

WESTERN AUSTRALIA

CONSERVATION AND LAND MANAGEMENT AMENDMENT ACT

No. 76 of 1988

AN ACT to amend the *Conservation and Land Management Act 1984*.

[Assented to 9 January 1989]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Conservation and Land Management Amendment Act 1988*.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Conservation and Land Management Act 1984** is referred to as the principal Act.

[*Act No. 126 of 1984 as amended by Acts Nos. 86 and 98 of 1985 and 113 and 126 of 1987.]

Section 13 amended

4. Section 13 of the principal Act is amended—

(a) by repealing subsection (3) and substituting the following subsection—

“ (3) The reservation of a marine park shall be for the purposes of fulfilling so much of the demand for recreation by members of the public as is consistent with the proper conservation and restoration of the natural environment, the protection of indigenous flora and fauna and the preservation of any feature of archaeological, historic or scientific interest; but in the event of any conflict or inconsistency between any of the foregoing purposes and any provision of the *Fisheries Act 1905* relating to commercial or recreational fishing, the latter shall prevail. ”; and

(b) by repealing subsection (9).

Section 14 amended

5. Section 14 of the principal Act is amended by inserting after subsection (5) the following subsection—

“ (6) The Minister shall not make a submission to the Governor under subsection (5) unless the Minister to whom the administration of the *Fisheries Act 1905* is for the time being committed concurs with the submission. ”.

Sections 34A and 34B inserted

6. After section 34 of the principal Act the following sections are inserted—

Business undertakings

“ 34A. (1) The powers conferred by section 34 include power for the Executive Director, for or in connection with schemes for the establishment, management, or utilization of tree plantations—

- (a) to form, promote or establish, or participate in the formation, promotion or establishment of, any business undertaking;
- (b) to subscribe for, invest in or otherwise acquire, and to dispose of shares, units or other interests in, or debentures or other securities of, a business undertaking;
- (c) to enter into any partnership or arrangement for sharing of profits;
- (d) to acquire, hold and dispose of real and personal property;
- (e) to manage, or participate in the management of, a business undertaking;
- (f) to exercise any power conferred on or available to the Executive Director in connection with a business undertaking, including power to appoint or hold office as a director or other office-holder of a business undertaking;
- (g) to enter into an agreement to do anything authorized by this section; and
- (h) to do anything incidental to the exercise of a power conferred by this section.

(2) The approval of the Treasurer is required to the exercise of any power referred to in subsection (1).

(3) In subsection (1) “business undertaking” means any person, corporation, trust, joint venture, government agency or other entity engaging or intending to engage in any scheme referred to in subsection (1).

Timber sharefarming agreements

34B. (1) The powers conferred by sections 34 and 34A include power for the Executive Director to enter into and carry out, whether as a principal or an agent, a timber sharefarming agreement in respect of any land with the owner of that land.

(2) For the purposes of this section a timber sharefarming agreement is an agreement—

- (a) whereby the Executive Director acquires the right to establish, maintain and harvest, or to maintain and harvest, a crop of trees on land; and
- (b) which provides for rights, obligations and powers relating to—
 - (i) payment of money or the giving of other consideration by, or the division of the crop or the proceeds of the crop between, the parties to the agreement; and
 - (ii) access to the land and the undertaking of work or the provision of facilities thereon by those parties.

(3) The Executive Director shall not enter into any agreement under this section with the lessee or licensee of any land unless the owner of the freehold, and any person occupying the land with the consent of the owner of the freehold, has given approval in writing to the agreement.

(4) A right referred to in subsection (2) (a) acquired by the Executive Director is a *profit a prendre* and an interest in the land to which the right relates, notwithstanding any rule of law or equity to the contrary.

(5) The obligations and restrictions that bind the owner of any land under a timber sharefarming agreement that is registered under the *Transfer of Land Act 1893* are binding also on his heirs, executors, administrators and successors in title, except to the extent that the agreement otherwise provides.

(6) Where a timber sharefarming agreement in respect of any land is registered under the *Transfer of Land Act 1893* and bears the written consent of a mortgagee or chargee of the land whose mortgage or charge was registered before the timber sharefarming agreement, the estate or interest of the owner of the land passing to and vesting in a purchaser on a sale by the mortgagee or chargee is subject to the timber sharefarming agreement.

