecosystem diversity can be addressed, to some extent, by protecting listed ecological communities. This will greatly enhance and complement existing mechanisms to protect ecosystems, such as the conservation reserve system.

In order to protect biodiversity, and not just species, the new Act will:

- Protect threatened ecological communities as listed by the Minister; and
- Protect species, and define species to include, for the purposes of the Act, specified sub-species and specified populations of biological entities.

Above right: Masked boobies.  
Below: Australian sealion.  
Photos – Andrew Burbidge

Opposite page  
Top right: Bilby.  
Photo – Michael James  
Centre right: Woylies.  
Photo – Babs & Bert Wells  
Bottom right: Female green  
turtle.  
Photo – Keith Morris





## Listing of threatened and specially protected biota

### New categories of threatened species and ecological communities

At present, fauna may be specially protected by listing as likely to become extinct, rare or otherwise in need of special protection. Flora may be specially protected by listing as declared rare flora. Such species are then ranked informally for conservation priority, following international standards.

It is proposed to adopt a common categorisation for threatened species and ecological communities in line with internationally agreed standards used by the World Conservation Union (IUCN) that include recognition of threat priorities or rankings.

The listing categories for threatened species and ecological communities will be:

- Extinct, for species that are extinct in the wild and destroyed for ecological communities that have been removed or irrevocably changed
- Critically endangered, for species and ecological communities that are facing an extremely high risk of extinction or destruction in the near future
- Endangered, for species and ecological communities that are not critically endangered but still face a very high risk of extinction or destruction in the near future
- Vulnerable, for species and ecological communities that are not endangered or critically endangered, but still face a high risk of extinction or destruction in the medium term.

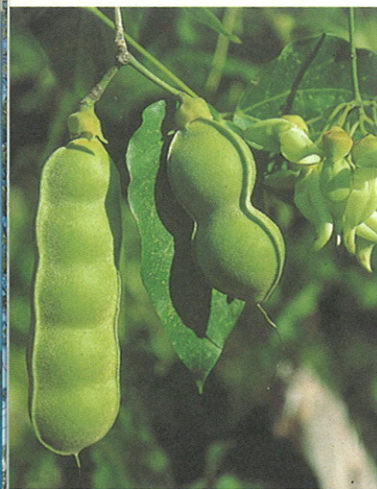
### New categories of specially protected species

Special protection may be appropriate for some biota that are not yet threatened.

It is proposed to also enable the listing and special protection of the following categories of species:

- Conservation dependent species, for species that are the subject of a specific conservation program, the cessation of which would result in the species becoming eligible to be listed as a threatened species
- Migratory species, for migratory species only partly resident in Western Australia and which are under threat in other jurisdictions or require cooperative conservation measures with other jurisdictions, including species protected under an international agreement to which Australia is a party





Top: Matchbox bean.  
Photo – Kevin Kenneally  
Above: Crystal Cave crangonyctoid.  
Photo – Edyta Jasinska  
Below: Flowers of marri.  
Photo – WA Herbarium

- Cetaceans, for the protection of whales, dolphins and other cetaceans
- Species subject to international conservation agreements, for species that are subject to an international agreement that requires Australia to provide special protection to that species
- Species for which a need for special protection exists for any other reason, such as species that are likely to come under significant pressure because of their commercial value (e.g. some cockatoos) or species that have a special value to science.

### An independent listing process

At present, the Minister is responsible for listing threatened species of flora and fauna. There are no statutory criteria as to when flora and fauna should be listed as threatened.

It is proposed that the new Act will set out clear criteria for the listing of threatened species and ecological communities. An independent scientific body, the Threatened Species and Communities Scientific Committee, will be given the task of providing advice to the Minister.

Where the Minister departs from the advice of the Committee, the Minister must table a statement in Parliament to say why he or she is doing so.

The Threatened Species and Communities Scientific Committee will also be responsible for providing advice on key threatening processes. (This topic is dealt with in more detail below.)

The public will be able to nominate threatened species, threatened ecological communities and key threatening processes for listing.

### Protection of listed biota

Direct protection of listed biota: modernising the “taking” offence

At present, the Wildlife Conservation Act makes it an offence to “take” threatened species unless a license to do so is first obtained from the Department of Conservation and Land Management (DCLM). “Take” is broadly defined to include the disturbance of fauna and the injury of flora.

The use of the word “take” may have been appropriate for earlier wildlife legislation that focussed on the hunting of fauna and picking



of flora, but it does not adequately describe the range of activities that should be covered by modern biodiversity conservation legislation.

It is proposed that the new Act will prohibit people from killing, harming or detrimentally disturbing a species protected by the Act unless they have an authorisation under the Act to do so.

Actions that modify or destroy a threatened ecological community will also be prohibited.

