

Western Australia

Conservation and Land Management Amendment Bill 1999

CONTENTS

1.	Short title	1
2.	Commencement	2
3.	The Act amended	2
4.	Section 3 amended	2
5.	Section 5 amended	5
6.	Section 7 amended	5
7.	Section 10 replaced	5
8.	Section 16B amended	6
9.	Section 17 amended	6
10.	Part III Divisions 1, 2 and 3 replaced by Division 1	7
11.	Section 26B amended	20
12.	Heading to Part III Division 4 amended	20
13.	Section 27 amended	20
14.	Section 30 amended	20
15.	Section 33 amended	21
16.	Section 33A amended	23
17.	Section 34B amended	23
18.	Section 35 amended	24
19.	Section 36 amended	25
20.	Section 38 amended	25
21.	Section 49 amended	25
22.	Section 53 amended	25
23.	Section 54 amended	27
24.	Section 58 amended	28
25.	Section 59 amended	28
26.	Section 60 amended	29
27.	Section 62 amended	31

Contents

28.	Section 62A inserted	33
29.	Section 64 amended	34
30.	Section 87 amended	35
31.	Section 87A inserted	35
32.	Section 92 amended	37
33.	Section 95 amended	37
34.	Section 96 amended	37
35.	Section 97 replaced by sections 97 and 97A	37
36.	Section 99 amended	40
37.	Section 101 amended	42
38.	Section 103 amended	43
39.	Section 107 amended	44
40.	Section 117 amended	44
41.	Section 118 amended	44
42.	Section 119 amended	45
43.	Section 127 amended	45
44.	Section 128 amended	45
45.	Section 130A inserted	45
46.	Section 131A inserted	46
47.	Section 132 amended	47
48.	Schedule amended	47
49.	Various references to “Authority” amended	49
50.	References to the department amended	49
51.	Transitional provisions	50

Schedule 1 — Transitional provisions

1.	Definitions	51
2.	Certain contracts under CALM Act for sale of forest products have effect as if entered into by Forest Products Commission	51
3.	Certain contracts under CALM Act for harvesting of forest products have effect as if entered into by the Forest Products Commission	52
4.	Transfer of rights and obligations under certain timber sharefarming agreements under CALM Act	53
5.	Transfer of rights and obligations under other agreements	53
6.	Transfer of positions	53
7.	Reserves and other land vested in the Commission or Authority	55

8.	Management plans	56
9.	Members of Commission, Authority and Council	56
10.	References to the department to be read as references under its new name	56
11.	Certain regulations under CALM Act taken to have been made under Forest Products Act	57
12.	Registration of documents	58
13.	Transitional regulations	58
14.	Saving	59

Western Australia

LEGISLATIVE ASSEMBLY

Conservation and Land Management Amendment Bill 1999

A Bill for

**An Act to amend the *Conservation and Land Management Act 1984*,
to make consequential amendments to other Acts, and for related
purposes.**

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Conservation and Land
Management Amendment Act 1999*.

s. 2

2. Commencement

This Act comes into operation on the day on which the *Forest Products Act 1999* comes into operation.

3. The Act amended

5 The amendments in this Act (other than in section 50(2)) are to the *Conservation and Land Management Act 1984**.

[* Reprinted as at 26 March 1999.]

4. Section 3 amended

(1) The amendments in this section are to section 3.

10 (2) The definition of “appointed member” is deleted.

(3) The definition of “associated body” is amended by deleting “Authority” in both places where it occurs and inserting in each place instead —

“ Conservation Commission ”.

15 (4) The definition of “Authority” is deleted and the following definitions are inserted instead —

“

20 “**biodiversity**” means the variability among living biological entities and the ecosystems and ecological complexes of which those entities are a part and includes —

(a) diversity within native species and between native species;

(b) diversity of ecosystems; and

25 (c) diversity of other biodiversity components;

“**biodiversity components**” includes habitats,
ecological communities, genes and ecological
processes;

”.

5 (5) The definition of “Commission” is deleted.

(6) After the definition of “conservation and land management
officer” the following definition is inserted —

“

10 “**Conservation Commission**” means the Conservation
Commission of Western Australia established by
section 18;

”.

(7) The definitions of “Council” and “*ex officio* member” are
deleted.

15 (8) After the definition of “forest produce” the following definitions
are inserted —

“

“**forest products**” has the same meaning as it has in
the *Forest Products Act 1999*;

20 “**Forest Products Commission**” means the Forest
Products Commission established by the *Forest
Products Act 1999*;

”.

25 (9) The definition of “member” is deleted and the following
definition is inserted instead —

“

“**member**” means a member of the Conservation
Commission, the Marine Authority or the Marine
Committee;

30

”.

s. 4

- (10) After the definition of “Minister for Fisheries” the following definition is inserted —

“

5 **“Minister for Forest Products”** means the Minister to
whom the administration of the *Forest Products*
Act 1999 is committed;

”.

- (11) After the definition of “pearling activity” the following definition is inserted —

10 “

“public water catchment area” means —

15 (a) land which is reserved under Part 4 of the *Land*
Administration Act 1997 for water supply
purposes and the care, control and
management of which are placed with the
Water and Rivers Commission under that Act;

(b) a catchment area or water reserve constituted
by order in council or proclamation under —

20 (i) the *Country Areas Water Supply*
Act 1947;

(ii) the *Metropolitan Water Supply,*
Sewerage, and Drainage Act 1909; or

(iii) the *Water Boards Act 1904*;

or

25 (c) an Underground Water Pollution Control
Area constituted by proclamation under the
Metropolitan Water Supply, Sewerage, and
Drainage Act 1909;

”.

- 30 (12) The definition of “royalty” is deleted.

- (13) After the definition of “tree” the following definition is inserted —

“

“**Water and Rivers Commission**” means the Water and Rivers Commission established by section 4 of the *Water and Rivers Commission Act 1995*;

”.

5. Section 5 amended

- (1) Section 5(g) is amended by deleting “Commission, the Authority” and inserting instead —

“ Conservation Commission ”.

- (2) Section 5(h) is amended by deleting “Commission or the Authority.” and inserting instead —

“ Conservation Commission. ”.

6. Section 7 amended

- (1) Section 7(1) is amended before “Commission” by inserting —

“ Conservation ”.

- (2) Section 7(3) is amended by deleting “Authority.” and inserting instead —

“ Conservation Commission. ”.

- (3) Section 7(6) is amended by deleting “and (3), 22(2) and (3)”.

7. Section 10 replaced

Section 10 is repealed and the following section is inserted instead —

“

10. Reservation of timber reserves

The Governor may, by order published in the *Gazette*, reserve any Crown land as a timber reserve.

”.

s. 8

8. Section 16B amended

Section 16B(3) is amended by deleting “10(1)(b) and 17” and inserting instead —

“ 17 and 20(2) ”.

5 **9. Section 17 amended**

(1) Section 17(3) is amended by deleting “Commission, Authority” and inserting instead —

“ Conservation Commission ”.

10 (2) Section 17(4) is amended by deleting “Commission, the Authority” in both places where it occurs and inserting in each place instead —

“ Conservation Commission ”.

(3) Section 17(4a) is amended by deleting “Commission, the Authority” and inserting instead —

15 “ Conservation Commission ”.

(4) Section 17(5) is amended after “subsection (6) applies,” by inserting —

20 “
or in the case of a timber reserve to which
subsection (6a) applies,
”.

(5) Section 17(6) is amended after “marine reserve” by inserting —

25 “
(other than land reserved under Part 4 of the *Land Administration Act 1997* as a marine reserve)
”.

(6) After section 17(6) the following subsection is inserted —

“

(6a) In the case of a timber reserve (other than land reserved under Part 4 of the *Land Administration Act 1997* as a timber reserve), the Minister, with the concurrence of the Minister for Forest Products, may, subject to this section, recommend to the Governor that an order be made to give effect to the proposal, and thereupon the Governor shall by order published in the *Gazette* give effect to the proposed cancellation, amendment or alteration.

”.

