

**Major differences between the *Biodiversity Conservation Act 2016* and the *Wildlife Conservation Act 1950* (and, as relevant, *the Sandalwood Act 1929*)<sup>1</sup>.**

<b>Comparison Topic</b>	<b>Wildlife Conservation Act</b>	<b>Biodiversity Conservation Act</b>
<i>Scope of the Act</i>	<ul style="list-style-type: none"> <li>Regulates the taking of fauna (native animals) on all lands and waters, the taking of flora (native plants) on Crown lands and the taking of declared rare flora on all lands.</li> </ul>	<ul style="list-style-type: none"> <li>Provides coverage for flora and fauna as provided in the Wildlife Act.</li> <li>Provides coverage of additional important matters including; habitats, communities, threatening processes, environmental pests and weeds.</li> <li>Provides recognition and incentives for, and cooperative programs for, private individuals, community groups and businesses to conserve biodiversity.</li> <li>Avoids duplication with other legislative approvals and avoids unnecessary regulation in order to minimise unnecessary red tape.</li> <li>Enhances protection for threatened species, introduces protection for threatened ecological communities and strengthens protection for whales and dolphins.</li> </ul>
<i>Application to Government agencies</i>	<ul style="list-style-type: none"> <li>Only native plant (flora) provisions binding on Government agencies.</li> </ul>	<ul style="list-style-type: none"> <li>All Government agencies are required to abide by the Act and all its requirements.</li> </ul>
<i>Objects of the Act (Identifies what the Act is trying to achieve and guides decision makers).</i>	<ul style="list-style-type: none"> <li>None.</li> <li>The Act is about conserving wildlife (from the title), but the term wildlife is not defined.</li> </ul>	<ul style="list-style-type: none"> <li>Two Objects are included. These are the same as those in the International Convention on the Conservation of Biological Diversity (1993) and are: <ul style="list-style-type: none"> <li><i>to conserve and protect biodiversity and biodiversity components in the State;</i> and,</li> <li><i>to promote the ecologically sustainable use of biodiversity components in the State</i></li> </ul> </li> </ul>
<i>Principles of Ecologically Sustainable Development</i>	<ul style="list-style-type: none"> <li>No mention at all.</li> </ul>	<ul style="list-style-type: none"> <li>In pursuing the Objects of the Act decision makers must take into account the Principles of Ecologically Sustainable Development (ESD) pursuant to the <i>Australian Inter-Governmental Agreement on the Environment</i> (1992).</li> <li>These Principles include: integration of long and short-term economic, environmental, social and equitable considerations; the precautionary principle; intergenerational equity; conservation of biological diversity and ecological integrity; and, improved valuation, pricing and incentive mechanisms.</li> </ul>

<sup>1</sup> Prepared by the Department of Parks and Wildlife and covers the *Biodiversity Conservation Act 2016* as at 21 September 2016 through 18 October 2016.

