

**BIRDS AND ANIMALS
PROTECTION (AMENDMENT)
ACT.**

Act No. 12, 1930.

An Act to amend the Birds and Animals Protection Act, 1918; to repeal the Birds and Animals Protection (Amendment) Act, 1922; and for purposes connected therewith. [Assented to, 17th April, 1930.]

George V.
No. 12, 1930.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Birds and Animals Protection (Amendment) Act, 1930," and shall be read with the Birds and Animals Protection Act, 1918, in this Act referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the "Birds and Animals Protection Act, 1918-1930."

(3) Any proclamation, notification, or regulation made under the Principal Act and in force at the commencement of this Act shall be as valid and effectual as if this Act had commenced before the date upon which the proclamation, notification, or regulation was made.

(4) An honorary ranger appointed under the Principal Act and holding office at the commencement of this Act shall remain in office as if this Act had commenced before his appointment.

2. Section three of the Principal Act is amended—

(a) by inserting after the definition of "License" the following new definition:—

"Prescribed" means prescribed by this Act or by the regulations made thereunder.

Amendment
of Act No. 21,
1918, s. 3.

(Interpre-
tation.)

(b)

No. 12, 1930.

Further
amendment
of Act No. 21,
1918, s. 7.
(Licenses to
take for sale.)

Further
amendment
of Act No. 21,
1918, s. 8.
(Penalty for
having in
possession.)

(b) by omitting from the definition of "Protected bird or animal" the words "hereto and the eggs of any such bird" and by inserting in lieu thereof the words "to this Act, and the skin or any part of any such bird or animal, and the feathers and the eggs of any such bird."

3. Section seven of the Principal Act is amended—

(a) (i) by inserting in subsection one after the words "think proper" the words "including the payment of such royalty as is prescribed";
(ii) by omitting from the same subsection the words "or animals";
(b) by omitting from subsection two the words "or animal" wherever occurring;
(c) by adding the following new subsection :—
(3) The Governor may, by proclamation, direct that the provisions of this section shall apply to protected animals, and upon the publication of such proclamation such provisions shall apply accordingly.

4. Section eight of the Principal Act is amended—

(a) (i) by omitting from the same subsection the words "or the skin of such bird or animal or any part of such bird or animal";
(ii) by omitting from the same subsection the words "or skin or part of a bird or animal";
(iii) by omitting from the same subsection all the words after the word "committed" and by inserting in lieu thereof the following words :—

"The provisions of this section shall apply, whether such bird or animal was killed, taken, or bought in or received from any State or territory of the Commonwealth, or the Dominion of New Zealand, or elsewhere:

"Provided that the Minister may by license, under conditions therein specified, permit the importation of any such bird or animal:

"Provided

No. 12, 1930.

“ Provided, also, that the Governor may by proclamation exempt, under conditions specified in such proclamation, any bird or animal from such provisions ”;

- (b) by omitting from subsection two the words “or in or from any country other than any such State territory or Dominion as aforesaid ”; and
- (c) by adding the following new subsections :—

(3) Any such bird or animal, shall, upon the conviction of any person under this section for an offence in relation thereto, be liable to forfeiture, and shall be disposed of in such manner as the court may direct.

(4) In this section “possession ” includes having any protected bird or animal, as defined in this Act, in any building, lodging, apartment, field, or other place whether belonging to or occupied by the person charged or not, and whether such bird or animal is then had or placed for his own use or the use of another.

(5) This section shall be construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State to the intent that where any enactment thereof would but for this subsection have been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

5. Section nine of the Principal Act is repealed and the following new section is substituted therefor :—

9. (1) The land described in the Third Schedule is hereby constituted a district.

(2) The land within a radius of one mile from any school which is a public school within the meaning of the Public Instruction Act of 1880, or any Act amending the same, is hereby constituted a district.

(3) The Governor may, by proclamation, declare any other land to be a district.

Amendment of
Act No. 21,
1918, s. 9.Birds and
animals
within
districts.

(4)

No.12, 1930.

(4) The Governor may, by proclamation, declare what birds or animals may be taken or killed within a district, and either generally or within certain specified periods.

(5) Any person who in any district takes or kills, or attempts to take or kill, any bird or animal which he is not expressly authorised to take or kill by virtue of a proclamation made under the last preceding subsection or under the terms of a license issued under sections eighteen or nineteen shall be liable to a penalty not exceeding twenty pounds.

