



Western Australia

Biodiversity Conservation Act 2016

**Biodiversity Conservation (Exemptions)  
Order 2018**



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# **Biodiversity Conservation (Exemptions) Order 2018**

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### **Defined terms**



## **Biodiversity Conservation (Exemptions) Order 2018**

### **1. Citation**

This order is the *Biodiversity Conservation (Exemptions) Order 2018*.

### **2. Commencement**

This order comes into operation as follows —

- (a) clauses 1 and 2 — on the day on which this order is published in the *Gazette*;
- (b) the rest of the order — on the day after that day.

### **3. Existing authorities to modify occurrence of threatened ecological community**

(1) In this clause —

*existing authority* means a licence, permit, approval, consent, registration or other authority —

- (a) issued, granted, conferred or given under a written law or a State agreement; and
- (b) in force immediately before the day on which section 48 of the Act comes into operation; and
- (c) in force on the day on which the activity mentioned in subclause (2) is carried out.

(2) An activity that modifies an occurrence of a threatened ecological community is exempt from section 48(1) of the Act in circumstances where —

- (a) the activity is authorised by an existing authority; and

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- (b) the activity is carried out in accordance with any conditions to which the existing authority is subject; and
- (c) any clearing permit required under the *Environmental Protection Act 1986* in respect of the activity has been obtained.

**4. Activities involving dingoes**

- (1) In this clause —

***biosecurity requirement*** means —

- (a) a pest exclusion notice under the *Biosecurity and Agriculture Management Act 2007* section 27(1); or
- (b) a requirement to take prescribed control measures under the *Biosecurity and Agriculture Management Act 2007* section 30(3); or
- (c) a pest control notice under the *Biosecurity and Agriculture Management Act 2007* section 31(1);

***dingo*** means an animal that belongs to the native species *Canis familiaris dingo* (also referred to as *Canis lupus dingo*).

- (2) A person who takes a dingo is exempt from section 149(1) of the Act in relation to that taking if the person takes the dingo in accordance with a biosecurity requirement.
- (3) A person who possesses a dingo is exempt from section 152(1) of the Act in relation to that possession.
- (4) A person who disturbs a dingo is exempt from section 153(1) of the Act in relation to that disturbance if the person disturbs the dingo in accordance with a biosecurity requirement.

*[Clause 4 inserted: Gazette 5 Nov 2019 p. 3878-9.]*

**5. Activities involving flora cultivars**

- (1) In this clause —  
*flora cultivar* means flora that —
- (a) has been produced by selective breeding either through hybridisation or form selection; and
  - (b) is in a form that is morphologically distinguishable from its parent species growing in the wild.
- (2) The activity of supplying a flora cultivar is exempt from section 176(1) of the Act.
- (3) The activity of dealing in a flora cultivar is exempt from section 177(1) of the Act.
- (4) The activity of processing a flora cultivar is exempt from section 178(2) of the Act.

**6. Dealing in flora**

- (1) In this clause —  
*flora* does not include specifically controlled sandalwood as defined in the *Biodiversity Conservation Regulations 2018* regulation 3.
- (2) The activity of dealing in flora is exempt from section 177(1) of the Act in circumstances where the flora is purchased from —
- (a) the holder of a licence authorising the supply of flora; or
  - (b) a person who otherwise has lawful authority to supply flora.
- (3) The exemption provided for in subclause (2) is subject to the condition that a person who deals in flora in reliance on the exemption must —
- (a) make a record of the flora purchased that contains the following information —
    - (i) a description of the flora;

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- (ii) the quantity of the flora;
  - (iii) the day on which the flora is purchased;
  - (iv) the name and address of the person from whom the flora is purchased;
- and
- (b) keep the record —
    - (i) for at least 2 years after the day on which the flora is purchased; and
    - (ii) at the place where the person deals in flora;
- and
- (c) make the record available to a wildlife officer if asked by the wildlife officer to do so.
- (4) The activity of dealing in flora is also exempt from section 177(1) of the Act in circumstances where the flora is supplied as a living potted plant or by retail directly to the public.