<b>Comparison Topic</b>	<b>Wildlife Conservation Act</b>	<b>Biodiversity Conservation Act</b>
<i>Threatened animals and plants.</i>	<ul style="list-style-type: none"> <li>• Capacity only to list species as “likely to become extinct”, “rare”, or “otherwise in need of special protection”. No mention of modern threatened species categories.</li> <li>• Maximum penalty of \$10,000 regardless of threat category.</li> <li>• No public nomination process or feedback on decisions.</li> <li>• No requirement for consultation with anyone or to accept scientific advice.</li> <li>• No listing criteria.</li> </ul>	<ul style="list-style-type: none"> <li>• Capacity to list species as “critically endangered”, “endangered”, “vulnerable”, “extinct”, “extinct in the wild” (i.e. the IUCN Red List threat categories).</li> <li>• Differential penalties &amp; protection based on threat ranking with a maximum penalty of \$500,000 for an individual person and \$2.5M for a corporation.</li> <li>• Statutory process for public nominations for the listing of a species, including provisions requiring the Minister to provide feedback on any decision contrary to a nomination.</li> <li>• Minister must consider scientific advice when making a listing.</li> <li>• The basic criteria for listing are included in the Act, with finer detail in Ministerial guidelines (the criteria used will be the IUCN Red List criteria as agreed internationally).</li> <li>• IUCN ‘Near threatened’ &amp; ‘least concern’ category species will be protected (and be included on the non-statutory priority species list for monitoring).</li> </ul>
<i>Threatened Ecological Communities</i>	<ul style="list-style-type: none"> <li>• No provisions at all.</li> </ul>	<ul style="list-style-type: none"> <li>• Capacity to list communities as “critically endangered”, “endangered”, “vulnerable”, “collapsed” (destroyed).</li> <li>• Differential penalties &amp; protection related to degree of threat, with maximum penalty the same as threatened species (\$500,000 for an individual person, \$2.5M, corporation for critically endangered communities).</li> <li>• Statutory process for public nominations for the listing, including provisions that require the Minister to provide feedback on any decision contrary to a nomination.</li> <li>• Minister must consider scientific advice when making a listing decision.</li> <li>• The basic criteria for listing are included in the Act, with fine detail in Ministerial guidelines.</li> </ul>
<i>Threatening processes</i>	<ul style="list-style-type: none"> <li>• No provisions at all.</li> </ul>	<ul style="list-style-type: none"> <li>• Capacity to list threatening processes as “key threatening processes”.</li> <li>• Public nominations.</li> <li>• Provides for management of key threatening processes under recovery plans or management programmes.</li> <li>• Regulations may provide for the prevention, eradication, reduction and containment of key threatening processes.</li> </ul>

<b>Comparison Topic</b>	<b>Wildlife Conservation Act</b>	<b>Biodiversity Conservation Act</b>
<i>Taking of threatened animals</i>	<ul style="list-style-type: none"> <li>• Authorised by licence.</li> <li>• Licence may include conditions.</li> <li>• No special approval mechanisms regardless of potential impact on species conservation.</li> </ul>	<ul style="list-style-type: none"> <li>• Ministerial authorisation.</li> <li>• Offset conditions for mitigating or offsetting impacts on biodiversity conservation may be included with authorisation.</li> <li>• Special requirement for approval of both Houses of Parliament before a Ministerial authorisation may be given where taking may lead to the species becoming extinct in future. Provides highest possible level of approval and strong incentive to seek outcomes with lower species conservation impact.</li> </ul>
<i>Taking of threatened plants</i>	<ul style="list-style-type: none"> <li>• Authorised by Minister (Declared Rare Flora).</li> <li>• May include conditions.</li> <li>• No special approval mechanisms regardless of potential impact on species conservation.</li> </ul>	<ul style="list-style-type: none"> <li>• Ministerial authorisation.</li> <li>• Offset conditions for mitigating or offsetting impacts on biodiversity conservation may be included with authorisation.</li> <li>• Special requirement for approval of both Houses of Parliament before a Ministerial authorisation may be given where taking may lead to the species becoming extinct in future. Provides highest possible level of approval and strong incentive to seek outcomes with lower species conservation impact.</li> </ul>
<i>Impacts to ecological communities</i>	<ul style="list-style-type: none"> <li>• No recognition of ecological communities at all.</li> </ul>	<ul style="list-style-type: none"> <li>• Ministerial authorisation required where a significant permanent modification will occur. Existing non-significant/non-permanent impacts may continue.</li> <li>• Offset conditions may be applied as necessary for mitigating or offsetting impacts on conservation of the ecological community.</li> <li>• Special approval of both Houses of Parliament before a Ministerial authorisation may be given where taking may lead to the community becoming eligible for listing as a collapsed ecological community in future. Provides highest possible level of approval and strong incentive to seek outcomes with lesser impact on ecological community conservation.</li> </ul>