Further
amendment
of Act No. 21,
1918, s. 10.
(Penalty for
trespass.)

6. Section ten of the Principal Act is amended—

- (a) by omitting the words “enters any district” and substituting therefor the words “issued under sections eighteen or nineteen is found in any district”; and
- (b) by omitting the words “when so trespassing” and substituting therefor the words “when so found.”

Further
amendment of
Act No. 21, 1918, and
s. 11.

Rangers.

7. Section eleven of the Principal Act is repealed and the following new section is substituted therefor:—

11. (1) Members of the police force, public school teachers, conditional purchase inspectors, officers and employees of the Forestry Commission of New South Wales on State forests, stock inspectors, field officers of the Department of Agriculture, inspectors of fisheries, and rangers appointed under the Metropolitan Water, Sewerage, and Drainage Act, 1924, shall, by virtue of their office, be rangers.

(2) The Minister may, by notice in the Gazette, appoint honorary rangers, who shall have the powers and perform the duties of rangers.

Further
amendment
of Act No. 21,
1918.
New s. 17.

Protected
birds and
animals until
taken to be
the property
of the Crown.

8. (1) Section seventeen of the Principal Act as inserted by section two of the Birds and Animals Protection (Amendment) Act, 1922, is omitted and the following section is inserted in lieu thereof:—

17. (1) All protected birds and animals until taken or killed in accordance with the provisions of this Act shall be deemed to be the property of the Crown.

(2)

(2) Nothing in this Act shall prevent any person from keeping in confinement or in a domesticated state, otherwise than for the purpose of traffic, any protected bird or animal which has been taken in accordance with the provisions of this Act.

(3) No person shall traffic in birds or animals without the permission in writing of the Minister. The prescribed fee shall be payable for any such permission. Such permission may stipulate the maximum number of live birds or animals of any class or species, whether protected or scheduled, that may be in the possession of the applicant at any one time.

The permission may be revoked or varied by the Minister at any time.

(4) A different maximum number may be prescribed for different classes or species of birds or animals.

(5) Any person who traffics in birds or animals without the permission in writing of the Minister or who fails to observe any stipulation contained in such permission shall be guilty of an offence and shall be liable to a penalty not exceeding five pounds for every bird or animal in respect of which there is a contravention of the provisions of this section.

(6) For the purposes of this section any person who is in possession of any number of live birds or animals of any class or species, and whether protected or scheduled, in excess of the maximum number prescribed by regulations for such class or species shall be deemed to traffic in such birds or animals, and to keep the same for the purpose of traffic.

(7) This section shall be construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any enactment thereof would but for this subsection have been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

No. 12, 1930.~~Repeal of Act
No. 37, 1922.~~~~Further
amendment of
Act No. 21, 1918.~~

Sec. 18.

(2) The Birds and Animals Protection (Amend-

ment) Act, 1922, is hereby repealed.

9. The Principal Act is further amended—

(a) by inserting in section eighteen after the word "property" the words "and may also authorise that any such bird or animal may be taken under such authority";

(b) by inserting at the end of section eighteen the words "The Minister may in such license insert such conditions as he thinks proper";

(c) by inserting at the end of section nineteen the words "The Minister may in such license insert such conditions as he thinks proper."

10. The Principal Act is further amended by inserting after section twenty-two the following new sections:—

22A. If any person is convicted of an offence against any of the provisions of this Act, or of any regulation made thereunder, the court shall impose a penalty of not less than twenty shillings, and any firearms, nets, traps, or other instruments, or any dogs found in the possession of such person when such offence was committed shall be liable to forfeiture, and shall be disposed of in such manner as the court may direct.

22B. Every penalty imposed by or under this Act or the regulations made thereunder in the case of any person committing an offence shall extend and apply also to any person—

- (a) who causes the commission of the offence;
- (b) by whose order or direction the offence is committed; or
- (c) who aids, abets, counsels, or procures the commission of the offence.

