

*New future for
biodiversity conservation*

by Gordon Wyre and Sophie Moller





*The new Biodiversity Conservation Act 2016
and its associated regulations mark a significant
milestone for the future of biodiversity
conservation in Western Australia.*



Any search online for the term 'biodiversity conservation' will quickly locate information about how biodiversity is essential for the biological life support systems that we all depend on. Natural biological services or 'ecosystem services' provide oxygen to breathe, clean water to drink, fertile soil and productive oceans for food, and many other resources. In short, if we fail to conserve biodiversity, we will fail to have the full suite of natural biological resources we need to survive. There are also ethical reasons for conserving biodiversity, for recognising the rich tapestry of life on the planet and for living sustainably. And human health studies demonstrate that we also benefit as individuals from appreciating first hand, the sights, sounds, and smells of the natural world around us. We all have a role in ensuring the long-term conservation of Australia's biodiversity.

A BIODIVERSITY WORTH CONSERVING

Western Australia has world-renowned biodiversity in terms of both variety of species and their uniqueness. We have more than 12,000 flowering plant species (more than 60 per cent are endemic), about 200 species of mammals, around 850 bird species, 550 reptile and 80 amphibian species, more than 2000 fish species, and invertebrates number in the hundreds of thousands.

The State is so diverse on a global scale that it qualifies (without the rest of Australia) as one of the world's megadiverse countries (more than 5000 endemic flowering plant species and diverse marine ecosystems). Indeed, if WA was a country, it would be in the top 10 largest countries on Earth, as well as being one of the most megadiverse.

WA also has eight of the 15 nationally recognised terrestrial Australian biodiversity hotspots as well as world-renowned marine biodiversity. South-west WA is one of the world's biodiversity hotspots with about 3000 endemic flowering plant species (as well as a significant number of animal species), of which many are under threat. This is



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Main Spotted-thighed frog.

Photo – David Bettini

Inset Ningaloo Marine Park.

Photo – Clay Bryce/Lochman Transparencies

Above Leschenaultia, like this one pictured at Drummond Reserve, was first protected in WA in 1912.

Photo – Sallyanne Cousans

Right Western ringtail possums are classed as critically endangered.

Photo – David Bettini



largely due to the reduction and dramatic altering of about 30 per cent of the State's original native vegetation.

A LEGAL FOUNDATION

Biodiversity conservation legislation provides the legal foundation for conserving biodiversity, and for protecting the natural processes it provides. Modern biodiversity conservation legislation promotes, encourages and facilitates conservation efforts by individuals, community groups and corporations, because the biodiversity conservation outcomes needed cannot be achieved by governments alone.

The *Wildlife Conservation Act 1950* (Wildlife Act) was archaic and failed to provide a sound baseline level of protection for biodiversity. It was

penalty and regulatory based, with limited provisions for the protection of species, did not recognise ecological communities or habitats, had inadequate deterrent penalties and had no capacity for promoting conservation, consulting with the community or stakeholders, or facilitating or recognising conservation efforts. These failings are largely attributable to the age of the Wildlife Act – 68 years – and the fact that it was heavily based on legislation going back more than 100 years, with an initial focus of protecting the King's game from poaching (see 'The path of biodiversity legislation' on page 34).

The need for new biodiversity conservation legislation has been recognised for many years, starting with the proposal to replace the Wildlife Act

“The State is so diverse on a global scale that it qualifies (without the rest of Australia) as one of the world’s megadiverse countries ...”



Left The spectacular glossy ibis is protected under an international agreement.
Photo – Marc Russo

Above Australian green skinhead is one of WA’s many fungi species.
Photo – Richard Robinson/DBCA

with a revised and expanded *Wildlife Conservation Bill 1992*. A series of proposals for new legislation followed but, due to various reasons, were not brought to fruition.

A NEW AGE

In developing the new Act, particular attention has been given to recognising modern and widely accepted conservation concepts. There is a new focus on biodiversity conservation outcomes, including providing tools to various sectors of the community to undertake and become involved in conservation, knowing that their efforts will be recognised and protected. A fundamental change is that decision-making is now more inclusive, particularly for landholders and managers, while also directly encouraging and

protecting private conservation initiatives.

