

FAUNA PROTECTION.14⁷ and 15⁷ Geo. VI., No. LXXVII.

No. 77 of 1950.

AN ACT to provide for the Conservation and Protection of Fauna.

[Assented to 5th January, 1951.]

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

Short title.

1. This Act may be cited as the *Fauna Protection Act, 1950*.Commence-
ment.

2. This Act shall come into operation on a day to be fixed by Proclamation.

Repeal of
No. 78 of 1912,
reprinted as
amended by
and pursuant
to s. 12 of
No. 27 of 1913
in the
appendix to
the Sessional
Volume, 1913

3. The Game Act, 1912, and the Game Act Amendment Act, 1913, are repealed.

Severability

4. This Act shall be construed so as not to exceed the legislative power of the State the intention being that, if any provision of this Act would, but

for this section, be construed as being in excess of that power, it shall, to the extent to which it is not in excess of that power, be a valid enactment.

5. (1) Where there is inconsistency between— Saving.

(a) the provisions of this Act; and

(b) the provisions of—

the Fisheries Act, 1905-1949;

the Vermin Act, 1918-1946;

the Whaling Act, 1937; or

the Zoological Gardens Act, 1898,

the provisions referred to in paragraph (b) of this subsection shall prevail.

(2) In the last preceding subsection, reference to the provisions of the Acts mentioned includes reference to the provisions of Acts amending or substituted for them, and includes also the provisions of Orders in Council, Proclamations, declarations, regulations, by-laws, notices or other matters which are promulgated pursuant to authority delegated by those Acts and which are in operation.

6. In this Act, unless the context requires otherwise— Interpre-
tation.

“Committee” means The Fauna Protection Advisory Committee of Western Australia constituted pursuant to the provisions of this Act;

“close season” means, in relation to any of the fauna, the period of time during which that fauna is, subject to the provisions of this Act, protected from being taken;

“fauna” means the vertebrate fauna which is wild by nature and is ordinarily to be found in a condition of natural liberty in the whole or a part or parts of the State, and which is indigenous or introduced, and includes any kind, species, sex and individual member of the fauna, and also includes mammals, birds, reptiles and frogs,

and also the whole or any part of the skin, plumage, body, eggs, nests, young and offspring of the fauna;

“honorary warden” means an honorary warden of fauna appointed pursuant to the provisions of this Act;

“illegal device” means any specified device declared to be an illegal device by the regulations and any specified device which is used in a manner other than that prescribed for its use by the regulations;

“illegal means” means any specified means declared to be an illegal means, and any specified means used in a manner other than that prescribed by the regulations;

“indigenous” means, in relation to fauna, such of the fauna as is indigenous to the State;

“introduced” means, in relation to fauna, such of the fauna as is indigenous to any place outside the State, but which occurs permanently, seasonally or occasionally within the State, whether as the result wholly or partly of introduction by man or by migration into the State;

“license” means a license issued pursuant to the provisions of this Act;

“open season” means, in relation to any of the fauna, the period of time during which that fauna may, subject to the provisions of this Act, be taken;

“protected” means, in relation to any of the fauna, protected from being taken, and “protection” has a corresponding meaning;

“sanctuary” means an area of land—

vested in the Crown and which the Governor, subject to such conditions and limitations as he thinks fit, reserves to His Majesty or disposes of in such a manner as for the public interest may seem fit for the conservation of fauna,

pursuant to the provisions of paragraph (g) of section 29 of the Land Act, 1933-1948; or

which is the subject of an agreement made between the Minister and the owner of the land for its use as a sanctuary;

“to sell” means to sell by wholesale or retail, and includes to supply for profit, offer for sale, receive for sale, having possession for sale, expose for sale, send forward or deliver for sale, cause or suffer or allow to be sold, and to dispose or offer for disposal under hire purchase agreement, and derivatives and inflections have corresponding meanings;

“to take” means to kill or capture, and includes to decoy, stupefy, disable, pursue, hunt, destroy, poison, net, trap, snare, lime, spear, take, disturb and injure, and to attempt any of the foregoing, and derivatives and inflections have corresponding meanings;

“warden” means a warden of fauna appointed pursuant to the provisions of this Act but does not include an honorary warden.