### Accountability for licensing decisions

At present under the Wildlife Conservation Act and associated regulations, the Minister (or DCLM, under delegated power) may grant a licence to take fauna, including threatened fauna. There are a limited number of types of licence that may be granted, such as licences for the taking of fauna causing damage to property, and licences to take and mark fauna for research purposes.

Rare flora is dealt with differently. The written consent of the Minister is required before a person can take rare flora (this power is delegated to DCLM in circumstances where the impact is not considered significant). The Wildlife Conservation Act does not restrict the circumstances in which the Minister may grant that consent, nor does legislation prescribe conditions that the Minister may set.

It is proposed to take a consistent approach to the authorisation of actions that will negatively impact on the conservation of any threatened species or ecological community. All such decisions involving the risk of significant conservation impacts will have to be authorised



by the Minister. In other cases authorisation will continue to be delegated to DCLM.

Above: Gibson Desert Nature Reserve.  
Photo – Graeme Liddelow

In addition, in the case of decisions that could reasonably be expected to result in the extinction or total destruction of a species or ecological community, the Minister's decision must be approved by the Governor (effectively Cabinet) and tabled in Parliament. This will ensure that the Government of the day will be held accountable for such decisions.

### International biodiversity conservation instruments

The protection of biodiversity is increasingly seen as a global concern, rather than simply as a concern of national and sub-national governments.

This change in perspective has been associated with an increasing number of international instruments addressing biodiversity conservation issues.



Above: Shoalwater Islands Marine Park.  
Photo – Michael James

Below: D'Entrecasteaux National Park.  
Photo – Cliff Winfield

Some of these instruments, such as those relating to Biosphere Reserves, have been given a measure of recognition in the Commonwealth's Environment Protection and Biodiversity Conservation Act.

The Biodiversity Conservation Act will make clear that the Minister must have regard to specified international instruments when making decisions under the Act.

### Modern enforcement provisions

At present, the only enforcement mechanism available in the Wildlife Conservation Act is the prosecution, after the event and with inadequate penalties, of people who have committed an offence under the Act (maximum \$10,000 for taking a threatened species in comparison with over \$500,000 under Commonwealth legislation).

The Biodiversity Conservation Act will address these inadequacies by:

- ensuring that fines are adequate to provide a real deterrent
- empowering the Minister to make a conservation order to require landholders to protect, conserve or manage threatened species or ecological communities
- providing that a person convicted of breaching the Act may be required to make good the damage they have caused.

Some legislation, such as the Commonwealth's Environment Protection and Biodiversity Conservation Act, provides that conservation organizations and members of the public may apply for an injunction to restrain unlawful acts that will affect threatened species or ecological communities. Consideration will be given to including enforcement provisions of this kind in the new Biodiversity Conservation Act.



## Application to Government

The fauna provisions of the Wildlife Conservation Act do not bind State Government or Commonwealth Government agencies.

It is accepted that, as a matter of principle, the same rules should apply to private persons and government agencies.

The new Act will provide that it binds State agencies and, so far as is legally possible, Commonwealth agencies.

## Protection of habitat

### Critical habitat

The Biodiversity Conservation Act will allow the Minister to identify habitat critical to the survival of a species or ecological communities.

A database of such habitat will be maintained, alongside the existing databases for threatened species and threatened ecological communities.

The Minister will have the power to issue a conservation order to protect critical habitat.

### Conservation agreements

The new Act will empower the Minister to enter into a conservation agreement, on a voluntary basis, with a private landholder or a public authority.

Conservation agreements will outline what steps the parties will take to enhance biodiversity conservation on the land in question.



Above: Mangroves at St George Basin.  
Photo -Tim Willing

They could set out actions that should or should not be taken on the land, and measures that the Minister will take to provide assistance for positive management activities (see page 19). There would be provision for ongoing management assistance from the DCLM in such agreements.

A conservation agreement may be framed to bind the present landholder, but not future landholders.

Conservation agreements will be available to indigenous persons and corporations who own, lease or manage land.

They will provide a way to achieve biodiversity conservation outcomes where the indigenous persons or corporation in question might not wish to see a formal conservation reserve created, but are interested in entering into a partnership agreement with the State Government.

Existing non-binding voluntary undertakings to maintain wildlife habitat through the highly successful Land for Wildlife program would remain unchanged.

## Nature conservation covenants

DCLM has a conservation covenant program, under which landholders can agree to set aside part of their land for nature conservation purposes. Such an agreement places a restriction on the use of land that can bind future, as well as present, landowners.

In order to get its conservation covenant program off the ground, DCLM has been using a general covenanting power in the Transfer of Land Act on an interim basis. The opportunity will now be taken to introduce covenanting provisions that are designed specifically for protecting biodiversity.