<b>Comparison Topic</b>	<b>Wildlife Conservation Act</b>	<b>Biodiversity Conservation Act</b>
<i>Advice to land owners/occupiers that threatened species or communities may be present on private or leasehold land</i>	<ul style="list-style-type: none"> <li>No provisions to notify landowners or occupiers.</li> </ul>	<ul style="list-style-type: none"> <li>Minister to advise owners/occupiers of presence of threatened species or community on their property (there is a defence to unlawful taking if the person is not aware the species or community is there).</li> <li>The advice to owners/occupiers must identify conservation requirements for the species/community as well as assistance programs that may be available.</li> <li>There are provisions for the CEO to place a Notification on the official Title of the land referring to the presence of the species/community. This means a landowner may not sell a property without a prospective purchaser being made aware of the existence of the threatened species or community.</li> <li>Opportunity to negotiate biodiversity conservation management agreements to assist with species/community conservation.</li> <li>Owners of properties with Notifications must advise the Department of the sale of their property, so the Department can advise the new owner of the conservation requirements for the species/community.</li> </ul>
<i>Reporting of threatened species and communities discovered in biological surveys</i>	<ul style="list-style-type: none"> <li>Only under licence condition for licences issued under the <i>Wildlife Conservation Regulations</i>.</li> </ul>	<ul style="list-style-type: none"> <li>Fine (up to \$50,000) for people who do not report threatened species or communities found in <i>Environment Protection Act 1986</i> surveys.</li> <li>Designed to help ensure that such discoveries do not go unreported. Reporting will help ensure the species/communities can be conserved.</li> </ul>
<i>Critical habitat</i>	<ul style="list-style-type: none"> <li>No provisions at all.</li> </ul>	<ul style="list-style-type: none"> <li>Habitat critical to the survival of a threatened species or community can be listed and placed on a publicly available register.</li> <li>Critical habitat will normally be identified in recovery plans.</li> <li>Direct consultation with landholders before listing to ensure accuracy, landowner awareness and to assist with conservation management.</li> <li>Where there is a threat of significant damage (or damage is occurring) to critical habitat areas, the CEO may issue a habitat conservation notice (HCN) and place a Notification on Title.</li> <li>HCNs can be used to prevent damage or further damage and also to require repair of any damage that has occurred.</li> <li>Penalties for contravention of a HCN are the same as for threatened species and communities.</li> </ul>

<b>Comparison Topic</b>	<b>Wildlife Conservation Act</b>	<b>Biodiversity Conservation Act</b>
<i>Biodiversity Management programmes</i>	<ul style="list-style-type: none"> <li>No provisions at all.</li> </ul>	<ul style="list-style-type: none"> <li>Provides for the development of programmes for the management of species, communities and habitats for conservation purposes including sustainable use (such as kangaroo harvesting), research, conservation of native species, habitats and communities, educational activities, nature-based tourism and control of pests, threatening processes etc.</li> <li>Programmes will be approved by the Minister.</li> <li>Direct consultation is required with anyone likely to be affected before the Minister may approve a programme (in practice there will also be open public consultation).</li> <li>Public authorities must have regard to approved programmes.</li> <li>The programmes are not subsidiary legislation but explain and put into context the detail mechanisms in the Act and Regulations that apply to their conservation management objectives.</li> </ul>
<i>Recovery Plans and Interim Recovery Plans</i>	<ul style="list-style-type: none"> <li>No provisions at all.</li> </ul>	<ul style="list-style-type: none"> <li>Recovery plans guide recovery of listed threatened species and communities, including identification of possible critical habitat areas.</li> <li>Will establish formal threatened species and threatened ecological community recovery plans approved by Minister after full public consultation.</li> <li>Provisions allow for interstate recovery plans to be formally adopted for Western Australia.</li> <li>Public authorities must have regard to plans.</li> <li>Regulation of operations under recovery plans is through the detail mechanisms in the Act and Regulations.</li> </ul>
<i>Biodiversity Conservation Agreements</i>	<ul style="list-style-type: none"> <li>No provisions at all.</li> </ul>	<ul style="list-style-type: none"> <li>Provides for cooperative agreements for biodiversity conservation management of private or Crown lands.</li> <li>Enhanced security for cooperation and protection of both landholder and Government investment.</li> <li>Also protected by Notification on title.</li> <li>May involve provision of finances, materials, expertise etc. to landholders.</li> </ul>
<i>Biodiversity Conservation Covenants</i>	<ul style="list-style-type: none"> <li>No provisions at all</li> <li>Currently, nature conservation covenants are prepared as restrictive covenants under the provisions of the <i>Transfer of Land Act 1893</i>.</li> <li>Covenant Registered on land title.</li> <li>Protected through possible use of injunctions.</li> </ul>	<ul style="list-style-type: none"> <li>New biodiversity conservation covenants may be made under the Act to provide for permanent or long-term protection of private land biodiversity conservation efforts.</li> <li>Provides for both positive and restrictive condition making (i.e. enhancing as well as protecting existing habitat).</li> <li>Penalty of \$50,000 for non-compliance with the covenant as well as injunction abilities.</li> <li>Covenant is Registered on the Land title.</li> <li>Owner must advise when the land is sold and all purchasers are able to see Covenant Registered on title before finalising purchase.</li> </ul>