7. (1) Subject to the direction and control of the Minister, this Act shall be administered by the Chief Warden of Fauna. Administra-
tion.

(2) The Governor shall appoint a person to the office of Chief Warden of Fauna which office shall be subject to the provisions of the Public Service Act, 1904-1948, and shall also appoint such other persons as wardens of fauna, honorary wardens of fauna, and officers as he thinks fit to carry out the provisions of this Act.

(3) Unless and until the Governor appoints a person to the office of Chief Warden of Fauna, the person for the time being occupying or discharging the duties of the office having the title of Chief Inspector of Fisheries, pursuant to the provisions of the Fisheries Act, 1905-1949, shall, by virtue of this subsection, occupy the position of and be the Chief Warden of Fauna.

(4) Acceptance of or acting in the office of Chief Warden of Fauna, or of warden, honorary warden or officer, by a person shall not of itself render the provisions of the Public Service Act, 1904-1948, or the Superannuation Act, 1871-1947 or the Superannuation and Family Benefits Act, 1938-1947, applicable to him or affect the application of those provisions to him if they applied to him at the time of the acceptance of or acting in the office.

Cost of
administration.

8. The cost of the administration of this Act shall be paid out of moneys to be appropriated by Parliament for the purpose.

Crown not
bound.

9. This Act does not bind the Crown or any undertaking carried on by or on behalf of the Government of the State.

The Fauna
Protection
Advisory
Committee.

10. (1) For the purposes referred to in the next succeeding section, there shall be a committee constituted as provided in this section.

(2) The name of the Committee shall be The Fauna Protection Advisory Committee of Western Australia.

(3) The Committee shall consist of six members, including the chairman, of which number—

three referred to in this section as *ex officio* members shall be—

(a) the person for the time being occupying the office of Chief Warden of Fauna, who shall be chairman of the Committee;

(b) the person for the time being occupying or discharging the office having the title of Chief Inspector of Vermin, pursuant to the provisions of the Vermin Act, 1918-1946; and

(c) the person for the time being occupying the position of Conservator of Forests,

and of which number—

three other persons referred to in this section as the appointed members shall be appointed by the Governor to hold office, subject to the provisions of subsection (6) of this section, as members for a period of three years, at the expiration

of which period an appointed member shall, subject to those provisions, be eligible for re-appointment and at least one of the three shall be a person, other than a civil servant, with a wide, practical knowledge of the native fauna of Western Australia.

(4) Meetings of the Committee shall be held at such times and places as it may decide, or be determined by the Minister, and the Committee may regulate its own procedure.

(5) At all meetings of the Committee—

three members, of whom one shall be an *ex officio* member, shall constitute a quorum for the conduct of the business;

all matters shall be determined by a majority of the votes of the members present;

each member, including the chairman, shall be entitled to one vote only on the determination of any matter.

(6) (a) If an appointed member of the Committee—

(i) is absent without the consent of the Minister for more than three meetings of the Committee, notice of the convening of which has been given to him;

(ii) becomes of unsound mind or is declared, pursuant to the provisions of the law for the time being relating to mental infirmity, incapable of managing his affairs;

(iii) becomes bankrupt or avails himself as a debtor of any law for the relief of bankrupt debtors;

(iv) is guilty of misbehaviour or incapacity in his office; or

(v) resigns, or dies,

his office on the Committee shall become vacant.

(b) Where the office of an appointed member becomes vacant, otherwise than by effluxion of the term for which the occupant was appointed, the Governor may appoint a person to the vacant office

for the remainder of the term, and at the expiration of that remainder, that person shall, subject to the last preceding paragraph, be eligible for re-appointment.