The new legislation includes the following initiatives:

- improved protection for threatened species, including conservation of their habitats;
- measures to conserve threatened ecological communities and critical habitats;
- cooperative provisions to recognise, promote and provide protection for private conservation efforts, including biodiversity conservation agreements and conservation covenants;
- public nomination provisions for listings of threatened species, communities and threatening processes;
- greatly increased deterrent penalties for people and corporations impacting on threatened species and communities

(up to \$500,000 for a person and \$2.5 million for a corporation);

- greatly increased deterrent penalties for unlawful sandalwood trading, increasing these from \$200 under the Sandalwood Act to \$200,000 for individuals and \$1 million for corporations, with additional penalties per tonne of unlawfully obtained sandalwood;
- an ability to require offenders to repair impacts to species and ecological communities in addition to penalties for damage done;
- control over impacts of environmental pests where these are not addressed under other legislation;
- biodiversity management programs, to cover the arrangements for sustainable harvesting, damage mitigation and other conservation management issues;



- reducing duplication by recognising approvals for impacts on biodiversity under other legislation, including the *Environmental Protection Act 1986*; and
- providing the basis for State biodiversity management arrangements to be recognised and exempted from secondary approval under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Table 1 provides a summary of the major differences between the Biodiversity Conservation Act and the principal Act it is replacing, the Wildlife Act. This comparison demonstrates how archaic the Wildlife Conservation Act is. With hindsight it is remarkable that more of the State's biodiversity has not been lost over the past 68 years. Thanks must go to the many dedicated people across the community who have worked tirelessly for biodiversity conservation.

This new legal framework recognises that landholders and managers are often best placed to appreciate the biodiversity values of their land and that they know how to best to help conserve these. New measures involving, for the first time, statutory processes for consultation with landholders and managers include:

- advice on significant threatened species' and threatened ecological communities' habitat locations;
- the preparation of threatened species and community recovery plans;
- the preparation of biodiversity management programs;
- consideration of critical habitat declarations; and
- development of environmental pest notices.

One fortunate consequence of the long delay in bringing the Biodiversity Conservation Act to fruition is that it includes developments in contemporary legislation that have been made over the past 25 years nationally and in other states. Significantly, the important biodiversity conservation provisions of the EPBC Act have been taken into account and are replicated at a scale appropriate to a State jurisdiction. This provides opportunities for the Commonwealth to recognise State decision-making and management under the Biodiversity Conservation Act and to accredit these arrangements under Part 4 of the EPBC Act. Where State biodiversity management is accredited duplicate Commonwealth approvals will not be required.

Above left The penalties for taking fauna such as bobtails have been increased under the new legislation.

Above Western wattlebirds are commonly seen throughout southern WA.
Photos – David Bettini

Another significant development for the Biodiversity Conservation Act is that it will also eventually fully replace the *Sandalwood Act 1929*, which is even older than the Wildlife Act. The May 2014 report of the Legislative Council's Standing Committee on Environment and Public Affairs on its *Inquiry into the Sandalwood Industry in Western Australia* found it to be severely lacking in its ability to protect wild sandalwood.

Importantly, the Biodiversity Conservation Act has been prepared to support matters that have been operating effectively and simply without legislation. An example is the process for listing threatened species and communities. The Act makes a significant change with the requirement (for the first time) that the Minister must have regard to expert scientific advice when making listing



Top Australia has about 108,000 animals without back bones, including the jewel beetle (*Temognatha brucki*).
 Photo – Jiri Lochman

Above Short-eared rock wallabies are one of WA’s mammal species.
 Photo – David Bettini

decisions. The Act enables the Minister to continue using the non-statutory Threatened Species Scientific Committee, which has been proven to work very well for more than 20 years, rather than also requiring a statutory committee to provide this advice. This avoids the additional costs and bureaucracy that establishing and maintaining a formal statutory committee would entail.

Table 1: Key differences between the *Biodiversity Conservation Act 2016* and *Wildlife Conservation Act 1950*

Biodiversity conservation matter	Biodiversity Conservation Act	Wildlife Conservation Act
Listing of threatened species in categories of Vulnerable, Endangered and Critically Endangered with public nominations	Yes	No
Listing of threatened ecological communities with public nominations	Yes	No
Listing of threatening processes with public nominations	Yes	No
Minister must consider scientific advice before listings	Yes	No
Listing of critical habitat with landholder consultation required	Yes	No
Preparation of recovery plans to guide recovery of threatened species and communities, with community consultation	Yes	No
Preparation of biodiversity management programs for sustainable use and conservation of non-threatened species	Yes	No
Preparation of voluntary Biodiversity Conservation Agreements to assist and guide cooperative programs for biodiversity conservation on private and leasehold lands	Yes	No
Preparation of Biodiversity Conservation Covenants on private lands to secure long-term protection for private landholder biodiversity conservation efforts	Yes	No
Ability to regulate biodiversity impacts of environmental pests	Yes	No
Ability to adopt codes of practice and to regulate nature-based tourism potentially impacting on biodiversity	Yes	No
Significant deterrent penalties covering unlawful taking of biodiversity, up to \$500,000 for a person taking critically endangered species	Yes	No (Maximum \$10,000)
Ability to require reparation of biodiversity habitat damage	Yes	No
Act applies in full to State Government agencies for flora, fauna and threatened ecological communities	Yes	No (only for flora)
Publicly available Ministerial Guidelines to provide explanations and standards for decision-making under the Act	Yes	No

The path of biodiversity legislation

Game Act 1892

"An Act to provide for the Preservation of Imported Birds and Animals and of Native Game."

