

Western Australia.

WILDLIFE CONSERVATION ACT, 1950-1979.

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Approved for reprint 30th June, 1980.

WESTERN AUSTRALIA.

WILDLIFE CONSERVATION.

14° and 15° Geo. VI., No. LXXVII.

No. 77 of 1950.¹

(Affected by Act No. 113 of 1965, s. 8.)

[As amended by Acts:

- No. 38 of 1954, assented to 3rd December, 1954;
- No. 73 of 1954,² assented to 14th January, 1955;
- No. 45 of 1967,³ assented to 21st November, 1967;
- No. 99 of 1969,⁴ assented to 25th November, 1969;
- No. 53 of 1970, assented to 5th November, 1970;
- No. 67 of 1975,⁵ assented to 7th November, 1975;
- No. 86 of 1976,⁶ assented to 4th November, 1976;
- No. 34 of 1977,⁷ assented to 7th November, 1977;
- No. 28 of 1979,⁸ assented to 21st September, 1979,

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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

Long title.
Amended by
Act No. 28 of
1979, s. 3.

[Assented to 5th January, 1951.]

BE it enacted—

1. This Act may be cited as the *Wildlife Conservation Act, 1950-1979*.

Short title.
Amended by
Act No. 28 of
1979, s. 1.

2. This Act shall come into operation on a day to be fixed by Proclamation.¹

Commence-
ment.

¹ Proclaimed to come into operation on 1st July, 1952. See *Gazette*, 13/6/52, pp. 1497-8.

² Proclaimed to come into operation on 1st March, 1955. See *Gazette*, 18/2/55, p. 343.

³ Proclaimed to come into operation on 1st June, 1968. See *Gazette*, 24/5/68, p. 1509.

⁴ Proclaimed to come into operation on 13th February, 1970. See *Gazette*, 13/2/70, p. 429.

⁵ Proclaimed to come into operation on 5th December, 1975. See *Gazette*, 5/12/75, p. 4359.

⁶ Proclaimed to come into operation on 28th April, 1980. See *Gazette*, 18/4/80, p. 1115.

⁷ Proclaimed to come into operation on 1st August, 1978. See *Gazette*, 21/7/78, p. 2627.

⁸ Proclaimed to come into operation on the date that Act No. 86 of 1976 comes into operation, i.e. 28th April, 1980. See *Gazette*, 18/4/80, p. 1115.

Repeal.

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 The Game Act, 1912, and the Game Act Amendment Act, 1913, are repealed.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. [*Repealed by No. 45 of 1967, s. 3.*]

Interpre-
tation.

Amended by
No. 38 of
1954, s. 2;
No. 45 of
1967, s. 4;
No. 99 of
1969, s. 3;
No. 67 of
1975, s. 4;
No. 86 of
1976, s. 4;
No. 34 of
1977, s. 3;
No. 28 of
1979, s. 3.

6. (1) In this Act, unless the context requires otherwise—

“animal” means any living thing that is not a human being or a plant and includes in relation to any such animal the eggs, larvae or semen;

“Authority” means The Western Australian Wildlife Authority constituted under this Act;

“carcass” includes any part of a carcass;

“class” in relation to animals, means any group or grouping of animals;

“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;

“Crown land” means all land other than private land;

“Director” means the Director of Fisheries and Wildlife referred to in section seven of this Act;

“fauna” means—

- (a) any animal indigenous to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth;

- (b) any animal that periodically migrates to and lives in any State or Territory of the Commonwealth or the territorial waters of the Commonwealth; and
- (c) any animal declared as fauna pursuant to subsection (2) of this section,

and includes in relation to any such animal—

- (d) any class or individual member thereof;
- (e) the eggs, larvae or semen;
- (f) the carcass, skin, plumage or fur thereof,

but does not include any prescribed animal or prescribed class of animal;

“flora” means any plant (including any wild-flower, palm, shrub, tree, fern, creeper or vine) which is—

- (a) native to the State; or
- (b) declared to be flora pursuant to subsection (4) of this section,

and includes any part of flora and all seeds and spores thereof;

“honorary wildlife officer” means a person appointed to the office of that name under section seven 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;

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“keep” means to have in possession or control in any place whatsoever even though another person may have the actual possession or custody of the animal in question;

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

“nature reserve” means land reserved to Her Majesty, or disposed of, under the Land Act, 1933 or any other Act, for the conservation of flora or fauna;

“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;

“private land” means any land that has been or may hereafter be alienated from the Crown for any estate of freehold, or is or may hereafter be the subject of any conditional purchase agreement, or of any lease or concession with or without a right of acquiring the fee simple thereof other than for pastoral or timber purposes;

“processing establishment” means any land, building, tent or other structure of any kind or any vehicle, boat or other conveyance of any kind on or in which processing of fauna other than fish or whales is carried out for the purposes of sale;

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

“protected flora” means, any flora for the time being declared to be protected flora for the purposes of this Act;

“skin” includes any part of a skin;

“the Fund” means the Wildlife Conservation Trust Fund established under this Act;

“to process” in relation to any fauna other than fish or whales means to cut, skin, treat, freeze, can, cure, pack or preserve any part of the fauna and derivatives and inflections have corresponding meanings;

“to sell” means to sell by wholesale or retail, or to barter or exchange, 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” in relation to any fauna, includes to kill or capture any fauna by any means or to disturb or molest any fauna by any means or to use any method whatsoever to hunt or kill any fauna whether this results in killing or capturing any fauna or not; and also includes every attempt to take fauna and every act of assistance to another person to take fauna and derivatives and inflections have corresponding meaning;

“to take” in relation to any flora includes to gather, pluck, cut, pull up, destroy, dig up, remove or injure the flora or to cause or permit the same to be done by any means;

“wildlife officer” means a person appointed to an office referred to in section nineteen of this Act;

“wildlife sanctuary” means an area of land which is the subject of an agreement made between the Minister and the owner of the land for its use as a sanctuary.