(7) Acceptance of or acting in the office of member of the Committee by a person shall not of itself render the provisions of the Public Service Act, 1904-1948, the Superannuation Act, 1871-1947, or the Superannuation and Family Benefits Act, 1938-1947, applicable to him, or affect the application of those provisions to him if they applied to him at the time of the acceptance of or acting in the office.

(8) Each member of the Committee shall be entitled to such travelling allowances as the Minister may determine.

(9) The Committee shall cause to be kept minutes of its proceedings in such manner and form as the Minister may direct or approve.

Functions
of the
Committee.

11. (1) The Committee shall inquire into and report to the Minister on any matters referred to it by him or by the Chief Warden of Fauna in relation to the conservation of fauna in the State, and may advise the Minister and make such recommendations to him in relation thereto as it thinks fit.

(2) Without prejudice to the generality of the provisions of the last preceding subsection, the Committee shall inquire into and report to the Minister on the effect or likely effect on the conservation of the fauna of this State, of the importation into the State of the fauna of any place outside the State, when required by him or by the Chief Warden of Fauna, and may advise the Minister and make such recommendations to him in relation thereto as it thinks fit.

(3) At least thirty days before making to the Minister any report or recommendation relating to an inquiry under this section into any proposed new sanctuary, and, in relation to any other inquiry under this section, whenever directed by the Minister so to do, the Committee shall refer the subject matter of the inquiry to the local authority in whose district the matter may have effect for any

information and advice the local authority may be able to offer and shall advise the local authority of the general nature of any report, advice or recommendation which the Committee may then intend to submit to the Minister.

12. The Minister may cause to be carried out such research into the conservation and protection of fauna as he thinks fit.

Research.

13. The Minister may enter into agreements with the owners of areas of land for the use of the land as a sanctuary for the conservation and protection of fauna.

Agreements
for sanctu-
aries.

14. (1) Except to the extent which the Governor declares by Proclamation pursuant to the provisions of this section all fauna is wholly protected throughout the whole of the State at all times.

Protection of
fauna.

(2) (a) The Governor may from time to time declare—

that any of the fauna is not protected or is protected to such extent for such period of time throughout the whole of such part or parts of the State as he shall think fit,

and for these purposes may from time to time by Proclamation declare—

a close season or an open season in respect of any of the fauna or the maximum number of the fauna which one person may take during any specified period of time.

(b) The Governor may from time to time, by Proclamation, vary the provisions and operation of a Proclamation promulgated pursuant to the power conferred upon him by this section by cancelling those provisions and that operation wholly or in part absolutely, or by cancelling those provisions and that operation wholly or in part, and substituting other provisions and their operation for those so cancelled.

(c) A declaration promulgated by Proclamation pursuant to the provisions of this section shall, by virtue of this section, have the force of law while in operation.

Licenses.

15. (1) The Minister may issue licenses for the purpose of this Act.

(2) The Minister may renew the period of operation of a license from time to time, or transfer the authority it confers from one person to another, or, where its operation relates to any place, may transfer that operation to another place of the same kind.

(3) (a) The Minister may delegate all or any of the powers conferred upon him, with the exception of this power of delegation, to the Chief Warden of Fauna, or to any warden.

(b) Where the exercise of the power is dependent upon the opinion, belief, satisfaction or other state of mind of the Minister in relation to any matter, the power, when delegated, may be exercised by the delegate upon his opinion, belief, satisfaction or state of mind in relation to the matter.

(c) Every delegation pursuant to the provisions of this section shall be revocable at will, and no delegation shall prevent the Minister from exercising the power.

(4) No person shall be entitled to a grant, renewal or transfer of a license as of right.

(5) A grant, renewal or transfer of a license may be authorised subject to such conditions as, having regard to the conservation of fauna, the Minister considers fit, which conditions shall be endorsed upon or attached to the license when granted, renewed or transferred, as the case may be; and may be added to, cancelled, suspended and otherwise varied by the Minister from time to time during the operation of the license.