10. Part III Divisions 1, 2 and 3 replaced by Division 1

Part III Divisions 1, 2 and 3 are repealed and the following Division is inserted instead —

“

Division 1 — Conservation Commission of Western Australia

Subdivision 1 — Establishment and functions and powers of Conservation Commission

18. Conservation Commission established

- (1) There is established by this section a commission by the name of the Conservation Commission of Western Australia.
- (2) The Conservation Commission is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Commission in its corporate name.

19. Functions of Conservation Commission

- (1) The functions of the Conservation Commission are —
- (a) to have vested in it State forest, timber reserves, national parks, conservation parks, nature reserves, relevant land referred to in section 5(g) and to have the joint function provided for by section 7(4);
 - (b) to have the care, control and management of relevant land referred to in section 5(h) placed with it;
 - (c) to develop policies —
 - (i) for the preservation of the natural environment of the State and the provision of facilities for the enjoyment of that environment by the community;
 - (ii) for promoting the appreciation of flora and fauna and the natural environment; and
 - (iii) to achieve or promote the objectives referred to in section 56(1)(a), (b), (c), (d) and (e);
 - (d) to advise the Minister on the development of policies for the conservation and management of biodiversity and biodiversity components throughout the State;
 - (e) to consider, in accordance with section 17, any cancellation, change of purpose or boundary alteration in respect of land vested, whether solely or jointly with an associated body, in the Conservation Commission;
 - (f) to submit proposed management plans to the Minister as provided in Part V in respect of land vested, whether solely or jointly with an

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-
- associated body, in the Conservation Commission;
- 5 (g) in relation to management plans for land vested, whether solely or jointly with an associated body, in the Conservation Commission —
- 10 (i) to develop guidelines for monitoring and assessing the implementation of the management plans by the Department;
- 15 (ii) to set performance criteria for assessing and auditing the performance of the Department and the Forest Products Commission in carrying out and complying with the management plans; and
- (iii) to assess and audit the performance of the Department and the Forest Products Commission in carrying out and complying with the management plans;
- 20 (h) to advise the Minister on the ecologically sustainable management of —
- (i) State forest and timber reserves; and
- (ii) forest produce throughout the State;
- 25 (i) to advise the Minister on the production and harvesting, on a sustained yield basis, of forest produce throughout the State;
- (j) to inquire into and, subject to subsection (5), to advise the Minister on any matter on which the Minister requests advice;
- 30 (k) to provide advice, upon request, on matters relating to land and waters vested in the Conservation Commission, whether solely or jointly with an associated body, to any body or person, if the provision of the advice is in the

s. 10

- public interest and it is practicable for the Conservation Commission to provide it; and
- 5 (1) with the approval of the Minister, to cause study or research to be undertaken for the purposes of paragraph (c).
- (2) It is declared that the vesting in the Conservation Commission of State forest, timber reserves, national parks, conservation parks and nature reserves is only for the purposes of subsection (1)(c), (d), (e), (f), (g), 10 (h), (i), (k) and (l) and does not otherwise limit the functions of the Department under section 33.
- (3) Despite the *Land Act 1933*, land to which section 5(g) applies that is vested in the Conservation Commission, including the land referred to in section 155, is only 15 vested within the meaning in subsection (2).
- (4) Despite the *Land Administration Act 1997*, the placing of the care, control and management of land to which section 5(h) applies with the Conservation Commission is only for the purposes referred to in subsection (2).
- 20 (5) The Conservation Commission shall not advise the Minister on any matter to which this subsection applies unless, before the advice is tendered, it has —
- 25 (a) informed each local government in whose district land directly affected by the advice is situated of the general nature of its proposed advice; and
- (b) afforded the local government a reasonable opportunity to make submissions on its proposed advice.
- 30 (6) Subsection (5) applies to —
- (a) any proposal to establish a new State forest, timber reserve, national park, conservation park

or nature reserve or to enter into an agreement under section 16 for the management of land as a State forest, timber reserve, national park, conservation park or nature reserve; and

- 5 (b) any matter to which the Minister, by written direction to the Conservation Commission, applies that subsection.
- (7) Where a matter before the Conservation Commission is relevant to the functions of the Forest Products Commission, the Conservation Commission shall refer that matter to the Forest Products Commission for its comments and advice.
- 10
- (8) Where a matter before the Conservation Commission is relevant to the management of land or waters vested in the Marine Authority, or is otherwise relevant to the functions of the Marine Authority, the Conservation Commission shall refer that matter to the Marine Authority for its comments and advice.
- 15
- (9) Where —
- 20 (a) the Conservation Commission has provided advice to the Minister which the Minister has requested under subsection (1)(j), or is required by this Act to consider or take into account;
- (b) the advice recommends that the Minister take or refrain from taking specified action; and
- 25 (c) the Minister decides to act otherwise than in accordance with the recommendation,
- the Minister is to cause a copy of the advice and the decision to be laid before each House of Parliament within 14 sitting days of that House after the making of the decision.
- 30

20. Powers of Conservation Commission

- 5
- (1) The Conservation Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act.
- (2) Without limiting subsection (1), the Conservation Commission has the power to engage and manage staff.
- (3) The power conferred by subsection (2) —
- 10
- (a) includes the power to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate the employment of staff; and
- (b) does not preclude the delegation of any matter under section 26AA.
- 15
- (4) The remuneration of and other terms and conditions of employment of staff are —
- (a) not to be less favourable than is provided for in —
- 20
- (i) an applicable industrial award, order or agreement; or
- (ii) the *Minimum Conditions of Employment Act 1993*;
- and
- (b) to be determined after consultation with the
- 25
- Minister for Public Sector Management.
- (5) Nothing in this section affects the operation of the *Workplace Agreements Act 1993* or section 100 of the *Public Sector Management Act 1994*.
- 30
- (6) Without limiting subsection (1), the Conservation Commission has the rights to take water from land vested in, or land the care, control and management of

which are placed with, the Conservation Commission that would apply if —

- (a) that land was land alienated from the Crown; and
- 5 (b) the Conservation Commission was the occupier of that land,

within the meaning of the *Rights in Water and Irrigation Act 1914*.

- 10 (7) The rights referred to in subsection (6) may be assigned by the Conservation Commission to —
 - (a) a member of the Conservation Commission;
 - (b) a member of the staff of the Conservation Commission; or
 - 15 (c) the Executive Director or a member of the staff of the Department.

Subdivision 2 — Membership and meetings of Conservation Commission

21. Membership of Conservation Commission

- 20 (1) The Conservation Commission comprises 9 members appointed by the Governor on the nomination of the Minister.
- (2) Subject to subsection (3) and section 22, the members are to be persons who, in the opinion of the Minister —
 - 25 (a) have knowledge of and experience in —
 - (i) the conservation or management of biodiversity;
 - (ii) environmental management, including the management of the natural

s. 10

environment for use for recreational purposes; or

- (iii) the sustainable use of natural resources; or

- 5 (b) have a particular function or vocational interest relevant to the functions of the Conservation Commission,

10 and who, in the opinion of the Minister, are able to make a contribution to the functions of the Conservation Commission.

- (3) One member is to be a person who, in the opinion of the Minister —

- 15 (a) has knowledge of and experience in Aboriginal cultural and Aboriginal heritage matters relevant to the functions of the Conservation Committee; and
- (b) is able to make a contribution to the functions of the Conservation Commission.

- 20 (4) The Governor is to appoint, on the nomination of the Minister, 2 of the members to be the chairman of the Conservation Commission and the deputy chairman of the Conservation Commission respectively.

22. Certain person not eligible for appointment

- 25 (1) A person is not eligible to be appointed as, or be, a member of the Conservation Commission if the person —
 - 30 (a) holds office as the Executive Director, Director of Forests, Director of National Parks, Director of Nature Conservation or a member of the staff of the Conservation Commission or the Department; or

(b) holds office as a commissioner, the General Manager or a member of the staff of the Forest Products Commission.

5 (2) A reference in this section to a person who holds an office includes a reference to a person who acts in the office.