The new conservation covenant provisions will allow landholders to enter into positive management obligations, including the

obligation to manage the land in accordance with a plan of management.

One option that will be explored is whether the Minister should have the power to waive rates, taxes and charges. Such a power could be granted to the Minister with appropriate safeguards (e.g. requirement for the agreement of a local government, where local government rates are to be waived).

DCLM's conservation covenant program will continue to be supported by a stewardship program under which it will provide ongoing assistance, including expert advice, to landholders.

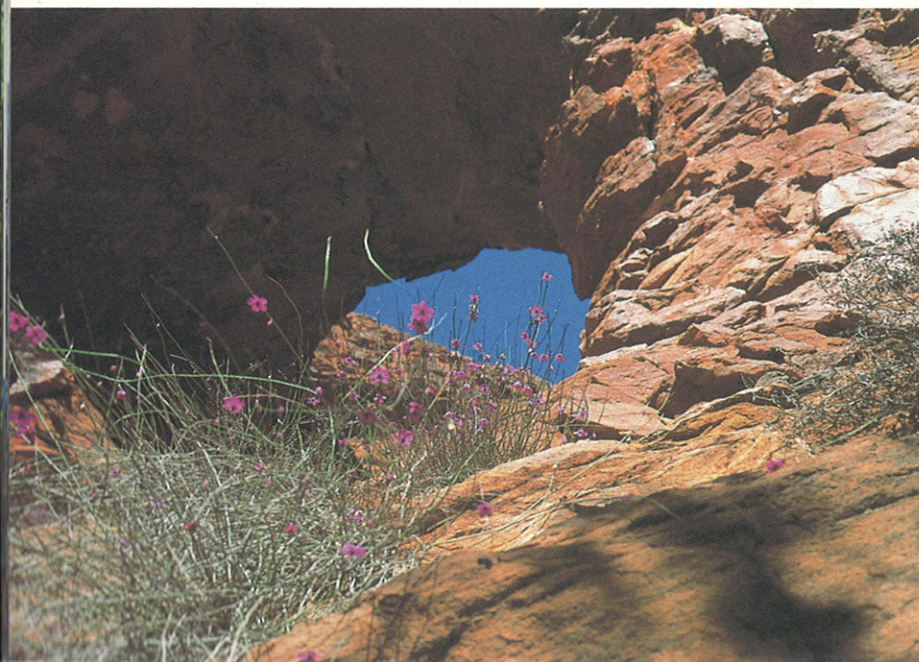
## Controlling threatening processes

### General controls on threatening processes

While the Wildlife Conservation Act does not do so, modern biodiversity conservation legislation sometimes provides for the listing of "key threatening processes" as a means to identify and deal with the causes of biodiversity loss.

For example, the Commonwealth Government has had the ability to list key threatening processes since 1992, and has done so on a number of occasions. Key threatening processes listed by the Commonwealth have included predation by the European Red Fox and the incidental catch of seabirds during longline fishing operations.

Below: Chapman's tetraetheca at Serpents Glen, Carnarvon Range.  
Photo - Daphne Edinger



The new Act will enable the Minister to list a threatening process as a key threatening process where:

- there is a significant risk that the threatening process will cause a native species or ecological community to become threatened; or
- there is a significant risk that the threatening process is likely to cause a threatened species or threatened ecological community to become listed in another category representing a higher degree of endangerment.

Once a key threatening process is declared, the Government will have the power to pass regulations, or use conservation orders, to control the impacts of that threatening process on native animals and plants. Key threatening processes will be addressed in relevant recovery plans.

### Special controls for biological threats

It is proposed that environmental weeds and pests will be dealt with directly by the Act, rather than being dealt with under the regulations relating to threatening processes.

The Act will empower the Minister to determine that a biological entity is, or is likely to become, a threat to biodiversity conservation or a biodiversity component.

Certain acts, such as bringing the entity into the State or transporting it within the State, will then be prohibited unless they are authorised under licence.

In addition, the Minister may make orders for the eradication, reduction or containment of



Above: Pebble-mound mouse.  
Photo – Babs & Bert Wells

environmental weeds and pests. In doing so, the Minister must have regard to whether resources are available for that task, and whether it is practicable to eradicate, reduce or contain the species.

The new Act will also impose an obligation on the Chief Executive Officer of DCLM to reduce, contain or eradicate environmental weeds or pests on land the Department manages, subject to the practicability of doing so and the availability of resources.

It is acknowledged that environmental weeds and pests are already dealt with to a limited extent by existing laws. It is proposed that the new Act will not impose further controls in areas that are already adequately regulated.

## **“Conservation offset” conditions**

In some cases, it may be appropriate to allow a certain activity to proceed that compromises the protection of specially protected flora, fauna or ecological communities, provided an “offset condition” is imposed to ensure that any adverse impacts of that activity are more than offset by positive conservation outcomes elsewhere. This offset would be structured to require either a “maintenance of conservation values” or a “net benefit to conservation”, depending on the circumstances.

