



8. Biodiversity conservation under West Australian law

The south-west botanical province of Western Australia is one of 25 “hot-spots” for biodiversity in the world. The level of species richness in the State is as a result of relative isolation, low fertility soils, relative geological stability and variation in climatic conditions. Many of these species are naturally rare. This natural rarity combined with the effects of European settlement has resulted in many native species becoming extinct or critically endangered. Processes that have led to this damage are well known – land clearing, introduction of pests and diseases, inappropriate land use practices and over-exploitation. As many as 450 species of plants are predicted to face extinction over the next 50 to 100 years due to salinity in agricultural areas.

This fact sheet examines Western Australian laws relating to the protection of biodiversity. It should be read in conjunction with **Fact Sheet 9: Biodiversity conservation under Commonwealth law**, which considers federal laws applying to biodiversity.



What is “biodiversity”?

Biodiversity (or “biological diversity”) is defined in the *Convention of Biological Diversity* as:

“the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.”

Biodiversity is therefore the diversity of plants, animals and microorganisms, the genes they contain, and the ecosystems of which they form a part. It is not static, but constantly changing; it is increased by genetic change and evolutionary processes and reduced by processes such as habitat degradation, population decline, and extinction.



How is biodiversity protected?

There are a number of statutes directly or indirectly protecting biodiversity in Western Australia. The most important of these is the *Wildlife Conservation Act 1950*. The Act is administered by the Department of Conservation and Land Management under guidance from the Conservation Commission of Western Australia.

Under the *Wildlife Conservation Act*, individual species of plants and animals are protected, with the level of protection varying depending on whether the species is rare or endangered. Aquatic species may also be protected under the *Fish Resources Management Act 1994* (see **Fact Sheet 19: Fishing**). Groups of species and their habitats (often referred to as “ecological communities”) are not directly protected under Western Australian law.

Other laws relevant to biodiversity protection are those protecting particular areas (for example, national parks and other conservation areas) and those controlling activities that may directly or indirectly damage biodiversity (for example, planning laws or laws controlling land clearing).



Protection of flora

What is “flora”?

Flora means any plant or part of a plant that is native to Western Australia or is not native, but which has been declared to be flora by the Minister for the Environment.

Important disclaimer:

This Fact Sheet is for general information purposes. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your specific circumstances you should contact the Environmental Defender's Office WA (Inc) or your solicitor. The EDO takes no responsibility for any loss or damage resulting from any error in this Fact Sheet.

Protected flora

To be protected under the *Wildlife Conservation Act*, flora must be “declared” to be protected. This is done by the Minister for the Environment publishing a list of protected flora in the *Government Gazette*. Currently, all flora (algae and fungi to flowering plants) native to the State is protected. This includes marine plants such as seaweed and seagrass.

Threatened flora

The Minister for the Environment may also declare any species of flora as being rare where that species is likely to become extinct or is otherwise in need of special protection. A declaration by the Minister must be published in the *Government Gazette*.

What controls apply to the taking of protected flora?

It is an offence to “take” protected flora:

- on Crown land (that is, any land other than private freehold land) without a licence from the Department of Conservation and Land Management (CALM); and
- on private land where the flora:
 - is taken without the consent of the owner or occupier of the land; or
 - is taken for the purpose of sale, and the person does not hold a licence from CALM.

To “take” in relation to 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.

The flora provisions of the Act are binding on the Crown. This means government departments and authorities must obtain a licence before taking flora.

The penalty for unlawfully taking flora is a maximum fine of \$4,000 for each offence.

Exemptions from requirement for a licence

Aboriginal persons

Aboriginal people may (with the consent of the occupier of the land (if any)) take flora for food, but this excludes taking declared rare flora or flora on a nature reserve.

Unavoidable consequence of a lawful right or authority

A person cannot be convicted of taking protected flora without a licence if the person can prove that the taking occurred as an unavoidable incident or consequence in the performance of any right, power or authority conferred upon the person under another Act. This may exempt a local government from requiring a licence to remove a tree from a road verge where it is causing a hazard. However, the act of taking must be “unavoidable” – that is, there must be no other option other than for the person to take the flora. The onus of proving that the act was unavoidable rests with the accused.

Special protection for rare flora

It is an offence for a person to take (kill or directly or indirectly interfere with) rare flora without the written approval of the Minister for the Environment. This applies irrespective of whether the rare flora is on private land or Crown land. Where rare flora is located on private land, and that person is refused permission to take that rare flora, compensation may be payable.

The maximum penalty for illegally killing or interfering with declared rare flora is a fine of \$10,000 for each species taken.



Protection of fauna

What is “fauna”?

“Fauna” means any animal that is native to Australia, or which is a periodic migrant to Australia. It includes any part of the fauna, including eggs, fur, feathers and so on.

Like flora, fauna generally falls into two categories: “protected fauna” and “declared rare fauna”.