(7) A timber sharefarming agreement is not a lease or licence to which section 20 of the *Town Planning and Development Act 1928* applies.

(8) In subsections (1), (5) and (6) “owner” includes a lessee or licensee. ”.

Section 50 amended

7. Section 50 of the principal Act is amended—

(a) by deleting “50. A” and substituting the following—

“ 50. (1) Subject to subsection (2), a ”; and

(b) by inserting after subsection (1) the following subsection—

“ (2) For the purposes of section 34, 34A or 34B, the Minister may in writing approve of the Executive Director or other officer of the Department entering into any transaction or holding any right, title or interest or accepting appointment to any office on behalf of or as representative of the Department; and subsection (1) does not apply to the Executive Director or other officer of the Department while he is acting in accordance with such an approval. ”.

Section 53 amended

8. Section 53 of the principal Act is amended—

(a) after the definition of “controlling body” by deleting “and”;

(b) in the definition of “land” by deleting the full stop and substituting the following—

“ ; and ”; and

(c) by inserting after the definition of “land” the following definition—

“ “Minister for Fisheries” means the Minister to whom the administration of the *Fisheries Act 1905* is committed. ”.

Section 56 amended

9. Section 56 of the principal Act is amended in subsection (1)—

(a) in paragraph (c), by deleting “and marine parks”;

(b) in paragraph (d), by deleting “and marine nature reserves”;

(c) by deleting “and” after paragraph (d); and

(d) by inserting after paragraph (d) the following paragraph—

“ (da) in the case of marine nature reserves and marine parks, to achieve the purposes set out in subsections (2) and (3) respectively of section 13; and ”.

Section 59 amended

10. Section 59 of the principal Act is amended by inserting after subsection (4) the following subsection—

“ (5) The controlling body shall submit a proposed management plan for a marine park to the Minister for Fisheries. ”.

Section 60 amended

11. Section 60 of the principal Act is amended by repealing subsection (2) and substituting the following subsections—

“ (2) Subject to subsection (2a) the Minister may approve the proposed plan or approve it with such modifications as he thinks fit.

(2a) In the case of a proposed management plan for a marine park, if the Minister for Fisheries has made submissions on the proposed plan to the controlling body, the Minister shall not approve the proposed plan—

(a) unless he is satisfied that it gives effect to those submissions; or

(b) unless he has referred the proposed plan to the Governor and is satisfied that it gives effect to the decision of the Governor,

so far as the submissions or the decision relate to the taking of fish (within the meaning in the *Fisheries Act 1905*) in the park. ”.

Division 3 inserted in Part VIII

12. After Division 2 of Part VIII of the principal Act, the following Division is inserted—

“ *Division 3—Marine nature reserves and marine parks*

Definitions

101A. In this Division—

“fish” means any form of marine or freshwater animal life;

“take” includes injure, destroy or otherwise interfere with.

Protection of flora and fauna

101B. (1) Subject to subsection (2)—

(a) the Executive Director shall not under this Act authorize any person; and

(b) regulations shall not be made under section 130 so as to authorize any person,

to take any flora or fauna in a marine nature reserve or marine park.

(2) A person may take fish—

(a) notwithstanding the *Fisheries Act 1905*, in a marine nature reserve, or marine park for scientific purposes in accordance with a licence granted by the Executive Director under regulations made under section 130; or

(b) in accordance with the *Fisheries Act 1905* in a marine park.

(3) In the event of any conflict or inconsistency between a provision of the *Fisheries Act 1905* and a provision of regulations made under section 130 in respect of a marine nature reserve the latter provision shall prevail.

Unlawful taking of flora and fauna

101C. A person shall not, without lawful authority, take any flora or fauna in a marine nature reserve or marine park.

Penalty: \$1 000 and imprisonment for one year. ”.

Section 130 amended

13. Section 130 of the principal Act is amended by inserting after subsection (2) the following subsections—

“ (2a) The Governor shall not make regulations under subsection (1) that impose any restriction on the taking of fish in a marine park.

(2b) The prohibition in subsection (2a) does not include a restriction that relates to conduct or activity other than the taking of fish but that incidentally affects the taking of fish. ”.

Section 131 amended

14. Section 131 of the principal Act is amended in subsection (1) by deleting “purchased, acquired, resumed or appropriated under section 22 or 23 of the Forests Act 1918 and” and substituting the following—

“ that was ”.