11. Section twenty-four of the Principal Act is omitted and the following section is inserted in lieu thereof:—~~Further
amendment
of Act No. 21,
1918, s. 24.~~

24. (1) Any person who uses, or has in his possession with intent to use, potassium cyanide or sodium cyanide, or a mixture of potassium and sodium cyanide for the destruction or attempted destruction

No. 12, 1930.

destruction of any bird or animal, whether a protected bird or animal or a scheduled bird or animal, shall, unless he is exempted by the regulations, and complies with duly prescribed conditions attached to such exemption, be guilty of an offence.

(2) Any person who uses, or has in his possession with intent to use, any poison other than potassium cyanide or sodium cyanide, or a mixture of potassium and sodium cyanide for the destruction or attempted destruction of any protected bird or animal, shall be guilty of an offence.

(3) Any person who is guilty of an offence against this section shall be liable to a penalty not exceeding fifty pounds, and shall in addition to such penalty be liable at the discretion of the court before which he is convicted to imprisonment for a term not exceeding six months.

(4) Any potassium cyanide or sodium cyanide, or a mixture of potassium and sodium cyanide or other poison found in the possession of a person offending against this section shall on his conviction be liable to be forfeited by the court and to be disposed of as the court may direct.

(5) In any prosecution for an offence against this section proof that potassium cyanide or sodium cyanide, or a mixture of potassium and sodium cyanide or other poison was in the possession of the person charged, shall be *prima facie* evidence that he had it in his possession in contravention of this section.

12. The Principal Act is further amended by inserting after section twenty-four the following new sections:—

24A (1) Any person who uses or has in his possession with intent to use any bird-lime or other similar mixture or preparation of any kind for the taking or killing of any bird whether a protected bird or a scheduled bird shall for every such offence be liable to a penalty not exceeding twenty pounds.

(2)

Further
amendment of
Act No. 21, 1918.
New ss. 24A,
24B.

Forfeiture of
protected
bird or animal
in possession
of person
convicted
under ss. 21,
24, or 24A.

Further
amendment of
Act No. 21,
1918, s. 25.

(2) In any prosecution under this section proof that such bird-lime or other similar mixture or preparation was in the possession of the person charged shall be *prima facie* evidence that he had it in his possession in contravention of this section.

24B. Where any person has been convicted of an offence under section twenty-one, twenty-four, or 24A, any protected bird or animal, or any part of such bird or animal, found in the possession or under the control of such person, shall be liable to forfeiture, and shall be disposed of in such manner as the court may direct.

13. Section twenty-five of the Principal Act is amended—

(a) by inserting in subsection one after the word “issued” the words “and the rate of royalties to be paid on skins of protected animals, and the method of branding such skin to indicate the payment of such royalty”;

(b) (i) by inserting in the same subsection after the words “under the provisions of this Act” the following new paragraphs:—

Prescribing the conditions under which any bird or animal, whether such bird or animal is a protected bird or animal or a scheduled bird or scheduled animal, may be consigned or offered for sale, and for the proper caging of such bird or animal.

Prescribing the method of taking or killing protected birds and animals during the period of an open season or under the authority of a license.

Providing for the disposal of birds, animals, or articles forfeited by the court under this Act.

(ii) by inserting at the end of the same subsection the words “and may provide that any protected bird or animal in relation to which an offence against the regulations has been committed shall be liable to forfeiture.

The

The regulations may also provide for the signature and issue of licenses by officers of the police force or of the Public Service for the time being holding the rank or office prescribed in the regulations for and on behalf of the Minister.

Any regulation so providing may be framed generally as to all licenses and localities or officers holding specified rank or office, or may specify or except certain licenses, localities, or officers.

The regulations may also provide that any license purporting to be issued under the authority of the regulations and signed for and on behalf of the Minister shall be as effective for all purposes as a license signed and issued by him personally."

(c) by inserting in paragraph (iii) of subsection two after the word "fourteen" wherever occurring, the word "sitting."

14. The Third Schedule of the Principal Act is amended by omitting the words "by the eastern boundary of the parish of St. Luke" and by inserting in lieu thereof the words "by the western boundary of the parish of St. Luke."

15. Section six of the Principal Act is amended by inserting in subsection two next after the word "animal" where secondly occurring the following words: "or who, during such open season, fails to comply with any prescribed condition or restriction relating to the taking or killing of any protected bird or animal, or to the use of any gun, explosive, dog, net, or instrument or means whatsoever for the purpose of taking or killing any protected bird or animal."