23. Entitlement of Executive Director and Directors to attend meetings of Conservation Commission

10 (1) Reasonable notice of a meeting of the Conservation Commission is to be given to the Executive Director and, if in the view of the chairman any matter proposed to be put before the meeting concerns the functions of a Director, to that Director, and no resolution purportedly passed at a meeting is valid unless such notice of the meeting was duly given.

15 (2) For the purposes of subsection (1), the Executive Director is to notify the chairman as to the functions of the Directors and any changes to those functions.

20 (3) Subject to subsection (5), the Executive Director, or the Executive Director's representative, is entitled to attend any meeting and to take part in the consideration and discussion of any matter before a meeting, but cannot vote on any matter.

25 (4) Subject to subsection (5), a Director who receives notice under subsection (1), or that Director's representative, is entitled to attend the meeting to which the notice applies and to take part in the consideration and discussion of any matter before the meeting that concerns the functions of the Director, but cannot vote on any matter.

30 (5) The Conservation Commission may decide to exclude the persons referred to in subsections (3) and (4) (but

not some of them only) from a meeting while it is considering a matter that relates to the functions or actions of the Department.

(6) In this section —

5 **“Director”** means the Director of Forests, Director of National Parks or Director of Nature Conservation.

Subdivision 3 — Relationship with the Minister

24. Minister may give directions

10 (1) The Minister may give directions in writing to the Conservation Commission with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Conservation Commission is to give effect to any such direction.

15 (2) The text of any direction given under subsection (1) is to be included in the annual report of the Conservation Commission under section 31.

25. Minister to have access to information

- 20 (1) The Minister is entitled —
- (a) to have information in the possession of the Conservation Commission; and
 - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- 25 (2) For the purposes of subsection (1) the Minister may —
- (a) request the Conservation Commission to furnish information to the Minister;
 - (b) request the Conservation Commission to give the Minister access to information;

- (c) for the purposes of paragraph (b), make use of staff to obtain the information and furnish it to the Minister.
- 5 (3) The Conservation Commission is to comply with a request under subsection (2) and make staff and facilities available to the Minister for the purposes of subsection (2)(c).
- (4) In this section —
- 10 “**document**” includes any tape, disc or other device or medium on which information is recorded or stored;
- “**information**” means information specified, or of a description specified, by the Minister that relates to the functions of the Conservation Commission;
- 15 “**staff**” means the staff of the Conservation Commission or the staff provided by the Department under section 33(1)(ba).

Subdivision 4 — General

26. Consultants

20 The Conservation Commission may engage persons under contracts for services to provide any professional, technical or other assistance that the Conservation Commission considers necessary for the performance of its functions under this Act.

25 **26AA. Delegation**

- (1) The Conservation Commission may, by instrument, delegate the performance of any of its functions except this power of delegation.
- (2) A delegation under subsection (1) may be made to —
- 30 (a) a member of the Conservation Commission;

s. 10

- (b) a member of the staff of the Conservation Commission; or
 - (c) a member of the staff of the Department provided under section 33(1)(ba).
- 5 (3) A delegate cannot subdelegate the performance of any function unless the delegate is expressly authorized by the instrument to do so.
- (4) A function performed by a delegate of the Commission is taken to be performed by the Commission.
- 10 (5) A delegate performing a function under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

26AB. Execution of documents

- 15 (1) The Conservation Commission is to have a common seal.
- (2) A document is duly executed by the Conservation Commission if —
- 20 (a) the common seal of the Conservation Commission is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Conservation Commission by one or more persons authorized to do so under subsection (5).
- 25 (3) The common seal of the Conservation Commission is not to be affixed to any document except as authorized by the Conservation Commission.
- 30 (4) The common seal of the Conservation Commission is to be affixed to a document in the presence of 2 of its members, and each of them is to sign the document to attest that the common seal was so affixed.

- 5
- (5) The Conservation Commission may, by writing under its seal, authorize one or more of its members to sign documents on its behalf, either generally or subject to any conditions or restrictions specified in the authorization.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is proved.
- 10
- (7) A document executed by a person under this section without the common seal of the Conservation Commission is not to be regarded as a deed unless the person executes it as a deed and is authorized under subsection (5) to do so.
- 15
- (8) Where a document is produced bearing a seal purporting to be the common seal of the Conservation Commission, it is to be presumed that the seal is the common seal of the Conservation Commission until the contrary is proved.

26AC. Review of Conservation Commission

- 20
- (1) The Minister is to carry out a review of the operations and effectiveness of the Conservation Commission as soon as is practicable after the expiration of 5 years from the commencement of the *Conservation and Land Management Amendment Act 1999* and in the course of that review is to have regard to —
- 25
- (a) the need for the continuation of the Conservation Commission; and
 - (b) any other matters that appear to the Minister to be relevant.

s. 11

- (2) The Minister is to prepare a report based on the review under subsection (1) and, as soon as is practicable after its preparation, is to cause the report to be laid before each House of Parliament.

5

”.

11. Section 26B amended

Section 26B(7) is amended by deleting “the Authority” in each place where it occurs and inserting in each place instead —

“ the Conservation Commission ”.

10 **12. Heading to Part III Division 4 amended**

The heading to Part III Division 4 is amended by deleting “Commission, the Authority, the Council,” and inserting instead —

“ **Conservation Commission,** ”.

15 **13. Section 27 amended**

Section 27 is amended by deleting “Commission, the Authority, the Council,” and inserting instead —

“ Conservation Commission, ”.

14. Section 30 amended

20 Section 30 is amended as follows:

- (a) by deleting “An appointed” and inserting instead —
“ A ”;
- (b) by deleting “Public Service Commissioner.” and inserting instead —

25

“ Minister for Public Sector Management. ”.

15. Section 33 amended

(1) Section 33(1) is amended as follows:

(a) in paragraph (b) by deleting “Commission, the Authority, the Council,” and inserting instead —

5 “ Conservation Commission, ”;

(b) after paragraph (b) by inserting the following paragraphs —

“

10 (ba) without limiting paragraph (b) or section 20(2), to provide the Conservation Commission with any staff and facilities that it may reasonably require to perform its functions;

15 (bb) to enter into a memorandum of understanding with the Forest Products Commission relating to the performance of the Department’s and that Commission’s respective functions and to any other prescribed matter;

”;

(c) after paragraph (ca) by inserting the following paragraph —

20

“

25 (cb) to use, for the purposes of making improvements to any land to which this Act applies, any forest produce that becomes available for use from the carrying out of —

(i) necessary operations, within the meaning in section 33A(1), on nature reserves;

30 (ii) compatible operations, within the meaning in section 33A(2), on national parks and conservation parks; or

(iii) operations, in accordance with the provisions of section 56 applicable to the land, on land vested in, or on land

s. 15

- 5 the care, control and management of
which are placed with, the Conservation
Commission that is State forest, a
timber reserve or land referred to in
section 5(g) or (h). ”;
- (d) in paragraph (dc) before “to promote” by inserting —
“ subject to paragraph (dd), ”;
- 10 (e) after paragraph (dc) by inserting the following
paragraph —
“
(dd) to develop policies that provide for water to be
taken from land referred to in paragraph (a); ”;
- 15 (f) by deleting the full stop at the end of paragraph (g) and
inserting a semicolon instead;
- (g) after paragraph (g) by inserting the following
paragraph —
“
20 (h) to perform any other function prescribed for the
purposes of this paragraph. ”.
- (2) After section 33(3) the following subsection is inserted —
“
25 (4) A function referred to in paragraph (dc) or (dd) of
subsection (1) shall be carried out, where there is a
management plan for land to which that paragraph
applies, in accordance with that plan and without
30 limiting the operation of the *Rights in Water and
Irrigation Act 1914*. ”.

- (3) Section 33(5) is amended by deleting “Commission, the Authority or the Marine Authority under sections 19, 22” and inserting instead —

“

5 Conservation Commission or the Marine Authority
under sections 19

”.

16. Section 33A amended

- 10 (1) Section 33A(1) is amended by deleting “section 33(3)(b)” and inserting instead —

“ section 33(1)(cb)(i) and (3)(b) ”.

