

WILDLIFE CONSERVATION.

No. 28 of 1979.

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

[Assented to 21st September, 1979.]

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. 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, 1976 comes into operation.

Section 6 of
principal Act
amended.

3. Section 6 of the principal Act is amended 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; .

Section 5 of
amending
Act amended.

4. Section 5 of the amending Act is amended by repealing the proposed section 9 of the principal Act and substituting the following section—

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;

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

- (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.

5. Section 13 of the amending Act is amended by repealing subsection (2) of the proposed section 23B and substituting the following subsection—

Section 13
of amending
Act amended.

(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. .

Section 15
of amending
Act amended.

6. Section 15 of the amending Act is amended by adding after subsection (1) of the proposed section 23D the following subsection—

(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. .

Section 17
of amending
Act amended.

7. Section 17 of the amending Act is amended by repealing subsection (4) and subsection (5) of the proposed section 23F and substituting the following subsection—

(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;
- (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. .

8. Section 26 of the principal Act is amended by 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 person authorised in that behalf by the Director. .