For example, it may be appropriate to allow an activity to proceed that results in the taking of some threatened flora (which does not seriously endanger the species), as long as binding conditions are imposed requiring enhanced overall conservation of that flora species.

Enhanced conservation could be achieved through translocation, or re-establishment, or secure and ongoing protection of other key populations. The conservation offset power would also allow the Minister to require payments to be made to cover ongoing species conservation management costs.

It is proposed to include condition-setting powers that would allow conservation offset conditions to be imposed in appropriate cases.

## **Bioregional planning**

The new Act will provide that the Minister may approve or recognise “bioregional plans”.

Bioregional plans may describe, for a particular area, matters such as:

- the components of biodiversity, their distribution and conservation status

Below: Scott National Park.  
Photo – Department of  
Conservation and Land  
Management





- objectives for biodiversity conservation in the area
- actions that will be taken to achieve these objectives
- measures for monitoring the implementation of the plan.

A body other than DCLM could prepare a bioregional plan, if the plan met criteria set by the Minister. For example, the Minister could recognise a plan prepared by a regional natural resource management body that met such criteria.

The Act will provide that once a bioregional plan had been approved or recognised, it would have to be taken into account in making relevant decisions under the Act.

## Bilateral agreements

The *Commonwealth's Environment Protection and Biodiversity Conservation Act 1999* contains a number of provisions relating to the protection of biodiversity, including

- an approval process for actions that are likely to have a significant impact on nationally threatened species, nationally threatened ecological communities and migratory species protected under international agreements
- an approvals process for certain actions on Commonwealth land (e.g. an action that would injure a member of a nationally threatened species)
- an approvals process for commercial exports of wildlife and wildlife products.



Above: Underground orchid.  
Photo – Andrew Brown

The Commonwealth Act also allows for the accreditation of State arrangements in these areas, subject to specified criteria being met.

Below left: Bottlenose dolphin, Monkey Mia.  
Photo – Cindy Flaherty

The Biodiversity Conservation Act will ensure that the Commonwealth criteria for accreditation can be met, and that the Minister may enter into a bilateral agreement with the Commonwealth Environment Minister on the State's behalf.

This will allow bilateral agreements to be entered into where regulation could be carried out more efficiently and effectively at the State level.





# Restoration of biodiversity

## Overview

Effective biodiversity conservation requires active planning and management to provide a long-term future for all native species and ecological communities.

To assist in this task, the Biodiversity Conservation Act will:

- empower the making of recovery plans for threatened species, ecological communities and critical habitats
- provide that public authorities are obliged to take all reasonable steps to act in accordance with such recovery plans
- empower the Minister to issue conservation orders to prevent the continuation of actions that are impeding the recovery of a threatened species or ecological community
- empower the CEO to provide assistance to landholders to encourage the management and restoration of biodiversity.

## Recovery plans

It is proposed that the Minister may adopt a wildlife management program to provide for the recovery of a native species, ecological community or critical habitat. Once adopted, all public authorities will be obliged to take all reasonable steps to act in accordance with the management program. This will apply both to their actions on the ground (e.g. road works by local government) and the decisions they make (e.g. subdivision decisions by the WA Planning Commission).

## Conservation orders

As noted above, the Act will empower the Minister to make conservation orders to protect, conserve or manage threatened species or ecological communities.

This power would be available to the Minister in cases in which a person's actions are contrary to a recovery plan and are impeding the recovery of a threatened species or ecological community.

## Assistance for biodiversity management and restoration

Regulation is necessary to ensure that biodiversity is protected. However, it is limited in its ability to assist with the management and restoration of biodiversity. The Government recognises that, in cooperation with the Commonwealth Government, it has a role in providing financial assistance and incentives to encourage the management and restoration of biodiversity.

To facilitate the provision of this assistance, the Act will empower the CEO of DCLM to:

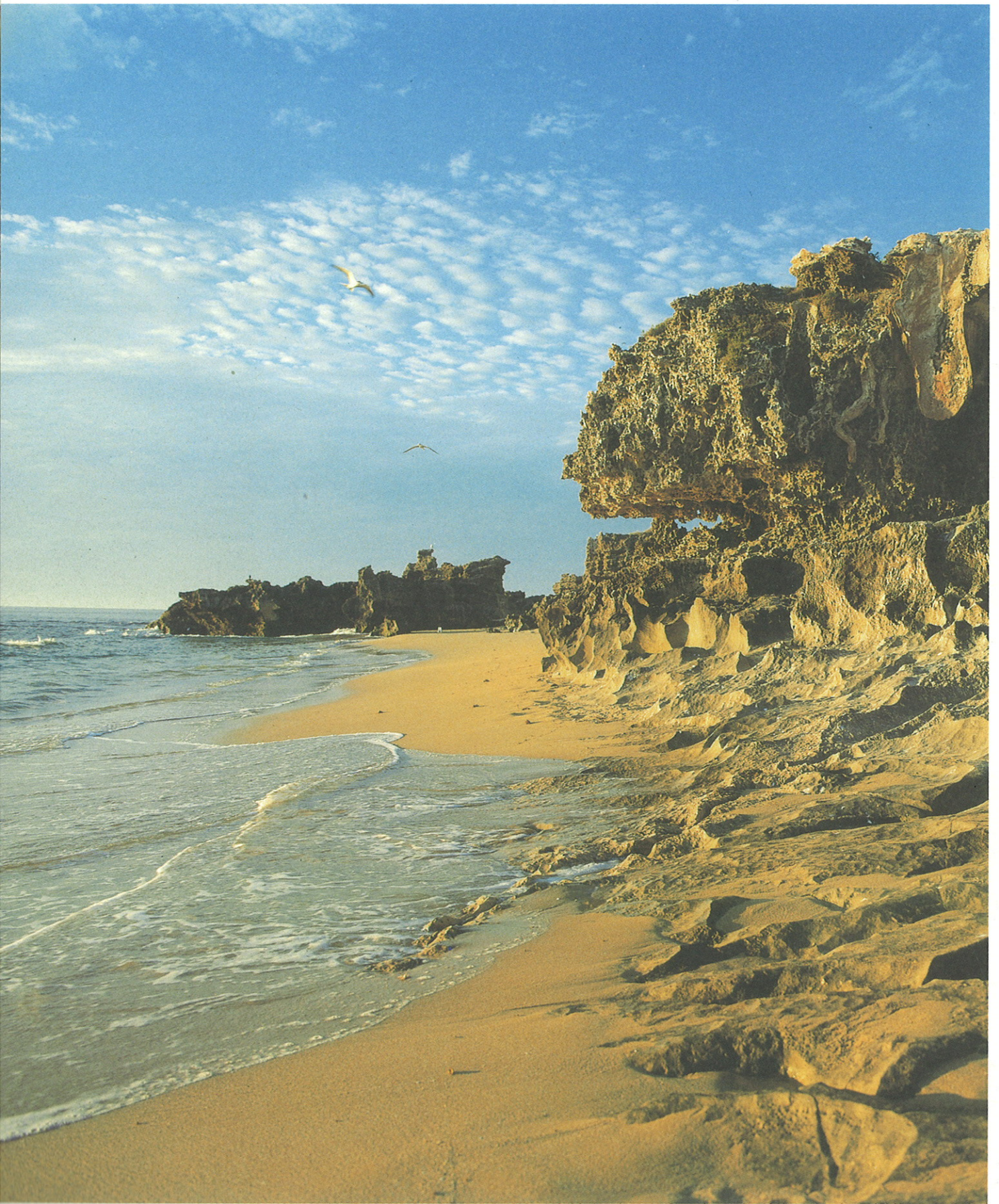
- grant money or supply goods to the landholders
- provide technical services such as wildlife surveys and land and species management planning, and
- arrange for DCLM to undertake work on the land in question.

In order to ensure accountability, the CEO will be given the power to recover goods or money that are used for an unauthorised purpose.



Opposite page  
Barrow Island euro.  
Photo – Andrew Burbidge

Above: *Acacia aprica*.  
Photo – Sally Madden



# Sustainable use of biodiversity

## Overview

Biological resources have a range of uses. Plants and animals have been used for millennia by Aboriginal people, and continue to be used for traditional purposes. Our rich marine life and terrestrial fauna and flora are essential to Western Australia's rapidly growing eco-tourism industry. Our wildflowers are sold to the world. And our biological resources are a potential source of new pharmaceuticals and other products.

Apart from its economic benefits, sustainable use of native plants and animals provides an incentive for the conservation of natural habitats. Consistent with its focus on sustainability, the Government wishes to encourage the sustainable use of Western Australia's biological resources. To this end, the new Act will build on existing controls in the Wildlife Conservation Act and:

- provide that one of its objectives is to provide for the ecologically sustainable use of biological resources
- provide for the application of controls on all persons who take native animals anywhere, native plants in areas owned by the Crown, or native plants on private land for the purpose of sale, where this is required to ensure conservation of those resources
- contain special licensing provisions for bioprospecting operations
- provide for the making and implementation of wildlife management plans to plan for the ecologically sustainable use of native flora and fauna

- guarantee the continuing right of Aboriginal people to use biota for customary, non commercial purposes (without a licence) and seek to ensure that the use of those biological resources is ecologically sustainable.