Provided for the Governor to proclaim closed seasons, during which native game and exotic game animals and birds could not be lawfully taken. Native game included ducks and other bird species, such as black swans and malleefowl, as well as kangaroos, tammar wallabies and seals.

Game Act 1912

"An Act to consolidate and amend the Laws relating to Imported and Native Game."

In addition to closed seasons, this Act provided for the Governor to proclaim "acclimatisation areas" where introduced species were to be protected under the control of the Acclimatisation Committee of Western Australia. This Act also provided for the Governor to identify native game species that were wholly protected from hunting.



Native Flora Protection Act 1912

"An Act to protect the Native Flora of Western Australia."

Protected eight genera of native plants growing on Crown land from being picked without authorisation. These included acacias, kangaroo paws, boronias, Christmas bush and Leschenaultia.

Game Act Amendment Act 1913

Amended the Game Act by adding various provisions for regulating commercial harvesting of species and imposing royalties on skins (e.g. kangaroos).

Native Flora Protection Act 1935–1938

"An Act to provide for the protection of the Native Flora of Western Australia."

This Act replaced the 1912 Flora Act and added protection from taking native flowers from private property where the owner had not given permission, while also expanding the range of native flora species protected.

Fauna Protection Act 1950

"An Act to provide for the Conservation and Protection of Fauna."

This provided a fundamental change in the legislative approach from protecting

fauna for hunting to also protecting fauna as part of the State's heritage.

The Act covered only native vertebrate fauna and did not protect invertebrates, or species listed as vermin under the *Vermin Act 1918*. It provided for reservation of lands as fauna sanctuaries.

Wildlife Conservation Act 1950 (to 1980)

"An Act to provide for the Conservation and Protection of Wildlife."

A series of amendments were made to the Fauna Protection Act. The most significant of these occurred between 1967 and 1980 to change the name of the Act to the Wildlife Conservation Act and incorporate flora protection, while repealing the *Native Flora Protection Act 1935–1938*. The flora conservation provisions introduced the concept of 'declared rare' flora and provided for controls over the conservation of declared rare flora on both private and public lands in addition to controls over the harvesting of wild flora from public lands.



WHAT HAPPENS NEXT?

The Biodiversity Conservation Act will replace the Wildlife and Sandalwood Acts in their entirety. As part of this, detailed biodiversity conservation regulations are being prepared. These regulations will replace the Wildlife Conservation Regulations that cover matters such as the licences that are required to take, keep, study and buy and sell protected native animal and plant species. They will also replace the Sandalwood Regulations. The new

regulations will include a new system to regulate and track wild sandalwood harvests from harvest through to processing. This is necessary to ensure that only lawfully obtained sandalwood is traded.

On 3 December 2016 a number of the new provisions in the Biodiversity Conservation Act became operational. These include 'biodiversity conservation covenants' and 'biodiversity conservation agreements' which provide enhanced protection for private biodiversity

conservation efforts. It is intended that the remaining provisions of the Act and the Biodiversity Conservation Regulations will be in place by the end of 2018. Relevant stakeholders and interest groups will be consulted during the development of the Biodiversity Conservation Regulations.

These first steps represent significant progress in a long-overdue process. However, with these first steps underway, the health and sanctity of WA's precious environment looks set to be protected well into the future.

Above Honey possums are endemic to the south-west of WA.

Photo – Sallyanne Cousans

Above right Kangaroo paw was first afforded protection against unlawful taking in 1912.

Photo – David Bettini

Right Pied herons are found in the far north of WA.

Photo – Marc Russo



Gordon Wyre was the former Department of Parks and Wildlife's Director of Legislative and Policy Reform and was instrumental in bringing the Biodiversity Conservation Act to fruition.

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For more information on the Biodiversity Conservation Act visit www.dpaw.wa.gov.au/plants-and-animals/468-biodiversity-conservation-act-2016. Feedback on the ministerial guidelines can be submitted by email (biodiversity@dbca.wa.gov.au) until 30 September 2018.

A report summarising the feedback received and how it has been addressed will be published by the department at the end of 2018.