<b>Comparison Topic</b>	<b>Wildlife Conservation Act</b>	<b>Biodiversity Conservation Act</b>
<i>Environmental pests</i>	<ul style="list-style-type: none"> <li>No provisions at all.</li> <li>Environmental pests are managed under <i>Biosecurity and Agriculture Management Act 1997</i> (BAM Act) and <i>Fish Resources Management Act 1994</i> (FRM Act).</li> </ul>	<ul style="list-style-type: none"> <li>Minister may declare environmental pests if they are not being covered under BAM or FRM Acts. Designed as a gap-filling mechanism.</li> <li>Provides for control of environmental pests that are not a priority under BAM and FRM Acts, where they are impacting on biodiversity, their control will assist biodiversity conservation and implement the identified control is a practical option.</li> <li>Similar in relation to the controls available and the scope of operations to those applying under the BAM Act.</li> </ul>
<i>Control over the taking, keeping and trading in, native animals and plants.</i>	<ul style="list-style-type: none"> <li>Archaic provisions including “open seasons” allowing taking of birds causing damage and some kangaroo species.</li> <li>No special protection for cetaceans.</li> <li>Complete overlap with management of fish under the <i>Fish Resources Management Act 1994</i> (all fish are also native animals or native plants under the Wildlife Act).</li> <li>No modern defence provisions.</li> </ul>	<ul style="list-style-type: none"> <li>Modern provisions, including provisions for identifying species as ‘managed species’ instead of ‘open season’ or ‘close season’ species.</li> <li>Provisions to allow a single authorisation to cover multiple activities (e.g. keeping reptiles and birds as pets)</li> <li>Special protection for all cetaceans (whales &amp; dolphins).</li> <li>Allows management of fish that are subject to fishing to be managed under the Fish Resources Management Act, and for this to be recognised as providing lawful authority for the taking of these fish under the Biodiversity Act.</li> <li>Modern defence provisions.</li> <li>Recognises defences for incidental taking of other fauna during accepted fishing practices designed to minimise that incidental take as part of ecologically sustainable fishing.</li> </ul>
<i>Nature based tourism</i>	<ul style="list-style-type: none"> <li>No provisions.</li> <li>Managed as taking fauna/flora (for example, whale watching is managed as the taking of whales (taking by ‘disturbing’ them in a controlled way).</li> </ul>	<ul style="list-style-type: none"> <li>Allows for regulation and issue of licences for low impact tourism involving interaction with native animals and plants to help ensure the ecological sustainability of such operations.</li> <li>Allows for use of Codes of Practice to operate as alternative to licensing, subject to Ministerial approval and consultation.</li> </ul>
<i>Compliance</i>	<ul style="list-style-type: none"> <li>Archaic provisions and limited investigation powers.</li> <li>Low penalties (\$4,000 to \$10,000) and prosecution of individuals only.</li> </ul>	<ul style="list-style-type: none"> <li>Modern provisions in keeping with State standards under other statutes, including the <i>Criminal Investigation Act 2006</i>.</li> <li>Provisions for collecting DNA/ forensic samples.</li> <li>CEO may take remedial action relating to biodiversity conservation covenant, environmental pest notice or HCN.</li> <li>Prosecution of partners, business owners, employers, bodies corporate and others for offences, not just individuals.</li> <li>Fines from \$50,000 up to \$500,000/\$2.5 million</li> <li>Courts may impose remediation orders and daily penalties for ongoing offences.</li> </ul>