**7. Bush fire mitigation and suppression activities**

- (1) In this clause —
  - burning**, of vegetation in an area, means —
    - (a) fire hazard reduction burning in the area; or
    - (b) burning or partial burning of vegetation in the area by an uncontrolled fire that reduces the risk of injury or damage to persons or property from a subsequent uncontrolled fire in the vegetation;
  - bush fire mitigation activity** means the following —
    - (a) burning permitted under the *Bush Fires Act 1954* section 17(5);
    - (b) burning done in accordance with a permit obtained under the *Bush Fires Act 1954* section 18;



- (c) burning done under the *Bush Fires Act 1954* section 22(2);
- (d) burning done under the *Bush Fires Act 1954* section 23;
- (e) things done to comply with a notice given under the *Bush Fires Act 1954* section 33(1);
- (f) things done pursuant to a direction of a local government under the *Bush Fires Act 1954* section 33(4);
- (g) clearing done by a local government under the *Bush Fires Act 1954* section 36(b);
- (h) things done under the *Bush Fire Risk Treatment Standards 2020* clause 6;
- (i) clearing described in the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* regulation 5(1) Table item 3 or 15;
- (j) things done for fire prevention or control purposes or other fire management works on Crown land by the FES Commissioner (as defined in the *Fire and Emergency Services Act 1998* section 3);

***bush fire suppression activity*** means the following —

- (a) things done under the *Bush Fires Act 1954* section 39(1)(d) or 44(1)(c);
- (b) things done in relation to fire under the *Fire Brigades Act 1942* section 34(a), (c) or (j);

***fire hazard reduction burning*** means burning or partial burning of vegetation to reduce the risk of injury or damage to persons or property from an uncontrolled fire in the vegetation.

- (2) A person who carries out a bush fire mitigation activity or bush fire suppression activity is exempt from —
  - (a) section 48(1) of the Act in relation to any modification of an occurrence of a threatened ecological community that occurs in the course of, or as a result of, the activity; and

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- (b) section 149(1) of the Act in relation to any taking of fauna that occurs in the course of, or as a result of, the activity; and
  - (c) section 150(1) of the Act in relation to any taking of threatened fauna that occurs in the course of, or as a result of, the activity; and
  - (d) section 153(1) of the Act in relation to any disturbance of fauna that occurs in the course of, or as a result of, the activity; and
  - (e) section 173(1) or (2) of the Act in relation to any taking of threatened flora that occurs in the course of, or as a result of, the activity.
- (3) Subclause (2) does not apply to a bush fire mitigation activity to the extent that the activity consists of fire hazard reduction burning in an area if —
- (a) the activity is of a kind referred to in paragraph (a), (b), (d), (h), (i) or (j) of the definition of ***bush fire mitigation activity***; and
  - (b) burning of vegetation in the area has occurred within the past 6 years.
- (4) Subclause (2)(b) and (c) do not apply to the extent that the taking of fauna consists of harvesting or capturing the fauna or causing or permitting harvest or capture of the fauna.
- (5) Subclause (2)(e) does not apply to the extent that the taking of threatened flora consists of harvesting the flora or causing or permitting harvest of the flora.

*[Clause 7 inserted: SL 2021/175 cl. 4.]*

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## Notes

This is a compilation of the *Biodiversity Conservation (Exemptions) Order 2018* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

### Compilation table

<b>Citation</b>	<b>Published</b>	<b>Commencement</b>
<i>Biodiversity Conservation (Exemptions) Order 2018</i>	21 Dec 2018 p. 4847-50	cl. 1 and 2: 21 Dec 2018 (see cl. 2(a)); Order other than cl. 1 and 2: 22 Dec 2018 (see cl. 2(b))
<i>Biodiversity Conservation (Exemptions) Amendment Order 2019</i>	5 Nov 2019 p. 3878-9	cl. 1 and 2: 5 Nov 2019 (see cl. 2(a)); Order other than cl. 1 and 2: 6 Nov 2019 (see cl. 2(b))
<i>Biodiversity Conservation (Exemptions) Amendment Order 2021</i>	SL 2021/175 15 Oct 2021	cl. 1 and 2: 15 Oct 2021 (see cl. 2(a)); Order other than cl. 1 and 2: 16 Oct 2021 (see cl. 2(b))

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
biosecurity requirement .....	4(1)
burning .....	7(1)
bush fire mitigation activity .....	7(1)
bush fire suppression activity .....	7(1)
dingo .....	4(1)
existing authority .....	3(1)
fire hazard reduction burning .....	7(1)
flora .....	6(1)
flora cultivar .....	5(1)