## Objectives

One of the objectives of the Act will be to ensure that the use of biological resources associated with native biota is ecologically sustainable.

## General controls

The Wildlife Conservation Act requires approval to be obtained before any person "takes" native fauna, unless an exemption applies (e.g. an open season on a problem bird species). As noted above, "fauna" is broadly defined to include any native living thing except a human or a plant.

In addition, approval is required before any person can take flora from Crown land.

The new Act will adopt a similar approach. It will:

- require a licence for the taking of native flora from Crown land, while allowing the Minister to declare exemptions where such control is not warranted
- require a licence for the taking of other biota, wherever it may be, while also allowing the Minister to declare exemptions.



Opposite page  
Penguin Island.  
Photo – Michael James

Above: Busselton jetty.  
Photo – Mick Eidam



Above: *Banksia verticillata*.  
Photo – Morris McDonald

Below: Big Brook.  
Photo – Western Australian  
Tourism Commission

In addition, the new Act will continue the practice of requiring the sellers of native flora from private land to be regulated through licensing.

These general provisions will be used to ensure that native biological resources are used in an ecologically sustainable manner where existing regulation does not adequately achieve that end.

It is intended that the general provisions will be used to regulate activities including:

- wildflower picking on Crown land
- taking of firewood from Crown land
- destruction of native animals causing damage to property
- the kangaroo industry, and
- farming of crocodiles and emus

The Act will provide for wildlife management plans which will be used to guide licensing decisions and ensure that the use of particular biological resources is ecologically sustainable.

The Biodiversity Conservation Act will provide that where fees are established for the administration and regulation of the sustainable use of wildlife, these fees will be used to cover the costs of that administration and regulation in a “user pays” system.

The general provisions relating to the use of biological resources will not be used to regulate activities already regulated under other laws, including:

- fishing
- logging in State forest and timber reserves.



## Export of fauna

At present, the Wildlife Conservation Act and associated regulations require a person who wishes to export fauna from the State to obtain a licence to do so. "Fauna" is defined to include the carcass, skin, plumage or fur of the animal in question.

This requirement will be continued under the new Act, so that DCLM can ensure that industries based on the export of native fauna and associated products are carried out in an ecologically sustainable manner. The new Act will also provide for accreditation of particular flora and fauna industries so that products from those operations do not require trade or export approval or licensing in all cases.

The new Act will also provide a similar framework for flora harvesting and export.



Above: Malleefowl.  
Photo – Babs & Bert Wells

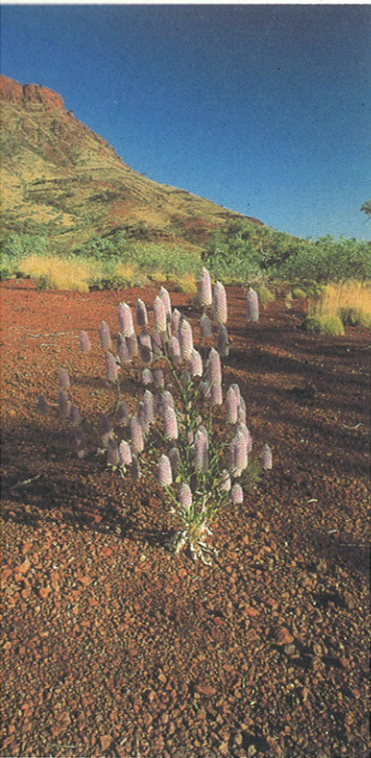
## Bioprospecting

Bioprospecting for biologically active compounds in terrestrial and marine organisms can lead to the development of new human and veterinary pharmaceuticals, agrochemicals and other products.

With its abundant marine and terrestrial biodiversity, Western Australia is well placed to take advantage of the opportunities that are offered by access to, and commercial exploitation of, these resources.

Below: Rowles Lagoon.  
Photo – Department of  
Conservation and Land  
Management





Above: Karijini National Park.  
Below right: Ningaloo Marine  
Park.  
Photos – Western Australian  
Tourism Commission

The new Act will include a licensing regime for terrestrial bioprospecting activities that will ensure that:

- biological resources are used in an ecologically sustainable manner and biodiversity is protected
- benefits arising from exploitation of Western Australia's biological resources are shared with the Western Australian community
- Aboriginal people's native title and intellectual property rights are recognised and protected.

Bioprospecting of flora is regulated under the Conservation and Land Management Act, whereas bioprospecting of fish is regulated under the Fish Resources Management Act.

Comment is invited as to the most appropriate regime for the regulation of bioprospecting across the range of WA's biota.

## Nature-based tourism and recreation

It is important that nature-based tourism and recreation is properly managed so that the biota on which that tourism depends is protected for the future.

DCLM currently has some regulatory control over nature-based tourism and recreation where activities occur on lands and waters managed by DCLM, or where there is interaction with fauna (e.g. swimming with dolphins).