<b>Comparison Topic</b>	<b>Wildlife Conservation Act</b>	<b>Biodiversity Conservation Act</b>
<i>Ministerial Guidelines</i>	<ul style="list-style-type: none"> <li>No provisions at all.</li> <li>Minister has unlimited discretion in determining whether to authorise actions involving native plants or animals.</li> </ul>	<ul style="list-style-type: none"> <li>Publicly available Ministerial Guidelines to provide community advice of decision making considerations.</li> <li>Not binding, but intended that Minister must give explanation where a decision is made contrary to guidelines.</li> <li>Guidelines must be developed for fine detail of threatened species listing criteria and standards (IUCN Red List).</li> </ul>
<i>Exemptions and Parliamentary disallowance of Ministerial decisions</i>	<ul style="list-style-type: none"> <li>No provisions at all.</li> <li>No Ministerial decisions subject to disallowance by Parliament.</li> </ul>	<ul style="list-style-type: none"> <li>Minister may grant exemptions from provisions of the Act with conditions, similar to existing exemption provisions in the Environmental Protection Act and Commonwealth EPBC Act.</li> <li>Any Ministerially approved exemptions are subject to possible Parliamentary disallowance.</li> <li>Parliamentary disallowance is also provided for: determinations as to whether species are considered to be flora or fauna; listing of environmental pests; allocations of property in fauna and; and the limits (quota) for wild sandalwood harvest (not currently provided under the Sandalwood Act).</li> </ul>
<i>Wetlands, biosphere reserves, natural heritage</i>	<ul style="list-style-type: none"> <li>No provisions at all.</li> </ul>	<ul style="list-style-type: none"> <li>Regulation making powers are provided for the conservation, protection and management of: <ul style="list-style-type: none"> <li>natural heritage of World/National Heritage Properties;</li> <li>ecological character of Ramsar wetlands; and</li> <li>declared Biosphere Reserves.</li> </ul> </li> </ul>

<b>Comparison Topic</b>	<b>Sandalwood Act</b>	<b>Biodiversity Conservation Act</b>
<i>Wild harvest Sandalwood quota</i>	<ul style="list-style-type: none"> <li>'Order in Council' establishes maximum harvestable amount. Not subject to possible Parliamentary disallowance.</li> <li>No special controls over the transport, storage or sale of wild harvested sandalwood.</li> <li>Maximum penalty for taking sandalwood unlawfully \$200.</li> </ul>	<ul style="list-style-type: none"> <li>Minister may set sandalwood harvest quota which is subject to possible Parliamentary disallowance.</li> <li>Wild sandalwood harvest, transport, storage and sale subject to special regulation as specially protected flora.</li> <li>New maximum penalty for unlawfully harvesting wild sandalwood of \$200,000 for an individual person and \$1 million for a business or corporation.</li> <li>New special penalty per tonne of wild harvest taken unlawfully of up to \$20,000 per tonne may be imposed through court actions in addition to the above fines.</li> </ul>

**N.B. Prepared by the Department of Parks and Wildlife and covers the *Biodiversity Conservation Act 2016* as at 21 September 2016 through 18 October 2016.**

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