

Rights of Nature and Future Generations Bill 2019

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Western Australia

LEGISLATIVE COUNCIL

(Introduced by Hon Ms Diane Evers, MLC)

**Rights of Nature and Future
Generations Bill 2019**

A Bill for

**An Act to protect the rights of nature and future
generations and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 - Preliminary

1. Short title

This is the *Rights of Nature and Future Generations Act 2019*.

2. Commencement

(1) This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation.

3. Objects

(1) The objects of this Act are to —

- (a) recognise and secure the inherent rights of nature to naturally exist, flourish, regenerate, and evolve, and its right to restoration and recovery; and
- (b) recognise and respect that First Nations Peoples, who have cared for land and sea country for millennia, have the right to speak for country and defend their ancestral lands from unwanted developments and environmental harm; and
- (c) recognise and respect the rights of all present and future generations to live in a healthy world; and
- (d) make it an offence to violate the rights and prohibitions recognised under this Act and provide for enforcement and implementation; and
- (e) promote the protection and care of nature as a primary goal for human societies.

4. Crown bound

This Act binds all persons, including the Crown.

5. Inconsistent laws

If there is any inconsistency between the provisions of this Act and the provisions of any other Act, the provisions of this Act will prevail to the extent of the inconsistency.

Part 2 - Rights

6. Rights of nature

- (1) Nature, including all ecosystems, ecological communities and native species, has the right to —
 - (a) naturally exist, flourish, regenerate and evolve; and
 - (b) recovery, rehabilitation and restoration; and
 - (c) a healthy and stable climate system; and
 - (d) a vibrant and biodiverse community of life.

7. Rights of future generations

- (1) Present and future generations of people in the State have the right to —
 - (a) a healthy environment, including the right to clean air and clean water; and
 - (b) a healthy and stable climate system; and
 - (c) a vibrant and biodiverse community of life.

8. Rights self-executing

All rights secured by this Act are inherent, fundamental and inalienable, and shall be self-executing and enforceable against both private and public actors. Further implementing legislation shall not be required to enforce all of the provisions of this Act.

9. No liability

The rights recognised by this Act shall not be interpreted to confer liabilities, duties or responsibilities on nature.

Part 3 – Liability and enforcement

Division 1 - Prohibitions

10. Rights protected

- (1) Activities which violate the rights recognised by this Act are prohibited.
- (2) It is an offence to significantly interfere with any right recognised by this Act.

Penalty

- (a) for an individual — a fine of \$500 000 or 5 years imprisonment or both;
- (b) for a body corporate — a fine of \$5 000 000.

11. Approvals invalid

Any permit, approval, licence, privilege or other government authorisation of an action, project, activity or development that would violate the provisions of this Act shall be invalid for all purposes.

Division 2 - Enforcement

12. Duty to secure rights

The State shall take all necessary steps and measures to implement, defend and enforce the rights and provisions of this Act.

13. Standing

- (1) Any person may bring proceedings for an offence or breach of any right or provision of this Act.
- (2) In addition to having the standing recognised under subsection (1), and without limiting, extinguishing or otherwise affecting any other of their rights, First Nations Peoples have the right to join as a party any proceeding commenced under this Act.

- (3) Any proceeding brought to defend or enforce the rights secured in section 6 of this Act, shall be brought in the name of nature, an ecosystem, ecological community or native species, as the real party in interest.

14. Injunctions

Any person may apply to the Supreme Court of Western Australia for an injunction under this section to stop the doing of any act that will or is likely to contravene a provision of this Act.

15. Costs in proceedings

In any proceeding commenced under this Act, a person found to have committed an offence or contravened a provision of this Act shall be liable to pay the costs of the proceeding incurred by the party or parties applying to enforce the provisions of the Act, including, without limitation, expert and legal fees.

16. Lack of full scientific certainty shall not postpone action

Lack of full scientific certainty shall not be used as a reason for denying or postponing the implementation, defence or enforcement of the rights and provisions of this Act.

Division 3 - Liability

17. Onus of proof

In any proceeding commenced under this Act, the burden of proving that an action, project, activity or development will not contravene the provisions in this Act lies with the entity proposing to take or carry out the action, project, activity or development.

18. Corporate and directors liability

- (1) If a body corporate contravenes any provision of this Act, each person who is a director or who is concerned in the management

of the body corporate is taken to have also committed the same contravention unless the person proves that —

- (a) the person did not know, and could not reasonably be expected to have known, that the contravention was being committed; or
 - (b) the person —
 - (i) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (ii) being in such a position, used all due diligence and reasonable precautions to prevent the contravention.
- (2) Under this section a person may be proceeded against and found to have contravened a provision of this Act whether or not the body corporate has been proceeded against or found to have committed the contravention.
- (3) Nothing in this section prejudices or affects any liability imposed on a body corporate for a contravention committed by the body corporate of a provision of this Act.
- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a body corporate (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the body corporate had that state of mind.

19. Damages

- (1) A person who is found to have contravened a provision of this Act shall be liable for damages in respect of harm caused by the conduct constituting the contravention, including any costs of remediation, rehabilitation and restoration of an ecosystem, ecological community or native species to a state of health consistent with the rights recognised in this Act.
- (2) Damages under this section shall be paid, as the Court deems appropriate, to relevant State or Local Government agencies and/or a not-for-profit organisation (being an association

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Part 3 Liability and enforcement

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incorporated in the State with demonstrated commitment to the restoration of nature and capacity to conduct that restoration), to be used exclusively for the full and complete restoration of nature, including the particular ecosystem, ecological community or native species.