

## NOTICE TO NSW GROWERS

### Introduction

The NSW Government's *Whole Plant Sustainable Management Plan 2018-22* commenced operation on 1<sup>st</sup> January 2018 and it contains important provisions that affect members of ANOS Groups and other orchid societies and individuals who grow and sell Australian native orchid species which are native to NSW.

The 2018-22 Plan can be downloaded from this page, which also contains useful information about the various categories of licences and when you do and do not require one:

<http://www.environment.nsw.gov.au/licences-and-permits/protected-native-plant-licences>

Further information about the application of the Plan is contained in the *Summary of stakeholder submissions* which was sent to those who made submissions on the draft plan. A copy can be found here: <http://anos.org.au/wp-content/uploads/2018/02/Plant-management-plans-summary-of-submissions-Feb-2018.pdf>

The 2018-22 Plan is similar to the one it replaced, which was called *The commercial harvest, salvage and propagation of protected whole plants: sustainable management plan 2013-2017*. That Plan was made under the *National Parks and Wildlife Act 1974*. The 2018-22 Plan was made under the *Biodiversity Conservation Act 2016* which repealed the *Threatened Species Conservation Act 1995* and the penalty and licensing provisions of the *National Parks and Wildlife Act*. You can view the *Biodiversity Conservation Act 2016* here <https://www.legislation.nsw.gov.au/#/view/act/2016/63> and the *Biodiversity Conservation Regulation 2017* here <https://www.legislation.nsw.gov.au/#/view/subordleg/2017/432>

The 2018-22 Plan covers all protected native plant species, not just orchids, but there is useful information for orchid growers throughout the Plan, not just in the parts that specifically relate to orchids. The definitions section explains the meaning of certain important words and terms used in the Plan, the Introduction, Objectives, and Legislative Framework sections provide a useful overview and explanation of the reasoning behind the Plan. The Policy and Administrative Framework section includes the details of the grower and harvester licences and the requirements about tagging. Grower licences are explained in section 4.5, the whole plant tagging requirements are set out in section 4.11, Appendix G sets out the grower licence application requirements, and Appendix I is specifically directed to the Family Orchidaceae.

### Grower Licences

The 2018-22 Plan is directed at commercial activities, but it defines "commercial" as "of or engaged in all forms of the purchase and sale of goods and services", so small-scale and hobby growers are covered by the Plan and require a grower licence if they propagate and sell protected native plants to the public, or to wholesalers or retail outlets. If an orchid society sells members' plants to the public at shows or other events, the society will require a grower licence.

This was also the case under the 2013-17 Plan so these requirements for grower licences are not new. Grower licences which had been issued under the old legislation remain in place under the new legislation for the duration of their term.

Grower licences issued under section 2.11 of the *Biodiversity Conservation Act 2016* allow the licence holder to propagate protected and threatened plants for commercial purposes from

artificially cultivated stock on land they own or occupy. The Office of Environment & Heritage (“OEH”) web site currently states that licence fees are \$30 for 1 year, \$75 for 3 years and \$100 for 5 years.

A link to download a grower licence application form can be found here:

<http://www.environment.nsw.gov.au/licences-and-permits/protected-native-plant-licences/apply-for-a-whole-plant-licence>

Note that the Plan is aimed at regulating commercial activities, and when it speaks of “grower licences” it means growing plants for sale, not as a hobby. The Plan contains provisions that assist people who cultivate native orchids for non-commercial hobby purposes. Clause 4.5.3 of the Plan provides that:

“Societies and special interest groups may pick, possess and trade protected plants between members and small-scale growers without the requirement for a licence when:

- the trade occurs at a society meeting or their nominal meeting venue, or between members of the society at any time
- the material has been obtained according to this plan or is lawfully in the possession of the person supplying it (see section 4.9)”

### **Grower Tags**

All plants that are offered for sale to the public under a grower licence (and this includes plants which are in a raffle for which members of the public may purchase tickets, because this is considered a sale) must be tagged at the time they are offered for retail sale, but hobbyists are not required to have grower tags on their plants while those plants are being grown by them in their collections.

The tagging requirements are not onerous. Tags may take the form of a sticker, label or sleeve. Sheets of tags may be produced by the licence holder, so all that will need to be added by hand when the plant is to be offered for sale is the name of the plant. The tag must be attached to the plant or pot. Section 4.11.2 of the 2018-22 Plan contains more details of the tagging requirements.