Taking of protected fauna an offence.

16. A person who infringes the protection conferred by subsection (1) or declared pursuant to subsection (2) of section fourteen of this Act, by taking fauna while protected, otherwise than by—

the authority of a license issued pursuant to the provisions of section fifteen of this Act; or

the authority of the provisions of paragraph (c) of subsection (2) of the next succeeding section, or of section twenty-three,

commits an offence against this Act.

17. (1) This section applies to fauna whether protected or not protected.

Certain
dealings
in fauna
prohibited
unless by
authority of
license.

(2) Unless by the authority of a license which is in operation, no person shall—

- (a) commence or carry on the business of conducting a farm for the purpose of breeding or raising any kind of indigenous fauna or, for the purpose of stocking the farm, take any kind of indigenous fauna;
- (b) commence or keep an establishment for the breeding or holding of fauna for gain or reward;
- (c) bring into the State from any place outside the State any of the live vertebrate fauna which is wild by nature and is ordinarily found in a condition of natural liberty in that place, or the eggs, source of reproduction, young or offspring of that fauna;
- (d) export fauna from the State; or
- (e) sell, or take for the purpose of sale, any fauna, other than fauna which are within the meaning of the interpretation "vermin" in section four of the Vermin Act, 1918-1946, or which are prescribed by the regulations.

(3) A person who uses any means or device prescribed by the regulations as an illegal means or device in the taking of fauna, commits an offence against this Act.

18. (1) Skins of indigenous fauna taken in the State are charged with payment of royalty at the rates prescribed by the regulations, which rates may be uniform or vary according to the kind of fauna from which the skin is taken, unless by the regulations the skin is exempt from payment of royalty.

Royalty on
skins.

(2) Where a person removes the skin of indigenous fauna which he has taken for the purpose of selling the skin for profit, he shall pay the prescribed royalty in respect of the skin unless exempted pursuant to the provisions of the regulations.

(3) A person who buys or sells skins of indigenous fauna, whether as principal or agent, shall, unless the skins are exempted from payment of royalty, or royalty has, at the time of the buying or selling, been paid, be liable for payment of the prescribed royalty thereon.

(4) Officers appointed and authorised to receive royalty pursuant to the provisions of this Act shall, on receipt of royalty, brand or cause to be branded in manner prescribed, each skin in respect of which the royalty is paid, as evidence of the payment.

(5) Skins of prescribed fauna intended for export and exempt from payment of royalty shall be branded by the officer so authorised with a prescribed brand.

(6) By virtue of this section an officer so authorised may seize and take control of any skin upon which royalty is payable but has not been paid and may retain the skin until the royalty is paid.

(7) The Minister, by virtue of this subsection, may sue for and recover royalty payable pursuant to the provisions of this section, in a court of competent jurisdiction, and may apply for, and if the court sees fit, obtain an order for the sale of such skin, and where a skin is sold pursuant to an order of the court, the proceeds of the sale shall, after payment of the costs of the sale and proceedings before the court, be appropriated to payment of the royalty, and any balance of the proceeds then remaining shall be applied as the court directs.

(8) A person who evades, or attempts to evade, payment of royalty payable by him pursuant to the provisions of this section, commits an offence against the Act.

Wardens.

19. For the purposes of this Act, the following persons shall be wardens:—

- (a) The person for the time being occupying or acting in the office of Chief Warden of Fauna;

- (b) persons appointed to the office of warden pursuant to the provisions of subsection (2) of section seven of this Act and for the time being occupying or acting in that office;
- (c) all members of the Police Force;
- (d) each person who, for the time being, occupies or acts in the office of Chief Inspector of Fisheries, or the office of inspector, pursuant to the provisions of the Fisheries Act, 1905-1949;
- (e) each person who, for the time being, occupies or acts in the office of forest officer pursuant to the provisions of the Forests Act, 1918-1931.