- (2) Section 33A(2) is amended by deleting “section 33(3)(b)” and inserting instead —

“ section 33(1)(cb)(ii) and (3)(b) ”.

15 **17. Section 34B amended**

- (1) Section 34B(2) is repealed and the following subsection is inserted instead —

“

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

(a) by which the right to harvest a crop of trees on land is acquired by a person through the Executive Director acting as an agent and the right to establish and maintain, or the right to maintain, the crop may be acquired —

25

- (i) by the Executive Director;
(ii) by another person through the Executive Director acting as an agent; or

s. 18

- (iii) by the Executive Director and by another person through the Executive Director acting as an agent;
 - and
 - 5 (b) which provides for rights, obligations and powers relating to —
 - 10 (i) payment of money or the giving of other consideration by the parties to the agreement; and
 - (ii) access to the land and, where appropriate, the undertaking of work or the provision of facilities on the land by those parties,
 - and may provide for rights, obligations and powers relating to the division of the crop or the proceeds of the crop between parties to the agreement (other than the Executive Director).
- 20 (2) Section 34B(7a) is repealed and the following subsection is inserted instead —
 - “
 - 25 (7a) The Executive Director may exercise rights under or in relation to a timber sharefarming agreement.
 - ”.
- 18. Section 35 amended**

Section 35 is amended as follows:

 - (a) before “Any” by inserting the subsection designation “(1)”;

(b) at the end of the section by inserting the following subsection —

“

5

(2) If an arrangement is made under subsection (1) with the Forest Products Commission, the agreed amount by way of payment is not to exceed the full cost to the Department of providing the advice, performing the work or supplying the services or facilities.

”.

10 **19. Section 36 amended**

Section 36(2) is repealed.

20. Section 38 amended

After section 38(3) the following subsection is inserted —

“

15

(4) In subsection (1) —

“**acquiring**” has a meaning that accords with the meaning of “disposing of”;

“**disposing of**” includes selling, leasing or disposing of in any other manner that an interest in property may be disposed of.

20

”.

21. Section 49 amended

Section 49(a) is amended by deleting “Commission or the Authority;” and inserting instead —

25

“ Conservation Commission; ”.

22. Section 53 amended

(1) Section 53 is amended as follows:

(a) before “In” by inserting the subsection designation “(1)”;

s. 22

- (b) by deleting the definition of “controlling body” and inserting the following definition instead —

“

“**controlling body**” means the Conservation Commission or the Marine Authority;

”;

- (c) at the end of the definition of “land” by deleting the full stop and inserting a semicolon instead;

- (d) after the definition of “land” by inserting the following definitions —

“

“**Minister for Water Resources**” means the Minister to whom the administration of the *Water and Rivers Commission Act 1995* is committed;

“**relevant water utility**”, in relation to a public water catchment area, means a public utility that holds —

- (a) a licence under Part III of the *Rights in Water and Irrigation Act 1914* for the taking, use or disposal of water from that area; and
(b) an operating licence under the *Water Services Coordination Act 1995*.

”.

- (2) At the end of section 53 the following subsections are inserted —

“

- (2) Anything to be done by the Conservation Commission under this Division in relation to a management plan for land that is State forest or a timber reserve is to be done —

- (a) by the Conservation Commission; or

- (b) by the Conservation Commission through the agency of the Department,

as the case requires, acting jointly with the Forest Products Commission.

- 5 (3) Anything to be done by the Conservation Commission under this Division in relation to a management plan for land that is or includes a public water catchment area is to be done —

- (a) by the Conservation Commission; or
- 10 (b) by the Conservation Commission through the agency of the Department,

as the case requires, acting jointly with the Water and Rivers Commission and any relevant water utility.

”.

15 **23. Section 54 amended**

Section 54(3) is amended by deleting paragraph (a) and “and” after that paragraph and inserting instead —

“

- (a) by —
 - 20 (i) the controlling body for that land through the agency of the Department;
 - (ii) if the land is State forest or a timber reserve, the Conservation Commission through the agency of the Department acting jointly with the Forest Products Commission; or
 - 25 (iii) if the land is or includes a public water catchment area, the Conservation Commission through the agency of the Department acting jointly with the
 - 30

s. 24

Water and Rivers Commission and any
relevant water utility;

and

”.

5 **24. Section 58 amended**

(1) Section 58 is amended by inserting before “Written” the
subsection designation “(1)”.

(2) At the end of section 58 the following subsections are
inserted —

10

“

(2) If the proposed management plan is for State forest or a
timber reserve, the Executive Director shall give a copy
of any written submission on the plan to the Forest
Products Commission.

15

(3) If the proposed management plan is for land that is or
includes a public water catchment area, the Executive
Director shall give a copy of any written submission on
the plan to the Water and Rivers Commission and to
any relevant water utility.

20

”.

25. Section 59 amended

(1) Section 59(5) is amended by deleting “controlling body” and
inserting instead —

“ Marine Authority ”.

25

(2) After section 59(5) the following subsections are inserted —

“

(6) The Conservation Commission shall submit a proposed
management plan for State forest or a timber reserve to
the Minister for Forest Products.

(7) The Conservation Commission shall submit a proposed management plan for land that is or includes a public water catchment area to the Minister for Water Resources.

5 (8) If a proposed management plan is relevant to the functions of the Western Australian Tourism Commission under the *Western Australian Tourism Commission Act 1983*, the controlling body shall submit the plan to the Minister administering that Act.

10

26. Section 60 amended

(1) Section 60(2) is amended by deleting “and (2b)” and inserting instead —

“ , (2b) and (2c), ”.

15 (2) After section 60(2b) the following subsections are inserted —

“

(2c) If the Minister for Forest Products has made submissions to the controlling body on a proposed management plan for State forest or a timber reserve, the Minister shall not approve the proposed plan unless —

20

(a) the Minister and the Minister for Forest Products —

25

(i) agree that the proposed plan gives effect to those submissions; or

(ii) having referred the proposed plan to the Governor, agree that it gives effect to the decision of the Governor,

30

so far as those submissions or the Governor’s decision relate to —

(iii) the production and yield of forest products;

- (iv) the sustainable use of indigenous forest products;
 - (v) the harvesting of forest products;
 - (vi) the forest products industry; or
 - 5 (vii) a proposal under section 17(2) to cancel or amend the purpose of a timber reserve or alter a boundary of a timber reserve;
- and
- 10 (b) the Minister and the Minister for Forest Products agree that consideration has been given to those submissions so far as they are about other matters relating to the administration of the *Forest Products Act 1999*.
- 15 (2d) If the Minister for Water Resources has made submissions to the controlling body on a proposed management plan for land that is or includes a public water catchment area, the Minister shall not approve the proposed plan unless —
- 20 (a) the Minister and the Minister for Water Resources —
 - (i) agree that the proposed plan gives effect to those submissions; or
 - 25 (ii) having referred the proposed plan to the Governor, agree that it gives effect to the decision of the Governor,so far as those submissions or the Governor's decision relate to —
 - 30 (iii) the maintenance and protection of water resources and the protection of water quality;
 - (iv) the management of water catchments; or

(v) access to and utilization of water resources;

and

(b) the Minister and the Minister for Water Resources agree that consideration has been given to those submissions so far as they are about other matters relating to the administration of —

(i) the *Country Areas Water Supply Act 1947*;

(ii) the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*;

(iii) the *Rights in Water and Irrigation Act 1914*; and

(iv) the *Water Agencies (Powers) Act 1984*.

”.

27. Section 62 amended

(1) Section 62(1) is amended as follows:

(a) by deleting “a controlling body” and inserting instead —
“ the Conservation Commission ”;

(b) by deleting “the whole or any part of land that is vested in that controlling body” and inserting instead —

“ any land that is vested in the Conservation Commission ”;

(c) before “may in like manner” by inserting —
“ , subject to section 62A, ”.

(2) After section 62(1)(d) the following paragraph is inserted —

“

(da) a forest conservation area;

”.

s. 27

(3) Section 62(1)(f) is amended by deleting “relevant controlling body” and inserting instead —

“ Conservation Commission ”.

