

NORTHERN TERRITORY OF AUSTRALIA  
TERRITORY PARKS AND WILDLIFE CONSERVATION  
AMENDMENT ACT 1992

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No. 12 of 1992

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# NORTHERN TERRITORY OF AUSTRALIA

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No. 12 of 1992

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## AN ACT

to amend the *Territory Parks and Wildlife Conservation Act*

[Assented to 21 April 1992]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### 1. SHORT TITLE

This Act may be cited as the *Territory Parks and Wildlife Conservation Amendment Act 1992*.

### 2. COMMENCEMENT

The various provisions of this Act shall come into operation on such date or dates as is or are respectively fixed by the Administrator by notice in the *Gazette*.

### 3. PRINCIPAL ACT

The *Territory Parks and Wildlife Conservation Act* is in this Act referred to as the Principal Act.

### 4. INTERPRETATION

Section 9(1) of the Principal Act is amended -

- (a) by inserting after the definition of "article" the following:

"'Crown land' means land -

- (a) held by the Territory for an estate in fee simple; or
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- (b) in respect of which neither a lease granted by the Territory or the Commonwealth is in force nor an estate in fee simple has been granted by the Territory;"
- (b) by inserting in the definition of "plant", after "parts of plants", the words "and things produced from plants";
- (c) by inserting before the definition of "progeny" the following:

"'private land' means any land which is not Crown land;"
- (d) by omitting the definition of "take" and substituting the following:

"'take' means -

  - (a) in relation to an animal - to hunt, catch, restrain or kill, or attempt or assist to hunt, catch, restrain or kill, the animal; and
  - (b) in relation to a plant - to sever, remove, damage or destroy, or assist to sever, remove, damage or destroy, the plant;"
- (e) by inserting after the definition of "protected animal" the following:

"'protected plant' means a plant declared by or under section 45 or the Regulations to be a protected plant, and includes a specially protected plant;"
- (f) by inserting after the definition of "specially protected animal" the following:

"'specially protected plant' means a plant declared by or under section 45 or the Regulations to be a specially protected plant;"

5. DECLARATION OF PROTECTED AREA

Section 22 of the Principal Act is amended -

- (a) by omitting "protected area" and substituting "protected area, either in relation to wildlife generally or to a species of animal or plant specified in the declaration"; and

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(b) by adding at the end the following:

"(2) In a declaration under subsection (1) the Administrator may specify an article which may not be taken into a protected area without the written authority of the Director.".

6. NEW SECTION

The Principal Act is amended by inserting after section 23 the following:

"23A. TAKING OF ANIMALS OR PLANTS ON OR FROM PROTECTED AREA

"A person shall not take or cause or permit to be taken wildlife to which a declaration under section 22(1) relates on or from a protected area, except in accordance with a permit or licence granted under this Act.

Penalty: \$2,000 or imprisonment for 6 months.".

7. FIREARMS AND TRAPS, &c. PROHIBITED

Section 24 of the Principal Act is amended -

(a) by omitting from subsection (1) "Subject to section 25, a person" and substituting "A person";

(b) by omitting from subsection (1) "private road" and substituting the following:

"private road -

(a) in the case of a protected area declared in relation to wildlife generally or to a protected species of animal - any kind of weapon that discharges a projectile or any kind of trap; and

(b) in any case - without limiting the generality of paragraph (a), an article declared under section 22(2) in relation to the protected area"; and

(c) by omitting from subsection (2) "Subject to section 25, a person" and substituting "A person".

8. SECTIONS 23A AND 24 NOT TO APPLY TO CONSERVATION OFFICERS, &c.

Section 25 of the Principal Act is amended by omitting "Section 24 shall not" and substituting "Sections 23A and 24 do not".

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9. NEW SECTIONS

The Principal Act is amended by inserting in Part III, after section 25, the following:

"25AA. DEFENCE TO PROSECUTION

"It is a defence to a prosecution for an offence against section 23A or 24 if the defendant proves that there was not on the road by which he entered the protected area the sign required by section 23 to be displayed and that he did not know or have cause to suspect that he was on a protected area.

"25AAA. DIRECTOR MAY CARRY OUT CERTAIN WORK

"The Director may construct such fences, fire-breaks or other works on a protected area as he considers necessary to ensure the integrity of the protected area and for that purpose may, after giving the person in lawful occupation of the land reasonable notice of his intention so to do, enter private land with such assistance, plant, machinery and equipment as he thinks fit."

10. SANCTUARIES

Section 25A(2)(b) of the Principal Act is amended by inserting after "land" the words "held in fee simple by the Corporation or".

11. DEFENCE AGAINST PROSECUTION

Section 25E of the Principal Act is amended -

- (a) by omitting "section 25C or section 25D" and substituting "section 25C, 25D or 25G"; and
- (b) by inserting at the end of paragraph (b) "and that he did not know or have cause to suspect that he was on a sanctuary".

12. NEW SECTION

The Principal Act is amended by inserting in Part IIIA, after section 25F, the following:

"25G. TAKING PLANTS ON OR FROM SANCTUARY

"Where a sanctuary is declared for the purpose of protecting a class or description of plants, a person who takes a plant of that class or description on or from the sanctuary, except with and in accordance with a permit or licence granted under this Act, is guilty of an offence.