20. (1) The Minister shall issue to a warden a certificate of authority authorising the warden to do all things which he is required or authorised to do by the provisions of this Act and the regulations, and all courts and persons acting judicially shall take judicial notice of the certificate and the authority conferred by it.

Authority of
wardens.

(2) A warden who is not a member of the Police Force and who finds a person committing an offence against this Act may, without warrant other than the provisions of this section—

- (a) take possession and control of—

any weapon, instrument, illegal device or other thing or means which the warden, on reasonable grounds, believes has been used, is being used, or is about to be used, by the offender in the commission of the offence;

any fauna which the warden on reasonable grounds believes to be involved in the commission of the offence,

and deliver them into the custody of a member of the Police Force to be dealt with according to law;

- (b) stop, detain and search any vehicle, vessel or conveyance in which the warden, on reasonable grounds, suspects there is any

*Of. Police
Act, 1892
(55 Vict.,
No. 27), s. 49*

fauna taken, or any weapon, instrument, illegal device or other thing or means used or about to be used, in the commission of an offence against this Act or the regulations;

Cf. Police
Act, 1892 (55
Vict., No. 27).
s. 50.

- (c) where the warden, on reasonable grounds suspects a person is committing or has committed an offence against this Act or the regulations,

require the person to give to him the person's name and address and may detain the person if, when required to do so, he does not give to the warden his name and address, or gives to the warden a false name and address, until he can be delivered to a member of the Police Force, or the warden may take him into custody himself, to be dealt with according to law pursuant to section fifty of the Police Act, 1892, as if he had been so required and had not given his name and address, or had given a false name and address, to an officer or constable of the Police Force.

(3) (a) If it appears to a justice of the peace on complaint made on oath that there are reasonable grounds for suspecting that there is in any house, vessel or place—

- (i) anything with respect to which an offence has been or is suspected, on reasonable grounds, to have been committed; or
- (ii) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of an offence, or
- (iii) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing an offence,

he may issue his warrant directing the warden named therein, or all wardens, to search the house, vessel or place and to seize the thing found and to take it before a justice to be dealt with according to law.

(b) The warrant is to be executed by day, unless the justice of the peace, by the warrant, has authorised it to be executed by night, in which case it may be so executed.

(4) In respect of fauna reasonably suspected of having been taken otherwise than as authorised by or pursuant to the provisions of this Act, the provisions of section sixty-nine of the Police Act, 1892, relating to things reasonably suspected of being unlawfully obtained shall apply.

(5) As regards a warden who is a member of the Police Force, the provisions of this Act relating to wardens are not in derogation of but are in addition to those of other Acts relating to members of the Police Force.

21. (1) The Minister shall issue to an honorary warden a certificate of authority authorising the honorary warden to do all things which he is required or authorised to do pursuant to the provisions of this Act.

Honorary wardens.

(2) The powers and duties of an honorary warden shall be those prescribed by the regulations.

22. (1) The property in fauna, until lawfully taken is, by virtue of this Act, vested in the Crown.

Property in fauna.

(2) The provisions of the last preceding subsection do not entitle any person to compensation.

23. Notwithstanding any other provisions of this Act, a person—

Exemption in certain cases.

who is a native according to the interpretation, "Native" in section two of the Native Administration Act, 1905-1947,

may take fauna—

upon Crown land or upon any other land, not being a sanctuary, but where occupied, with the consent of the occupier of that land,

sufficient only for food for himself and his family, but not for sale—

and the Governor may, if he is satisfied that any of the privileges conferred by this section upon the native has been or is being abused, by regulation curtail the privileges in such manner and for such period and in such part or parts of the State as he thinks proper.

Protection of
officers.