Protected fauna

All fauna that is native to Australia or periodically migrates to Australia is “protected” unless it is declared to be unprotected by the Minister for the Environment. At the time of writing, the only native or migratory species declared to unprotected is the Australian Dingo.

Threatened fauna

The Minister may declare a species of fauna that is likely to become extinct, is rare, or otherwise in need of special protection.

What controls apply to the taking of protected or threatened fauna?

It is an offence to take protected or threatened fauna unless:

- the person has a licence from CALM;
- the taking was authorised under an open season declared by the Minister for that species; or
- the taking was by an Aboriginal person for food on other than a nature reserve, and the species was not prescribed as exempt from Aboriginal usage.

To “take” includes to kill, capture, disturb, molest or hunt any fauna and also includes attempts to take fauna and assisting another person to take fauna.

Unlike the provisions relating to declared rare flora, the approval of the Minister is not required to take a rare species of fauna.

Note that the Crown is not bound by the fauna protection provisions of the *Wildlife Conservation Act*, and is therefore exempt from the requirement to obtain a licence to take fauna.

The penalty for illegally taking protected fauna is a maximum fine of \$4,000 or \$10,000 in the case of threatened fauna.

Specific activities requiring approval

The following activities involving fauna require approval from CALM (usually in the form of a licence):

- farming native fauna;
- importing native fauna or other animals (excluding farm animals and domesticated pets) into the State;
- exporting native fauna;
- selling native fauna (unless that action is authorised under another Act);
- processing fauna for the purposes of sale (excluding fish processed under a licence issued under the *Fish Resources Management Act*); or
- releasing any animal not ordinarily found at liberty or to keep any such animal in confinement for the purpose of releasing it.

Additional controls also apply to the manner in which fauna is kept, fed and transported.

Aquatic animals

Aquatic species of animal, such as fish, mollouscs and crustaceans are subject to specific protection under the *Fish Resources Management Act*. Under this Act, the taking of species which are threatened by over exploitation can be the subject of restrictions or prohibitions. Note that the definition of “fish” in the *Fish Resources Management Act* does not include aquatic mammals, aquatic reptiles, aquatic birds, amphibians or pearl oysters.

For further information on fishing see [Fact Sheet 19: Fishing](#) and for marine protection [Fact Sheet 17: Marine reserves](#).



Third party appeals and objections against licences

Can the public have input into the listing of threatened species?

Whilst it is not a legal requirement, the Minister for the Environment seeks the advice of the Threatened Species Scientific Committee before publishing lists of threatened flora. The Committee meets at least once a year before making a

recommendation to the Minister. Members of the public can make nominations to the Committee on listing or de-listing species of plants or animals. Criteria for listing and de-listing and nomination forms are available from CALM.

Is there a right to make submissions or appeal against licence decisions?

There is no third party right of appeal against a decision to issue a licence to take flora or fauna under the *Wildlife Conservation Act*. Nor is a register of licences available to the public.



Protection of specific places

The second way biodiversity is protected is through setting land or marine areas aside for conservation purposes. The controls vary depending on the type of reserve.

Terrestrial conservation areas

Land may be set aside for any public purpose, including for the conservation of the environment. The types of conservation areas include national parks, conservation parks and nature reserves. Most conservation reserves are vested in the Conservation Commission of Western Australia and managed by CALM. Approximately 6% of the State's land area is reserved for conservation purposes.

For further information on laws relating to conservation areas, refer to [Fact Sheet 11: Conservation reserves](#).

Marine conservation areas

Marine areas may also be set aside for the protection of plants, animals and the environment generally. There are two mechanisms for creating marine conservation areas in Western Australian waters – under the *Conservation and Land Management Act 1984*, and under the *Fish Resources Management Act 1994*. For more information on the operation of these reserves, see [Fact Sheet 17: Marine reserves](#).

Other reserves

Biodiversity may also be protected either directly or indirectly under other types of reservation, including:

- soil conservation reserves under the *Soil and Land Conservation Act*
- reserves under the *Land Administration Act* (including class A reserves) (see [Fact Sheet 12: Crown land management](#))
- State forests and timber reserves (see [Fact Sheet 10: State forests and timber reserves](#))
- specific controls for certain land, such as Rottneet Island, Kings Park, and the Abrolhos Islands.

Biodiversity conservation on private land

Owners of private land can enter into agreements to set aside that land for conservation purposes. This is done through entering into a conservation covenant – usually with a public authority (for example, CALM or the Commissioner of Soil and Land Conservation) or the National Trust. Whilst not a public reserve, this mechanism does provide a means through which private landholders can legally protect biodiversity values on their land. Conservation covenants are legally binding on subsequent owners of the land where the covenant is registered on the title of that land (see [Fact Sheet 14: Voluntary conservation measures](#)).



Controls on threatening processes

The final category of laws that can be used to protect biodiversity are those which regulate threatening processes – that is, processes or activities which directly or indirectly interfere with particular species or groups of species and their associated ecosystems.