(4) After section 62(1) the following subsection is inserted —

5

“

(1aa) Subject to this section, the Minister may, on the recommendation of the Minister for Forest Products, by notice published in the *Gazette*, classify any land in State forest or a timber reserve as a forest products temporary control area and may in like manner amend or cancel a notice previously so published.

10

”.

(5) Section 62(1a) is amended by deleting “the whole or any part of” and inserting instead —

15

“ any ”.

(6) Section 62(1b) is amended by deleting “the whole or any part of the” and inserting instead —

“ any ”.

(7) After section 62(1b) the following subsections are inserted —

20

“

(1ba) Before making a notice under subsection (1aa), the Minister shall, unless satisfied that the urgency of the case requires this subsection to be dispensed with, give the Conservation Commission an opportunity to make a submission on the matter, and shall take that submission into account.

25

(1bb) For the purposes of section 19(9), a decision under subsection (1ba) that the urgency of the case requires the provision of advice by the Conservation Commission to be dispensed with shall be treated as a

30

decision to act otherwise than in accordance with a recommendation.

”.

5 (8) Section 62(1e) is amended after “notice under subsection” by inserting —

“ (1aa), ”.

(9) After section 62(2) the following subsection is inserted —

“

10 (2a) A classification of land as a forest products temporary control area under subsection (1aa) shall only be made for the purposes of public safety or the safety of persons engaged in the harvesting or stockpiling of forest products, or in the construction or maintenance of roads, under the *Forest Products Act 1999*, and a notice of classification —

15

(a) shall not have effect for a period exceeding 90 days; but

(b) may be made more than once for the same purpose and for the same area.

20

”.

(10) Section 62(4) is repealed.

28. Section 62A inserted

After section 62 the following section is inserted in Part V —

“

25 **62A. Amendment and cancellation of forest conservation area classification**

30

(1) If the Minister proposes to publish a notice (a “**proposed notice**”) under section 62(1)(da) to amend or cancel a notice that classifies land as a forest conservation area, the Minister is to cause the proposed notice to be laid before each House of Parliament.

s. 29

- 5 (2) Section 42(2), (3) and (5) of the *Interpretation Act 1984* apply to a proposed notice laid before each House of Parliament under subsection (1) as if the proposed notice was a regulation, and the notice can only be published under section 62(1)(da) if —
- (a) it has not ceased to have effect; and
- (b) there is no longer any possibility of it ceasing to have effect,
- 10 under section 42(2) of that Act as applied by this subsection.

”.

29. Section 64 amended

Section 64(1) is amended as follows:

- 15 (a) in paragraph (g) after “section 35 for the” by inserting —
- “ provision of advice, ”;
- (b) after paragraph (g) by deleting “and” and inserting the following —
- 20 “
- (ga) subject to any direction of the Treasurer, moneys received by the Department or the Executive Director, as the case requires, by way of —
- 25 (i) payments under section 41(2)(d) of the *Forest Products Act 1999*; and
- (ii) recovery of the costs referred to in section 54(1)(c) and (d) of that Act;
- and

”.

30. **Section 87 amended**

Section 87(1) is amended as follows:

- (a) after the definition of “Crown land” by inserting the following definition —

5

“

“forest produce” does not include —

- (a) trees, parts of trees, timber, sawdust, chips, charcoal, gum, kino, resin or sap; or
(b) firewood to which regulations made under section 128(1)(d)(ix) apply;

10

”;

- (b) by deleting the definition of “permit”;

- (c) in the definition of “licence” —

- (i) after “means” by inserting —

15

“ , except in section 97A, ”; and

- (ii) by deleting the full stop at the end of the definition and inserting a semicolon instead;

- (d) by inserting after the definition of “licence” the following definition —

20

“

“permit” means, except in section 97A, a permit described in section 89.

”.

31. **Section 87A inserted**

25

After section 87 the following section is inserted —

“

87A. Restriction on exercise of powers

- (1) Subject to subsection (2), the powers conferred on the Executive Director by this Division are exercisable only —

30

s. 31

- (a) with the approval of the Minister;
 - (b) in the case of land vested in the Conservation Commission, after consultation with the Conservation Commission;
 - 5 (c) in the case of land classified under Division 2 of Part V as a forest conservation area, consistently with any management plan for the land concerned;
 - 10 (d) in the case of land in a public water catchment area, consistently with the provisions of the *Country Areas Water Supply Act 1947* and the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* relating to the protection of water quality; and
 - 15 (e) in conformity with section 33(3).
- (2) In the case of land other than land classified under Division 2 of Part V as a forest conservation area, subsection (1)(a) and (b) do not apply to the grant or renewal of a permit, licence or lease, or the entering into or renewal of a contract, under this Division where the appropriate approval has been given under paragraph (a) and, if applicable, the appropriate consultation has taken place under paragraph (b) for —
- 20 (a) the grant under this Division of certain kinds of permits, licences or leases or certain numbers of permits, licences or leases;
 - 25 (b) the entering into under this Division of certain kinds of contracts or certain numbers of contracts;
 - 30 (c) the renewal, transfer, cancellation or suspension of, or the imposition or variation of terms or conditions attached to, a permit or licence granted, or a contract entered into, under this Division; or

(d) the renewal of a lease granted under this Division,

and the permit, licence or lease granted or renewed, or the contract entered into or renewed, is covered by the terms of that approval and, if applicable, that consultation.

”.

32. Section 92 amended

(1) Section 92(1), (2), (3) and (4) are amended by deleting “royalties” and inserting instead —

“ forest produce charges ”.

(2) Section 92(5) is repealed.

33. Section 95 amended

Section 95(1) and (2) are amended by deleting “royalties,” and inserting instead —

“ forest produce charges or other ”.

34. Section 96 amended

(1) Section 96(1), (2) and (3) are repealed.

(2) Section 96(4) is amended by deleting “this section and to”.

(3) Section 96(5) is amended by deleting “this section” and inserting instead —

“ subsection (4) ”.

35. Section 97 replaced by sections 97 and 97A

Section 97 is repealed and the following sections are inserted instead —

“

97. Forest leases

- 5 (1) The Executive Director may grant a lease of land within State forest or a timber reserve for a term not exceeding 21 years on such terms and conditions as the Executive Director thinks fit.
- (2) A lease granted under subsection (1) may include an option or options to renew that lease for a further term or terms not exceeding, in the aggregate, 21 years.
- 10 (3) A lease granted under this section shall be laid before each House of Parliament within 14 sitting days of its execution by all parties to the grant or renewal.
- (4) No compensation shall be payable to a lessee under a forest lease, on the expiration of the lease, for any improvements to the land comprised in the lease; but the lessee shall be entitled, at any time before the expiration of the lease, to remove any buildings or fences erected by the lessee or to dispose of them to an incoming tenant.

20 **97A. Licences for use of land**

- (1) The Executive Director may grant a licence in writing to any person to enter and use any land to which this Division applies.
- 25 (2) The Minister, after consultation with the Conservation Commission and on the recommendation of the Executive Director, may, by notice published in the *Gazette*, declare that a permit is required for the carrying on of any activity specified in the notice on land to which this Division applies.
- 30 (3) The Executive Director may grant to a person a permit of the kind required by a declaration made under subsection (2).

(4) A person shall not, on any land to which this Division applies, carry on any activity for which a permit is required by a declaration made under subsection (2) unless the person is —

5

(a) the holder of a permit of the kind required by the declaration; or

(b) authorized to carry on that activity on the land under this Act or another written law.

Penalty: \$4 000.

10

(5) Subsections (2) to (4) do not affect the operation of section 128 or 129 or regulations made under either section.

15

(6) If a permit is granted under this section that authorizes the removal of water from land to which this Division applies —

(a) the granting of the permit does not limit the operation of the *Rights in Water and Irrigation Act 1914*;

20

(b) the permit can apply only to land for which there is a management plan in force that provides for water to be taken from the land; and

25

(c) the permit cannot authorize an activity to be carried on for the purposes of the removal of water from land unless the activity is consistent with that management plan.