The Department of Fisheries also has some regulatory control, under the *Fish Resource Management Regulations 1995*, over aquatic eco-tourism in specified areas.

Comment is invited as to the most appropriate regime for the regulation of nature-based tourism.







## Use of biological resources by indigenous people

The Act will respect native title and protect customary use of biological resources that takes place in accordance with traditional cultural practices.

To this end, the existing rights of Aboriginal people to take animals and plants for food will be extended to guarantee the right of Aboriginal people to use biological resources for any customary purpose.

As with the existing Wildlife Conservation Act, the consent of the owner or occupier will be necessary where the biological resources are on private land.

Under the Wildlife Conservation Act, the right of Aboriginal people to take flora or fauna may be suspended by the Government where that right is being abused or where any species of flora or fauna is likely to become unduly depleted.

The Government is keen to ensure that the use of biological resources by indigenous people takes place in a manner that protects biological diversity and is ecologically sustainable.

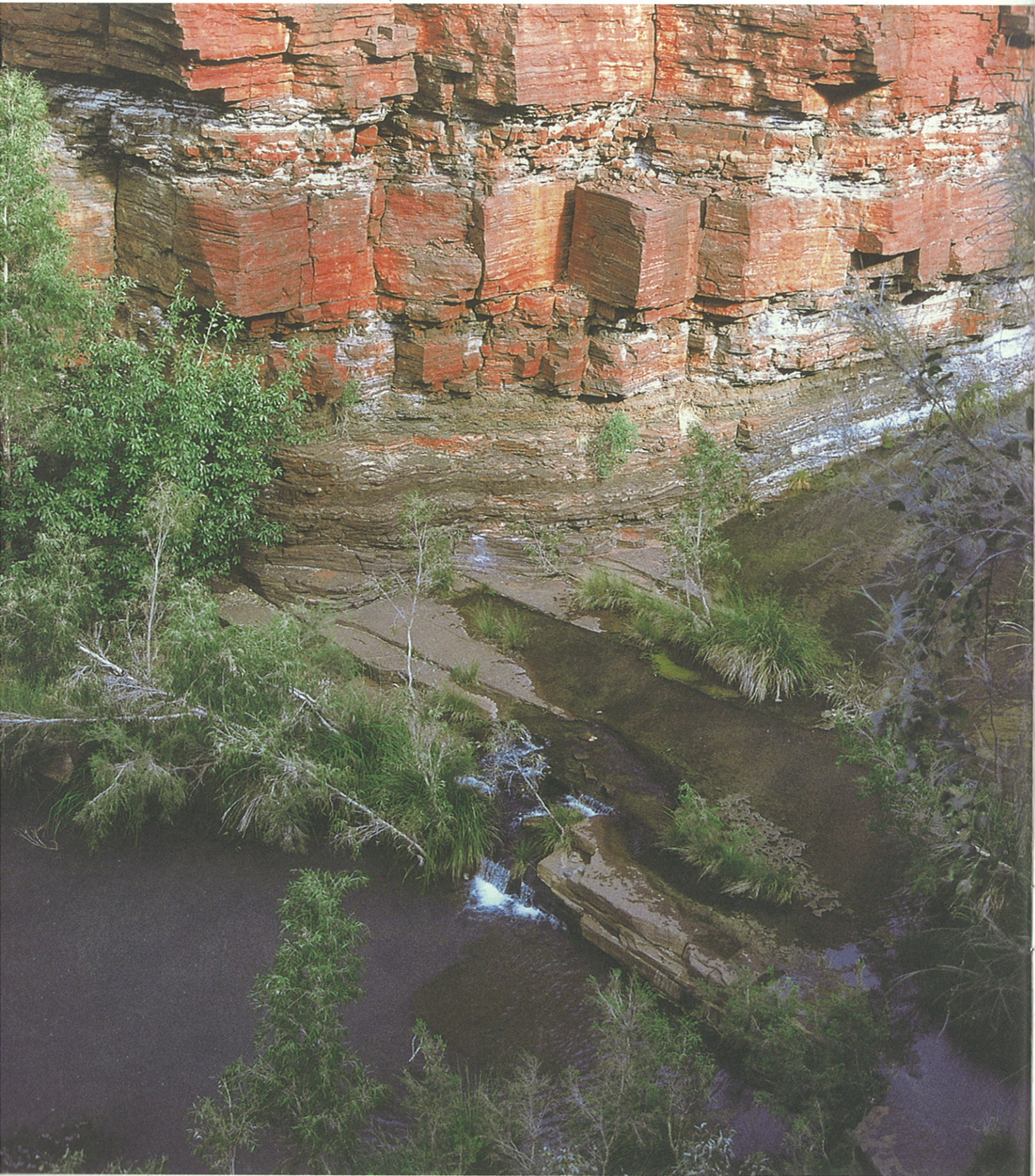
One option would be to carry over the existing provision relating to the suspension of rights, where this is required to ensure the special protection of particular species, into the new Act.