Unfortunately the tagging requirements apply to hybrids as well as species, on the basis that many hybrids cannot be readily distinguished from the parent stock until flowering occurs, making identification of hybrids very difficult without flowering parts: section 4.11.3 of the Plan.

It should be noted that plants cannot be offered for sale bare-rooted, or attached to an ‘endemic’ growing medium. Selling plants on lengths of branch or other substrate which can clearly be identified as collected from the wild, is prohibited: see Appendix I to the Plan.

### **Licences for Wild Harvest**

The 2018-22 Plan acknowledges – and it cannot be doubted – that wild harvest of orchids for cultivation has led to significantly reduced populations in the wild, and local extinctions. The Plan supports a transition to propagated material through ending wild harvest for all orchids that can be cultivated.

All orchid species which are native to New South Wales are protected under the *Biodiversity Conservation Act 2016*, as they were under the old legislation. Some, including the popular and widely cultivated *Sarcochilus hartmannii*, *Sarcochilus fitzgeraldii*, *Sarcochilus dilatatus*, *Phaius australis*, *Oberonia complanata*, *Oberonia titania*, *Peristeranthus hillii*, and *Dendrobium tetragonum* var. *melaleucaphilum*, are also listed as threatened species. There are also separate lists of plants which are part of a threatened population, such as the *Cymbidium canaliculatum* population in the Hunter Catchment. The full list of threatened species and populations is set out in Schedule 1 of the *Biodiversity Conservation Act 2016*. Schedule 2 of the Act lists threatened ecological communities.

There are some statutory defences in the *Biodiversity Conservation Regulation 2017* relating to the possession by a landholder of plants which occur naturally on their land, and for the picking of protected (but not threatened) species on private land by or with the consent of the landholder, but in general the harvest of orchid species from the wild is illegal without a licence.

All native orchid species are restricted to grower licences except for the few epiphytic species for which a salvage harvester licence may be granted. Under the old Plan, a number of orchid species could also be the subject of a sustainable harvest licence, but under the new Plan those species are proposed to be moved from Group 2 of Part 2 of Schedule 6 of the *Biodiversity Conservation Act 2016* to Group 3 which is the list of species for which only a salvage harvester licence may be obtained. Those species which are to be moved are *Dendrobium aemulum*, *Dendrobium gracilicaule*, *Dendrobium linguiforme*, and *Dendrobium speciosum* var. *hillii*. They will be joining *Cymbidium suave*, *Oberonia complanata*, *Oberonia titania* and *Taeniophyllum muelleri* which were already in Group 3.

Apart from those two *Oberonia* species which are listed in Group 3, the Plan does not permit the commercial harvest of threatened species from the wild. There is, however, provision in the *Biodiversity Conservation Act 2016* for the issue of a scientific licence for the collection of propagating material where the establishment of a cultivated population will contribute to the conservation of the species.

### **Penalties for Breaches of the Legislation**

Under the *Biodiversity Conservation Act 2016* the possession of orchid species native to New South Wales is illegal unless undertaken in accordance with a licence issued under the Act or in circumstances where a defence or exemption under the Act or under *the Biodiversity Conservation Regulation 2017* applies.

The list of offences and statutory defences is extensive and complex. They may be found in Part 2 of the Act and Division 2.2 of the Regulation. There are also some other offences listed in Part 13 of the Act. Similar provisions have been in the relevant legislation for many years. The 2018-22 Plan and Summary of stakeholder submissions refer to the defences, particularly as they apply to hobby growers.

It is important for growers to be aware that it is still an offence to take any native orchid plant from the wild in New South Wales unless it is done pursuant to a licence or under one of the exemptions provided in the legislation. The maximum penalties for taking plants, or parts of plants, from the wild illegally are significant. They are referred to in section 3.3 of the Plan.

The penalties for taking plants from the wild are high because the clearing of native vegetation is one of the key threatening processes that threaten the survival or evolutionary development of a species, population or ecological community. It should come as no surprise to growers to learn that

illegal collection for horticulture is listed as the number one threat to *Sarcochilus hartmannii* in the OEH profile for this species as at 1 December 2017. The profile states that “this showy orchid has suffered drastically from excessive collecting”.

### **Conclusion**

The *Whole Plant Sustainable Management Plan 2018-22* contains provisions which affect all orchid growers who propagate and cultivate and sell orchid species and hybrids, and ANOS Groups and other orchid societies which sell members’ plants to the public at shows or other events. It is important that the licensing and tagging requirements of the Plan be complied with. Your local National Parks and Wildlife Service office should be able to help with any queries about the requirements of the Plan.

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