30

(7) The Executive Director may renew the period of operation of a licence or permit under this section from time to time, or transfer the authority it confers from one person to another, or, where its operation relates to any place, may transfer that operation to another place of the same kind.

s. 36

- 5
- (8) A licence or permit under this section may be granted, renewed or transferred subject to such conditions as the Executive Director thinks fit, and those conditions —
- (a) are to be endorsed on or attached to the licence or permit when granted, renewed or transferred, as the case may be; and
- (b) may be added to, cancelled, suspended and otherwise varied by the Executive Director from time to time during the operation of the licence or permit.
- 10
- (9) The holder of a licence or permit under this section shall not contravene or fail to comply with any condition endorsed on or attached to the licence or permit.
- 15
- Penalty: \$4 000.
- (10) Where the holder of a licence or permit under this section contravenes or fails to comply with any condition endorsed on or attached to the licence or permit, the Executive Director may, by notice in writing to the holder, cancel the licence or permit or suspend it for such period as the Executive Director thinks fit.
- 20

”.

36. Section 99 amended

- 25
- (1) Section 99(1) is amended by deleting “The” and inserting instead —
- “ Subject to subsection (2), the ”.
- (2) Section 99(1)(a) is deleted and the following paragraphs are inserted instead —
- 30
- “
- (a) with the approval of the Minister;

- (aa) in the case of land vested in the Conservation Commission, after consultation with the Conservation Commission and, where applicable, an associated body;
- 5 (ab) in the case of land vested in the Marine Authority, after consultation with the Marine Authority;
- ”.
- (3) Section 99(1)(aa) (as enacted before the commencement of this section) is amended by deleting the paragraph designation “(aa)” and inserting the paragraph designation “(ac)” instead.
- 10 (4) Section 99(1) is amended by deleting paragraph (b) and “and” after that paragraph and inserting instead —
- “
- 15 (b) in the case of land for the management of which an agreement is entered into under section 16, consistently with the agreement;
- (ba) in the case of land in a public water catchment area, consistently with the provisions of the
- 20 *Country Areas Water Supply Act 1947* and the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* relating to the protection of water quality; and
- ”.
- 25 (5) Section 99(2) is amended as follows:
- (a) by deleting “Subsection (1)(a) does” and inserting instead —
- “ Subsection (1)(a), (aa) and (ab) do ”;
- (b) by deleting “approvals have been given under that
- 30 paragraph” and inserting instead —

s. 37

“
approval has been given under paragraph (a) and, if
applicable, the appropriate consultation has taken place
under paragraph (aa) or (ab)”;
5

(c) in paragraph (c), by deleting “for”;

(d) by deleting “those approvals.” and inserting instead —

“
that approval and, if applicable, that consultation.”
10

37. Section 101 amended

(1) Section 101(1a) is amended by deleting “on the
recommendation of the Authority, the Commission or the
Executive Director, as the case requires,” and inserting
15 instead —

“
after consultation with the Conservation Commission
or the Marine Authority, as the case requires, and on
the recommendation of the Executive Director,
20”

(2) After section 101(1d) the following subsection is inserted —

“
(1e) If a permit is granted under this section that authorizes
the removal of water from land —

25 (a) the granting of the permit does not limit the
operation of the *Rights in Water and Irrigation
Act 1914*;

(b) the permit can apply only to land vested in the
Conservation Commission for which there is a
management plan in force that provides for
30 water to be taken from the land; and

(c) the permit cannot authorize an activity to be
carried on for the purposes of the removal of

water from land unless the activity is consistent with the management plan.

”.

38. Section 103 amended

5 After section 103(2) the following subsections are inserted —

“

- 10 (2a) A person has lawful authority for the purposes of subsection (1) in relation to land that is classified under Division 2 of Part V as a forest conservation area only if the person fells, cuts, injures, destroys, obtains, or removes any forest produce in, on, or from that land in accordance with —
- 15 (a) a written authorization given by the Executive Director; or
 - (b) a Part VIII Division 1 authorization.
- (2b) The power of the Executive Director to give an authorization under subsection (2a)(a) is exercisable only —
- 20 (a) consistently with any management plan for the land concerned;
 - (b) with the approval of the Minister;
 - (c) in the case of land for the management of which an agreement is entered into under section 16, consistently with the agreement; and
 - 25 (d) in conformity with section 33(3).
- (2c) In subsection (2a)(b) —
- “Part VIII Division 1 authorization”** means —
- 30 (a) a contract entered into under section 88(1)(b);
 - (b) a permit described in section 89;
 - (c) a licence described in section 90; or

s. 39

- (d) a licence or permit granted under section 97A.

”.

39. Section 107 amended

5 Section 107 is amended as follows:

- (a) in paragraph (f) by deleting “royalty assessment” and inserting instead —
“ assessment of forest produce charges ”;
- (b) in paragraph (i) by deleting “royalty” and inserting instead —
10 “ forest produce charge ”;
- (c) in paragraph (j) by deleting “royalties, fees, or charges” and inserting instead —
“ forest produce charges or other charges or fees ”.

15 **40. Section 117 amended**

Section 117 is amended as follows:

- (a) by deleting “royalty dues or” and inserting instead —
“ forest produce charges or other ”;
- (b) by deleting “dues and”.

20 **41. Section 118 amended**

After section 118(1) the following subsection is inserted —

“

- (1a) The power to seize forest produce under subsection (1) does not apply to things that are forest products that may be seized under section 60 of the *Forest Products Act 1999*.

25

”.

42. **Section 119 amended**

Section 119 is amended by deleting “royalty, dues, or charges,” and inserting instead —

“ forest produce charges or other charges or dues ”.

5 43. **Section 127 amended**

Section 127(c) is amended as follows:

(a) by deleting “subject to section 96,”;

(b) by deleting “charges, and royalties,” and inserting instead —

10 “ forest produce charges and other charges, ”.

44. **Section 128 amended**

Section 128(1)(d)(iii) is amended by deleting “royalties” and inserting instead —

“ forest produce charges ”.

15 45. **Section 130A inserted**

After section 130 the following section is inserted in Part X —

“

130A. Regulations as to rights of holders of mining tenements to take forest produce

20 (1) The regulations may provide for —

(a) the rights of the holder of a mining tenement to take forest produce from the land comprising the tenement; or

25 (b) in the case of mining tenements within the boundaries of State forest or timber reserves, the forest produce charges to be paid for forest produce taken under regulations made under

paragraph (a) and the application and expenditure of such charges.

- (2) In subsection (1) —
“**mining tenement**” has the same meaning as it has in the *Mining Act 1978*.

5

”.

46. Section 131A inserted

After section 131 the following section is inserted —

“

10

131A. Tabling of Ministerial directions

- (1) The Minister must cause the text of any direction under section 24(1) or 26C(1) to be laid before each House of Parliament, or dealt with under subsection (2), within 14 days after the direction is given.

15

- (2) If —

(a) at the commencement of the period referred to in subsection (1) a House of Parliament is not sitting; and

20

(b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the direction to the Clerk of that House.

- (3) A copy of a direction transmitted to the Clerk of a House is to be regarded —

25

(a) as having been laid before that House; and

(b) as being a document published by order or under the authority of that House.

30

- (4) The laying of a copy of a direction that is regarded as having occurred under subsection (3)(a) is to be recorded in the Minutes, or Votes and Proceedings, of

the House on the first sitting day of the House after the Clerk received the copy.

”.

47. Section 132 amended

5 Section 132 is amended by deleting “Commission, Authority or Council,” and inserting instead —

“

Conservation Commission, Marine Authority or Marine Committee,

10

”.

48. Schedule amended

(1) The amendments in this section are to the Schedule.

(2) The heading is amended by deleting “Commission, the Authority, the Council,” and inserting instead —

15

“ **Conservation Commission,** ”.

(3) Clause 1(1) is amended by deleting “an appointed” and inserting instead —

“ a ”.

20

(4) Clause 1(2) is amended by deleting “An appointed” and inserting instead —

“ A ”.