Penalty: \$4,000 or imprisonment for 12 months."

13. NEW PART

The Principal Act is amended by inserting after Part IV the following:

"PART V - PLANTS

"45. DECLARATION OF PROTECTED AND SPECIALLY PROTECTED PLANTS

"(1) The Minister may, in relation to the whole or a specified part of the Territory, by notice in the *Gazette*, declare that a plant of a class or description of plants that is not a noxious weed within the meaning of the *Noxious Weeds Act* is a protected plant or specially protected plant for the purposes of this Part.

"(2) A declaration under subsection (1) remains in force until -

- (a) the expiration of 90 days after the publication of the notice under that subsection; or
- (b) the plant is subsequently declared in the Regulations to be either a protected plant or a specially protected plant,

whichever first occurs.

"46. CERTAIN PLANTS PROPERTY OF TERRITORY

"All plants on Crown land or plants that are wildlife on land leased from the Territory are the property of the Territory.

"47. CERTAIN PLANTS NOT TO BE TAKEN

"(1) Subject to this Act, a person shall not take, for the purposes of selling or bartering it (or offering to sell or barter it), a plant that is wildlife unless he holds a licence granted under section 49(1) to take the plant, or is the employee or agent of such a person, and he takes the plant in accordance with the conditions, if any, subject to which the licence is granted.

Penalty: \$2,000 or imprisonment for 6 months.

"(2) Subject to this Act, a person shall not take a protected plant or specially protected plant -

- (a) on or from Crown land; or
- (b) unless he is the owner of or in lawful occupation of the land, on or from private land,

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except with and in accordance with a permit or licence granted under section 49(1).

Penalty: \$2,000 or imprisonment for 6 months.

"48. APPLICATION FOR PERMIT OR LICENCE TO TAKE PLANTS

"(1) A person may apply to the Director for -

- (a) a permit to take a protected plant or specially protected plant; or
- (b) a licence to take a plant that is wildlife for commercial purposes.

"(2) An application under subsection (1) shall be in a form approved by the Director and be accompanied by such fee as is determined by the Commission as reasonable to defray the cost to the Commission of investigating and processing the application.

"49. GRANT OF PERMIT OR LICENCE

"(1) Subject to subsection (2), the Director may, in his absolute discretion, grant or refuse to grant a permit or licence applied for under section 48.

"(2) The Director shall not grant a permit or licence to take a specially protected plant until he has referred the application to the Minister and the Minister has authorised the proposed grant.

"(3) Subject to the Regulations, a permit or licence granted under subsection (1) shall be in such form as the Director thinks fit and shall remain in force until such date, and is granted subject to such conditions, if any, as the Director thinks fit and specified in the permit or licence document.

"50. RESTRICTION ON DISCRETION

"The Director shall not grant a permit or licence under section 49(1) (or the Minister authorise such a grant) in respect of a specially protected plant, if in his opinion the proposed taking of the plant will have a significant detrimental impact on -

- (a) the survival of the species; or
- (b) the environment generally,

in a part of the plant's range or occurrence.



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"51. PERMISSION OF LANDHOLDER REQUIRED

"A permit or licence granted under section 49(1) does not relieve the person to whom it is granted from the need to obtain the permission of the owner or person in lawful occupation of private land for the taking of a plant on or from the land.

"52. DESTRUCTION OF SPECIALLY PROTECTED PLANT BY LANDHOLDER

"(1) The owner or person in occupation of private land shall not wilfully destroy a specially protected plant on that land.

Penalty: \$2,000 or imprisonment for 6 months.

"(2) Except in the case of a prosecution for an offence against subsection (1) for the wilful destruction of a specially protected plant on land that is a protected area in relation to the plant or in contravention of an agreement under section 74, it is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the destruction of the plant resulted from the reasonable and efficient lawful use of the land.

"53. PAYMENT OF ROYALTIES, CHARGES, &c, A CONDITION OF LICENCE, &c.

"A permit or licence granted under section 49(1) is subject to the conditions that the permittee or licensee -

- (a) will pay the royalties and charges in respect of the taking of plants to which it relates;
- (b) will furnish to the Director, within the prescribed time, the prescribed returns and reports; and
- (c) is liable to have the permit or licence revoked for -
  - (i) failure to pay the royalties or charges for or under the permit or licence, at or by the prescribed time;
  - (ii) failure to furnish to the Director a prescribed return or report within the prescribed time; or
  - (iii) a breach of any other condition of the permit or licence.

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"54. FORFEITURE OF PERMIT OR LICENCE

"(1) Where a permit or licence under this Act is liable to forfeiture, the Minister or a person authorised by him to do so may serve notice in writing on the holder that the permit or licence is revoked.

"(2) A permit or licence is revoked on receipt of the notice under subsection (1) by the person who held it.