Comment is sought, particularly from Aboriginal persons and organizations, as to how the objective of ecological sustainability could be best achieved.



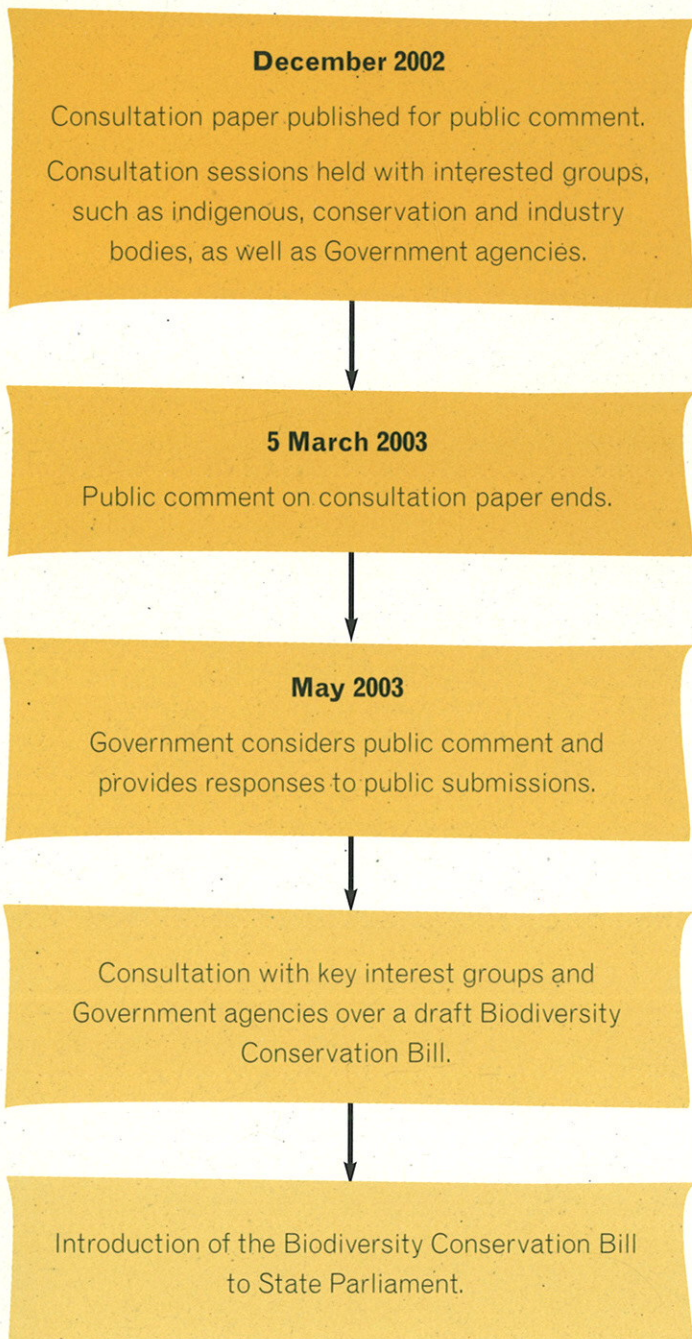
Above: Noisy scrub-bird.  
Photo – Babs & Bert Wells

Below: Manta ray and diver,  
Ningaloo Marine Park.  
Photo – Western Australian  
Tourism Commission



# Public consultation on the Biodiversity Conservation Act

## Public consultation process



## What is not negotiable

The Government has committed to introducing a Biodiversity Conservation Act, and will do so.

## What is negotiable

The Government will consider any proposal as to the content of the Act that is consistent with the Act's themes of protecting, restoring and promoting the sustainable use of biodiversity.

## How to comment

Please send your submission to the Executive Director of the Department of Conservation and Land Management, attention Kylie Dyson.

Email address:

[biodivconsult@calm.wa.gov.au](mailto:biodivconsult@calm.wa.gov.au)

Fax:

9386 1286

Mail address:

Executive Director  
Department of Conservation and  
Land Management  
Cnr Hackett &  
Australia II Drives  
Crawley WA 6009  
(Attention Kylie Dyson)

We would like to make submissions available on DCLM's web site. Please let us know if you would prefer your submission to be kept confidential.

Opposite page  
Dales Gorge, Karijini National Park.  
Back page  
Conspicuous Cliff Beach.  
Photos – Cliff Winfield



DEPARTMENT OF  
**Conservation**  
AND LAND MANAGEMENT  
*Conserving the nature of WA*