(5) Clause 2 is amended as follows:

(a) by deleting “an appointed” and inserting instead —

“ a ”;

25

(b) after paragraph (b) by inserting —

“ or ”;

(c) after paragraph (c) by deleting “; or” and inserting a full stop instead;

s. 48

- (d) by deleting paragraph (d).
- (6) Clause 3(1) is amended by deleting “or (3)”.
- (7) Clause 3(2) is amended by deleting “an appointed” and inserting instead —
- 5 “ a ”.
- (8) Clause 3(3) is repealed.
- (9) Clause 4(2) is amended as follows:
- (a) after paragraph (a) by inserting —
- “ or ”;
- 10 (b) by deleting paragraphs (b) and (c) and “or” after paragraph (b) and inserting the following paragraph instead —
- “
- (b) any 4 members.
- 15 ”.
- (10) Clause 4(3) is amended by deleting “, in the case of the Authority, the Council or the Marine Authority,”.
- (11) Clause 4(4)(a) is amended by deleting “(at least one of whom shall be an *ex officio* member, in the case of a body with *ex officio* members)”.
- 20
- (12) Clause 5A(1) is amended by deleting the subclause designation “(1)” and inserting instead the subclause designation “(1a)”.
- (13) Clause 5A is amended before the first subclause by inserting the following subclause —
- 25 “
- (1) The Conservation Commission may from time to time, by resolution, appoint temporary advisory committees of such persons as it thinks fit to advise it on matters relevant to its functions.
- 30 ”.

(14) Clause 5A(2) is amended by deleting “such a committee” and inserting instead —

“ a committee under subclause (1) or (1a) ”.

(15) Clause 5A(3) is amended by deleting “Marine Authority,” and inserting instead —

“
 Conservation Commission or Marine Authority, as the case requires,
 ”.

10 **49. Various references to “Authority” amended**

The provisions mentioned in the Table to this section are amended by deleting “Authority” in each place where it occurs (or as otherwise indicated in the Table) and inserting instead —

“ Conservation Commission ”.

15

Table

section 6(3)(a)	section 7(2a)
section 6(3)(b)	section 7(4) (in second and
section 6(3)(c)	third places only)
section 6(5)(a)	section 59(3)
section 6(5)(b)	section 64(1)(d)
section 6(5)(c)	section 99A(1)
section 7(2)	

50. References to the department amended

(1) The provisions mentioned in the Table to this subsection are amended by deleting “and Land Management” in each place where it occurs.

20

Table

section 3 (definition of	section 32
“Department”)	section 38(2)
Part IV heading	section 75

s. 51

- (2) The enactments mentioned in the Table to this subsection are amended by deleting “and Land Management” in each place where it occurs (or as otherwise indicated in the Table).

Table

Agriculture and Related Resources Protection Act 1976:

section 94(1)(b)(iv) (in first place only)

Bush Fires Act 1954: sections 28(4)(a) and (b); 34(2)(a) and (b); 37(2)(a) and (b); 58(3); 66(1)(b)(iii)

Government Employees Superannuation Act 1987:
Schedule 1

Wildlife Conservation Act 1950: section 6(1) (in first place only)

5 **51. Transitional provisions**

Schedule 1 has effect.

Schedule 1 — Transitional provisions

[s. 51]

1. Definitions

In this Schedule —

5 “**Authority**” has the meaning given in section 3 of the CALM Act, as enacted immediately before the commencement of this Act;

“**CALM Act**” means the *Conservation and Land Management Act 1984*;

10 “**Commission**” has the meaning given in section 3 of the CALM Act, as enacted immediately before the commencement of this Act;

“**Conservation Commission**” means the Conservation Commission of Western Australia established by section 18 of the CALM Act, as amended by this Act;

15 “**Council**” has the meaning given in section 3 of the CALM Act, as enacted immediately before the commencement of this Act;

“**Executive Director**” has the meaning given in section 3 of the CALM Act;

“**forest produce**” has the meaning given in section 3 of the CALM Act;

20 “**forest products**” has the same meaning as it has in the Forest Products Act;

“**Forest Products Act**” means the *Forest Products Act 1999*;

“**Forest Products Commission**” means the Forest Products Commission established by the Forest Products Act;

25 “**harvesting**” has the same meaning as it has in the Forest Products Act;

“**Minister**” means the Minister responsible for the administration of the CALM Act.

30 2. Certain contracts under CALM Act for sale of forest products have effect as if entered into by Forest Products Commission

- (1) A contract for the sale of forest produce entered into under section 88(1)(b)(i) of the CALM Act that is in effect immediately

Schedule 1 Transitional provisions

before the commencement of this Act has effect as if it had been entered into by the Forest Products Commission instead of the Executive Director.

- 5 (2) Subclause (1) applies only to the extent that the contract relates to the sale of forest products and to matters associated with that sale.
- (3) The terms and conditions of a contract referred to in subclause (1), including the provisions of Part VIII Division 1 of the CALM Act, continue to have effect, but the Commission may negotiate variations to the contract to ensure that the provisions of the contract are
10 consistent with the relevant management plan and amendments to the CALM Act that come into operation on the commencement of this Act.
- (4) A contract referred to in subclause (1) has no effect after the relevant management plan has expired.
- 15 (5) The CALM Act, as enacted immediately before the commencement of this Act, continues to have effect on and after that commencement for the purposes of a contract referred to in subclause (1), except that the references in sections 91(2), 92(5)(b), 93, 94(1) and 95(2)(b) of that Act to the Executive Director are taken to be references to the Forest
20 Products Commission.
- (6) Subclause (5) ceases to apply to a contract referred to in subclause (1) if the contract is varied under subclause (3).

3. Certain contracts under CALM Act for harvesting of forest products have effect as if entered into by the Forest Products Commission

25

- (1) A contract entered into under section 88(1)(b)(ii) or section 88(1a) of the CALM Act that is in effect immediately before the commencement of this Act has effect as if it had been entered into by the Forest Products Commission instead of the Executive Director.
- 30 (2) Subclause (1) applies only to the extent that the contract relates to the harvesting of forest products and to matters associated with that harvesting.
- (3) The terms and conditions of a contract referred to in subclause (1), including the provisions of Part VIII Division 1 of the CALM Act,

5 continue to have effect but the Commission may negotiate variations to the contract to ensure that the provisions of the contract are consistent with the relevant management plan and amendments to the CALM Act that come into operation on the commencement of this Act.

4. Transfer of rights and obligations under certain timber sharefarming agreements under CALM Act

10 A timber sharefarming agreement referred to in section 34B of the CALM Act that is in effect immediately before the commencement of this Act has effect as if —

- 15 (a) any rights held by the Executive Director under the agreement to harvest a crop of trees (otherwise than as an agent for another person) were held by the Executive Director as an agent for the Forest Products Commission; and
- (b) any rights, obligations or powers held by, or imposed or conferred on, the Executive Director under that agreement as to the division of a crop of trees or the proceeds of a crop of trees were rights, obligations or powers held by, or imposed or conferred on, the Forest Products Commission.

20 **5. Transfer of rights and obligations under other agreements**

(1) Subject to clauses 2, 3 and 4, an agreement that is in effect immediately before the commencement of this Act that provides for any rights, obligations or powers to be held by, or to be imposed or conferred on, the Executive Director (otherwise than as an agent for another person) under the agreement as to the harvesting, sale or supply of timber or other forest produce has effect as if the rights, obligations or powers were held by, or imposed or conferred on, the Forest Products Commission.

25 (2) Subclause (1) applies only to the extent that the agreement relates to the harvesting, sale or supply of forest products and to matters associated with that harvesting, sale or supply.