Land clearing controls

Land clearing has been a significant cause of biodiversity loss in Western Australia. Proposed changes to the *Environmental Protection Act* will mean that most types of clearing require a permit. For further information, refer to [Fact Sheet 7: Clearing native vegetation](#).

Drainage controls

Drainage of sub-surface water to control salinity has the potential to impact on biodiversity – especially habitats within valley floors. Environmentally sustainable disposal of this ground water is essential to ensure that problems are not simply transferred down stream. For more information on the controls applying to drainage, refer to [Fact Sheet 33: Drainage on agricultural land](#).

Mining

Mining operations can cause significant localised land degradation and damage to biodiversity, particularly in situations involving unique landform types. For information on the process for objecting to (or the conditions of) a mining lease, refer to [Fact Sheet 36: Mining law](#).

Pastoral land management

Pastoral activities occupy over one-third of Western Australia's land area. Overstocking of pastoral leases can cause significant erosion and loss of biodiversity. For further information, see our [Fact Sheet 34: Pastoral land management](#).

Environmental harm

A person causing damage to biodiversity may be charged with causing material or serious environmental harm under proposed changes to the *Environmental Protection Act*. For more information on environmental harm and pollution, refer to [Fact Sheet 27: Pollution and environmental harm](#).

Land degradation controls

The Commissioner of Soil and Land Conservation can issue a soil conservation notice to control activities likely to lead to land degradation. For further information on soil conservation notices, refer to [Fact Sheet 32: Land degradation](#).

Planning approval

Before commencing development on land, approval is often required from the relevant local government. For more information on planning laws, refer to [Fact Sheet 3: Planning laws](#) and [Fact Sheet 4: Development controls](#).

Vehicle use

Controls can also be placed on vehicular movement in sensitive areas under *Control of Vehicles (Off-road Areas) Act 1978*. Maps of prohibited areas are available for public inspection at the Department of Planning and Infrastructure or the relevant local government office. See also [Fact Sheet 32: Land degradation](#).

Control of declared plants and animals

Landholders are required to control declared animals and plants on their land. For further information, refer to [Fact Sheet 15: Introduced plants and animals](#).

Chemical use

The use of chemicals is subject to a number of controls relating to their application, transportation and disposal. These laws apply throughout the State. For further information refer to [Fact Sheet 28: Pesticides](#) and [Fact Sheet 29: Industrial chemicals](#).

Climate change

Since the mid-1970s, winter rainfall has declined sharply in south west Western Australia. These changes may reflect the emergence of an enhanced greenhouse effect. The implications of climate change on Western Australia's biodiversity – particularly in the south west – are considerable. Further information on this subject, together with an analysis of the legal responses to climate change, are discussed in [Fact Sheet 24: Greenhouse](#).

Genetically modified organisms

The use of genetically modified organisms (GMOs) has the potential to impact on biodiversity in a number of ways, for example by allowing genes from modified plants to become established in other species, with the potential that this may lead to “super weeds” that cannot be controlled with normal pesticides. For further details on the laws that apply to the release of GMOs, refer to [Fact Sheet 16: Genetically modified organisms](#).

How can you become involved?

There are limited opportunities for public involvement under Western Australia's current biodiversity laws. However, there are things you can do if you are concerned about a particular activity or the status of a particular species:

- any person can nominate a species to be listed under *Wildlife Conservation Act*. Nominations should be sent to Threatened Species Scientific Committee within CALM;
- make comment to CALM and the Conservation Commission on management plans for CALM managed land (see **Fact Sheet 11: Conservation reserves**);
- report possible illegal taking of flora or fauna to CALM;
- report possible illegal clearing to the Department of Environmental Protection (DEP) (see **Fact Sheet 7: Clearing native vegetation**);
- report pollution spills or waste dumping to the DEP (see **Fact Sheet 27: Pollution and environmental harm**);
- make submissions to the Department of Fisheries on management issues relating to fish stocks or the aquatic environment (see **Fact Sheet 17: Marine reserves** and **Fact Sheet 19: Fishing**);
- refer development proposals that are likely to have a significant impact on the environment to the Environmental Protection Authority and/or Environment Australia (see **Fact Sheet 5: Environmental impact assessment in WA** and **Fact Sheet 6: Commonwealth environmental impact assessment**).

Contacts and further information

Department of Conservation and Land Management, Kensington

Tel: (08) 9334 0333

Conservation Commission of Western Australia, Crawley

Tel: (08) 9389 1766

Roadside Conservation Committee, CALM, Kensington

Tel: (08) 9334 0423

Department of Fisheries, Perth

Tel: (08) 9482 7333

Environmental Protection Authority, Perth

Tel: (08) 9222 7000

Department of Environmental Protection, Perth

Tel: (08) 9222 7000

For copies of legislation considered in this fact sheet, contact the [State Law Publisher](#)

Tel: (08) 9321 7688

The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- ◆ to provide community groups and individuals with legal advice and representation to help protect the environment;
- ◆ to promote law reform that improves environmental protection; and
- ◆ to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal Attorney-General's Department. However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

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