

## NATIONAL PARKS AND WILDLIFE (MARINE MAMMALS PROTECTION) AMENDMENT BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the National Parks and Wildlife Act 1974 so as to protect whales and other marine mammals from interference and, in particular, to prevent persons from approaching them any closer than a certain distance.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on a day to be appointed by proclamation.

**Clause 3** amends the National Parks and Wildlife Act 1974 to create a separate and specific offence of approaching a marine mammal any closer than a distance prescribed by regulation or interfering with a marine mammal. The existing offence in section 99 of the Act of taking or killing fauna (within the extended meaning of "take or kill" in section 5 of the Act) does not adequately cover the conduct which it is proposed to prohibit. Section 99 of the Act, as amended, will read as follows:

**Taking or killing etc. endangered fauna**

99. (1) A person shall not—
- (a) take or kill any endangered fauna; or
  - (b) use any animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of taking or killing any such fauna; or
  - (c) **approach a marine mammal any closer than such distance as may be prescribed by the regulations or interfere with a marine mammal.**

**Penalty:**

- (a) in respect of any endangered fauna of a species named in Part 3 (threatened fauna), Part 4 (fauna in imminent danger of extinction) or Part 5 (marine mammals) of Schedule 12—\$10,000 or imprisonment for 2 years or both; or

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- (b) in respect of any other endangered fauna—\$4,000 or imprisonment for 1 year or both.
- (1A) Where—
  - (a) a person is convicted by the Land and Environment Court of an offence arising under subsection (1) in relation to a marine mammal; and
  - (b) the Court is satisfied that the person committed the offence in the course of commercial operations relating to the killing of marine mammals,
 the maximum pecuniary penalty that the Court may impose in respect of the offence is \$100,000.
- (2) A person shall not be convicted of an offence arising under subsection (1) if he proves that the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by a general licence under section 120.
- (3) . . . . .
- (4) **A reference in section 112F, 120, 129 or 171 to taking or killing any fauna includes, so far as is applicable in relation to a marine mammal, approaching or interfering with the marine mammal as referred to in subsection (1) (c).**
- (5) **In this section—**  
**“interfere with” includes harass, chase, herd, tag, mark and brand.**

The proposed amendment affects the application to marine mammals of other provisions of the Act, including the following:

- (a) Section 100—the section provides certain defences to a prosecution for taking or killing marine mammals or other endangered fauna. The defences will also apply to the new offence relating to marine mammals.
  - (b) Section 120—the section empowers the Director or other authorised officer to give persons authority to do things that might otherwise constitute an offence of taking or killing marine mammals or other endangered fauna. As a result of the amendment, authorities may also be given in connection with the new offence relating to marine mammals.
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