6. Transfer of positions

30 (1) The Minister, by order published in the *Gazette* within 4 weeks of the commencement of this Act, is to determine the positions, the

Schedule 1 Transitional provisions

functions or duties of which related, immediately before the commencement of this Act, to performing duties relating exclusively or primarily to —

- 5 (a) the negotiation, preparation, administration and enforcement of contracts for the sale of things that are forest products;
- (b) the negotiation, preparation, administration and enforcement of contracts under section 88(1a) of the CALM Act in relation to things that are forest products; or
- 10 (c) arrangements for the harvesting and sale of things produced under timber sharefarming agreements referred to in section 34B of the CALM Act that are forest products.
- (2) On the publication of an order under subclause (1) a position referred to in the order is transferred to the Forest Products Commission.
- 15 (3) A person holding a position when it is transferred to the Forest Products Commission is to be regarded as having been engaged under section 38 of the Forest Products Act.
- 20 (4) Except as otherwise agreed by a person referred to in subclause (3), the remuneration, existing or accrued rights (including the right to be employed for an indefinite period in the Public Service), rights under a superannuation scheme or terms, conditions or continuity of service of the person are not affected, prejudiced or interrupted by the operation of subclauses (2) and (3).
- 25 (5) If a person referred to in subclause (3) was a contributor as defined in the *Superannuation and Family Benefits Act 1938* immediately before becoming a Commission employee, the person may continue to be a contributor under that Act after becoming a Commission employee.
- 30 (6) For the purposes of subclause (5), the Forest Products Commission —
- (a) is a department as defined by the *Superannuation and Family Benefits Act 1938*; and
- (b) is to pay to the Board under that Act payments of the kind described in paragraph (i) of the proviso to the definition of “department” in section 6 of that Act.
- (7) If a transferred employee ceases to be a Commission employee, he or she is entitled to employment as a public service officer in the

Department at the same level of classification as he or she held immediately before becoming a Commission employee.

- 5 (8) A person does not have an entitlement under subclause (7) if his or her employment as a Commission employee was terminated, or he or she was dismissed, for substandard performance, breach of discipline or misconduct.
- (9) Subclause (7) does not prevent the subsequent operation of Part 6 of the *Public Sector Management Act 1994* in relation to a person who is employed in the Department under an entitlement under subclause (7).
- 10 (10) When a person ceases to be a Commission employee and becomes a public service officer under an entitlement under subclause (7), his or her service as a Commission employee is to be regarded as service in the Public Service for the purposes of determining his or her rights as a public service officer and for the purposes of the *Superannuation and Family Benefits Act 1938*.
- 15 (11) If no suitable vacancy is available to meet a person's entitlement under subclause (7), circumstances attracting the operation of Part 6 of the *Public Sector Management Act 1994* are to be regarded as having arisen in relation to the person.
- 20 (12) In this clause —
- “**Commission employee**” means a member of the staff of the Forest Products Commission;
- “**transferred employee**” means a person referred to in subclause (3) who, immediately before becoming a Commission employee, was employed for an indefinite period in the Public Service.
- 25

7. Reserves and other land vested in the Commission or Authority

- 30 (1) The care, control and management of a reserve that, immediately before the commencement of this Act, are placed under the *Land Administration Act 1997* with the Commission or the Authority (“**the original placement**”) are, on that commencement and by this subclause, placed under that Act with the Conservation Commission subject to any interests or conditions that applied to the original placement.

Schedule 1 Transitional provisions

5 (2) The care, control and management of a reserve vested under a written law (other than the CALM Act) in the Commission or the Authority immediately before the commencement of this Act (“**the original vesting**”) are, on that commencement and by this subclause, placed under the *Land Administration Act 1997* with the Conservation Commission subject to any interests or conditions that applied to the original vesting.

10 (3) Land that is vested in the Commission under section 7 of the CALM Act immediately before the commencement of this Act (“**the original vesting**”) is, on that commencement, vested under that section in the Conservation Commission subject to any interests or conditions that applied to the original vesting.

15 (4) Land that is vested in the Authority, either solely or jointly with another body or other bodies, under section 7 of the CALM Act immediately before the commencement of this Act (“**the original vesting**”) is, on that commencement, vested under that section in the Conservation Commission, either solely or jointly with another body or other bodies, subject to any interests or conditions that applied to the original vesting.

20 **8. Management plans**

A management plan prepared by the Commission or the Authority under Part V of the CALM Act that is in effect immediately before the commencement of this Act has effect as if it had been prepared by the Conservation Commission under that Part as amended by this Act.

25 **9. Members of Commission, Authority and Council**

30 A person who holds office as a member of the Commission, the Authority or the Council immediately before the commencement of this Act ceases to hold that office on that commencement but, subject to the CALM Act as amended by this Act, is eligible to be appointed as a member of the Conservation Commission.

10. References to the department to be read as references under its new name

If in a written law or other document there is a reference that is, or is to be regarded as, a reference to the Department of Conservation and

Land Management, that reference may, where the context so requires, be read as if it had been amended to be a reference to the Department of Conservation.

- 5 **11. Certain regulations under CALM Act taken to have been made under Forest Products Act**
- (1) Regulations made under the CALM Act to which this subclause applies that are in effect immediately before the commencement of this Act have effect as if they had been made under section 65 of the Forest Products Act.
- 10 (2) Subject to subclause (3), subclause (1) applies to regulations that relate to —
- (a) the registration of timber workers;
 - (b) identification codes for persons who fell trees in State forests or timber reserves;

15 (c) log delivery notes;

 - (d) the receiving by sawmills of log timber felled in State forests or timber reserves;
 - (e) the determination of the quantity of log timber felled in State forests or timber reserves;

20 (f) records made of log timber felled in State forests or timber reserves and received at sawmills;

 - (g) the sale by public auction or tender of forest produce;
 - (h) the powers of forest officers in relation to forest produce;

25 (i) the provision of statistical information relating to forest produce taken from State forests or timber reserves;

 - (j) the minimizing of damage to, and destruction of, forest produce in State forests or timber reserves caused by the holders of licences, permits or contracts;

30 (k) the unauthorized destruction, cutting, injuring or removing of or interfering with seized forest produce;

 - (l) the exporting of karri timber;
 - (m) the making of false or misleading statements or representations, or the production of forged or counterfeit

Schedule 1 Transitional provisions

- documents, for the purpose of procuring the registration of a person or an identification code;
- (n) the form and amendment of registers and the obtaining of copies of extracts from registers;
- 5 (o) the provision of information relating to, and copies of, permits, licences or contracts;
- (p) fees; and
- (q) appeals relating to the registration of a person or an identification code.
- 10 (3) If subclause (1) applies to a regulation that relates to forest produce, that subclause only has effect to the extent that the regulation relates to forest products.
- (4) Regulations may be made under Part X of the CALM Act to amend, repeal or repeal and replace regulations to which subclause (1)
- 15 applies.

12. Registration of documents

The Registrar of Titles is to take notice of the provisions of this Schedule and is empowered to record and register in the appropriate manner any necessary documents, and otherwise to give effect to this

20 Schedule.

13. Transitional regulations

- (1) If there is no sufficient provision in this Act for dealing with a transitional matter, the Governor may make regulations prescribing all matters that are required, or are necessary or convenient, for dealing
- 25 with that transitional matter.
- (2) Regulations made under subclause (1) may have effect before the day on which they are published in the *Gazette*.
- (3) To the extent that a regulation made under subclause (1) may have effect before the day of its publication in the *Gazette*, it does not —
- 30 (a) affect in a manner prejudicial to any person (other than the State, the Executive Director, the Forest Products Commission or the Conservation Commission), the rights of that person existing before the day of its publication; or

- (b) impose liabilities on any person (other than the State, the Executive Director, the Forest Products Commission or the Conservation Commission) in respect of anything done or omitted to be done before the day of its publication.

5 (4) In subclause (1) —

“transitional matter” means a matter that needs to be dealt with for the purpose of effecting the transition from the CALM Act, as enacted immediately before the commencement of this Act, to —

- 10 (a) the CALM Act as amended by this Act; or
- (b) the Forest Products Act.

14. Saving

The operation of any provision of this Schedule is not to be regarded —

- 15 (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of property, rights or liabilities or the disclosure of information;
- 20 (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any property, right or liability;
- (d) as causing any contract or other instrument to be void or otherwise unenforceable; or
- 25 (e) as releasing or allowing the release of any surety.

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