"55. EXEMPTION FROM APPLICATION OF PART

"The Minister may, by notice in the *Gazette*, declare that this Part or a particular provision of this Part does not apply to or in relation to -

- (a) the whole or a specified part of the Territory;
- (b) a specified plant or plant of a specified species of plant; or
- (c) a specified activity in relation to a plant,

and, accordingly, this Part or that provision does not apply.".

14. BY-LAWS

Section 71 of the Principal Act is amended by adding at the end the following:

"(8) In this section "park" or "reserve" shall be taken to include, and to have always included, land the care, control and management of which (however described), by or under this or any other Act (including by agreement with the owner of the land), lies with the Commission.".

15. ABORIGINAL LAND

Section 73 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) An agreement under subsection (1) may provide for financial assistance by the Territory or the Commission to achieve the object of the agreement but any such provision providing for financial assistance by the Territory shall have no effect unless approved in writing by the Minister.".

16. PROTECTION, &c., OF WILDLIFE AND NATURAL FEATURES OF PRIVATE LAND

Section 74 of the Principal Act is amended by inserting after subsection (1) the following:

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"(1A) An agreement under subsection (1) may provide for financial assistance by the Territory or the Commission to achieve the object of the agreement but any such provision providing for financial assistance by the Territory shall have no effect unless approved in writing by the Minister."

17. NEW SECTION

The Principal Act is amended by inserting after section 74 the following:

"74A. NATURE OF AGREEMENT FOR PROTECTION AND CONSERVATION OF WILDLIFE

"(1) An agreement under section 74(1) is binding on the land-owner according to its tenor but may be varied by further agreement.

"(2) The burden of an agreement under section 74(1), to the extent that it relates to the preservation, maintenance or care of land (including a fixture on the land), is an interest registrable under the *Real Property Act* and operates as a covenant which runs with the land, and the Minister has power to enforce the covenant against persons deriving title from the person who entered into the agreement as if it were a restrictive covenant, notwithstanding that it may be positive in nature or that it is not for the benefit of any land of the Territory."

18. REPEAL AND SUBSTITUTION

Section 117 of the Principal Act is repealed and the following substituted:

"116. ROYALTIES AND ADVANCE PAYMENTS

"(1) The Minister may, by notice in the *Gazette*, determine for the Territory or a part of the Territory the manner in which and the rates at which royalties in respect of animals (including the eggs of birds or reptiles) or plants taken in pursuance of a permit issued or granted or licence granted under this Act shall be assessed and the holder of a permit or licence is liable to pay the royalties so assessed accordingly.

"(2) The Regulations may provide for the payment of prescribed amounts in advance by the holder of a permit or licence and the crediting of amounts so paid towards royalties subsequently payable by the holder.

"117. FEES, CHARGES, &c.

"(1) Where the Minister, the Director or an officer or employee of the Commission -

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- (a) supplies a service, product or commodity;
- (b) grants or issues a permit or licence; or
- (c) gives a permission, consent or approval,

under this Act, the Director may demand, levy and receive, as a debt due and payable to the Commission, such fees, charges or royalties as are prescribed by or under this Act in respect thereof.

"(2) The Minister may, by notice in the *Gazette*, determine a fee or charge in respect of a matter referred to in subsection (1) where no such fee or charge is otherwise prescribed."

19. REGULATORY OFFENCES

Section 117A of the Principal Act is amended by omitting all words after "comply with" and substituting "sections 23A, 24, 25F, 25G, 30, 32, 40, 41, 44, 47, 94 or 114 is a regulatory offence".

20. REGULATIONS

Section 123 of the Principal Act is amended -

- (a) by inserting in subsection (2), after paragraph (a), the following:
  - "(aa) in relation to the whole or a specified part of the Territory, declare a plant or a class or description of plants to be a protected or specially protected plant;
  - (ab) prescribe markings to be made on plants taken under a permit or licence and the methods of applying, and registration of, such markings;"
- (b) by adding at the end the following:

"(5) The Regulations may not declare a noxious weed within the meaning of the *Noxious Weeds Act* to be a protected plant or specially protected plant and any plant declared by the Regulations to be a protected plant or specially protected plant ceases to have that status on it being declared a noxious weed under that Act."

21. SAVINGS AND TRANSITIONAL

(1) Where immediately before the commencement of section 13 a person held a permit or licence under the *Forestry Act* as then in force, the person shall continue to hold that permit or licence until it expires or is revoked, and may do anything in pursuance thereof as if

the *Forestry Act* and the Regulations made under it and in force immediately before that commencement had not been repealed.

(2) The holder of a permit or licence referred to in subsection (1) shall continue to have all the obligations and liabilities (including the obligation to pay fees, charges or royalties, the rates of which are hereby saved but may be revoked or varied), and his permit or licence shall expire or may be revoked, as if the *Forestry Act* and the Regulations made under it had not been repealed.

(3) Where by or under the *Forestry Act* as in force immediately before the commencement of section 13 a power was conferred or function imposed on the Minister or a forester or forestry officer in relation to a permit or licence or a condition to which a permit or licence is subject, after that commencement the power may be exercised or function performed by the Minister responsible for the administration of this Act or the Director, as the case may be, to the extent reasonably necessary for the continuation of the right, obligation or liability referred to in subsections (1) or (2).

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