24. (1) No matter or thing done by the Minister, any member of the Committee, the Chief Warden of Fauna, a warden of fauna, an honorary warden, an officer, in good faith in or about the exercise of any of the powers conferred upon and exercisable by those persons, shall subject them, or any of them, to any liability in respect thereof.

(2) Subject to the provisions of the last preceding subsection, no action shall be brought against those persons or any of them—

- (a) until after the expiration of one month's notice in writing specifying the name of the person intending to bring the action or proceeding, the name of the person against whom it is intended to proceed, and particulars of the cause or grounds of the action or proceeding;
- (b) after the expiration of twelve months from the time when the cause or the ground of action or proceedings arose.

Certain
offences

25. (1) No person shall—

- (a) wilfully mislead, hinder or obstruct any person in any particular likely to affect the discharge of that person's duty pursuant to the provisions of this Act;
- (b) without lawful excuse have in his possession a license issued under this Act, or any thing resembling such a license and calculated to deceive;
- (c) refuse to produce any license issued to him pursuant to the provisions of this Act when required to do so by a warden;

- (d) refuse to state his name or address when lawfully required to do so by a warden;
- (e) state a false name or address to a warden when lawfully required by a warden to give his name and address;
- (f) use abusive language to a warden;
- (g) fail to observe the conditions of any license issued to him pursuant to the provisions of this Act.

(2) That the provisions of the last preceding subsection relate to a warden, does not preclude the making of regulations containing similar provisions relating to an honorary warden.

26. (1) Any person who contravenes or who fails to comply with any provisions of this Act or the regulations is guilty of an offence against this Act and is liable, if no other penalty be prescribed, to a maximum penalty of fifty pounds, and any license issued pursuant to the provisions of this Act and held by him may be cancelled. Offences.

(2) All proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions.

(3) Any person may make and prosecute a complaint pursuant to the provisions of the Justices Act, 1902-1948, in respect of an offence alleged to be committed against this Act or the regulations.

27. (1) Where any fauna, weapon, instrument, illegal means or device, or thing, which is seized by a warden pursuant to the powers conferred upon him by this or any other Act, is involved in the commission of an offence against this Act or the regulations, it may, on conviction of the offender— Forfeiture.

if the court of petty sessions convicting the offender so orders,

be forfeited to the Crown and shall, after the expiration of the time limited for appeal, be destroyed or otherwise dealt with in such manner as the Minister directs.

(2) A person who feels aggrieved as complainant, defendant, or otherwise, may, without prejudice to any other right of appeal he may have, appeal

against the forfeiture ordered pursuant to the provisions of the last preceding paragraph in the manner prescribed in the Justices Act, 1902-1948.

(3) The provisions of this section do not apply to skins seized for non-payment of royalty pursuant to the provisions of this Act, nor to any vehicle, vessel or aircraft.

Regulations

28. The Governor may make regulations prescribing all forms, fees, and matters which by this Act are required or permitted to be prescribed, or are convenient for carrying into or facilitating the operation of the provisions of this Act, and, in particular and without prejudice to the generality of this power, may make regulations—

- (a) providing for the protection of fauna in sanctuaries and for the control of sanctuaries by the Committee or by such other persons as the Governor may from time to time appoint for the purpose;
- (b) limiting the number of shooters in any one locality at any one time and licensing shooting and hunting parties and regulating the same;
- (c) controlling and regulating the sale or disposal of live fauna for gain or reward;
- (d) prescribing the conditions under which fauna may be kept in captivity;
- (e) prescribing the particulars to be recorded and kept available for inspection by wardens, collectors and officers and the manner in which the particulars are to be recorded, and prescribing the matters to be recorded in returns and the times and manner of furnishing returns to the Minister;
- (f) prescribing matters relating to research which the Minister causes to be carried out, into the conservation of fauna, and, without limiting the generality of the foregoing provisions of this paragraph, prohibiting all such acts, matters and things as do or are likely to hinder or obstruct or otherwise adversely affect the carrying out of that research.