(1a) Where any fauna or flora is taken in any part of the State where the fauna or flora is protected, that fauna or flora shall continue to be protected notwithstanding that it may have been removed from that part of the State to another part where the same species, class or description of fauna or flora is not protected.

(2) The Minister may by notice declare any animal or any class of animal specified in the notice to be fauna for the purposes of this Act either generally or in relation to the time and place specified in the notice, and the animal or class of animal so specified shall be fauna for the purposes of this Act either generally or in relation to the time and place specified in terms of the notice.

(3) Any notice published pursuant to subsection (2) of this section may be varied or cancelled by the Minister by subsequent notice published in the *Government Gazette*.

(3a) Every notice under subsection (2) or subsection (3) of this section shall be published in the *Government Gazette* and shall take effect, subject to the provisions of section thirty-six of the Interpretation Act, 1918, as though it were a regulation.

(4) The Minister may—

(a) by notice published in the *Government Gazette* declare any class or description of plant (including any wildflower, palm, shrub, tree, fern, creeper or vine) specified in the notice which is not native to the State to be flora for the purposes of this Act in any part or parts of the State specified; and

(b) by notice so published vary or revoke any notice published under paragraph (a) of this subsection.

(5) Notwithstanding anything to the contrary contained in the preceding provisions of this section any plant (including any wildflower, palm, shrub, tree, fern, creeper or vine) which is a declared plant within the meaning of the Agriculture and Related Resources Protection Act, 1976 throughout the whole of the State or in any part of the State, shall not be flora for the purposes of this Act throughout the State or in that part of the State, as the case requires.

(6) The Minister may—

(a) by notice published in the *Government Gazette* declare any class or description of flora to be protected flora for the purposes of this Act, either throughout the whole of the State or in such part or parts of the State as are specified in the notice;

(b) by notice so published, declare—

(i) all flora; or

(ii) all flora other than such classes or descriptions of flora as are specified in the notice,

in such part or parts of the State as is or are specified in the notice to be protected flora for the purposes of this Act; and

(c) by notice so published, vary or revoke any notice published under paragraph (a) or (b) of this subsection.

7. (1) Subject to the direction and control of the Minister and the Director, this Act shall be administered by the Conservator of Wildlife.

Administra-
tion.
Amended by
No. 38 of
1954, s. 3;
No. 45 of
1967, s. 5;
No. 67 of
1975, s. 5.

(1a) The person for the time being holding the office of Director of Fisheries under the Fisheries Act, 1905, shall be the Director of Fisheries and Wildlife for the purposes of this Act.

(2) There shall be appointed under the Public Service Act, 1978, a Conservator of Wildlife and such wildlife officers, licensing officers and other staff as are necessary for the effective administration of this Act.

(2a) The Minister may appoint persons to be honorary wildlife officers who shall carry out such of the duties of a wildlife officer as the Minister determines in relation to the whole or any specified part of the State.

(3) [*Repealed by No. 45 of 1967, s. 5.*]

(4) The Minister may, with the approval of the Public Service Board, engage persons to carry out such of the duties of a wildlife officer as the Minister determines in relation to any specified part of the State, but the engagement of any such person does not of itself render the provisions of the Public Service Act, 1978, or the Superannuation Act, 1871-1947¹ or the Superannuation and Family Benefits Act, 1938-1947,² 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.

(4a) The Minister may, with the approval of the Public Service Board, engage under contract for services any consultant or professional, technical or other assistance, and may authorise a person so engaged to carry out such of the duties of a wildlife officer as the Minister determines.

(4b) The Conservator of Wildlife shall issue to each person appointed or engaged pursuant to this section to carry out duties under this Act a certificate of appointment in the prescribed form specifying the parts of the State in which that person is authorised to carry out those duties and the general nature of the duties, and the holder shall produce such certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act.

(4c) Production of a certificate in the prescribed form is conclusive proof in any court of the appointment of the person to whom that certificate relates and of his authority to exercise the powers conferred upon him by this Act in the execution of the duties therein specified.

¹ Now Superannuation Act, 1871-1970.

² Now Superannuation and Family Benefits Act, 1938-1979.

(5) As soon as may be after the thirtieth day of June in each year the Director shall cause to be prepared a report containing—

- (a) statements relating to the proceedings and work of the Authority during the financial year then last preceding; and
- (b) any comments which the Director thinks desirable to make relating to the administration or operation of this Act.

Such annual report shall be laid before both Houses of Parliament not later than the thirty-first day of October in each year.

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

Cost of administration.

9. (1) The provisions of this Act relating to flora bind the Crown.

Relationship to the Crown, government departments and local authorities and other persons exercising rights or duties. Repealed and re-enacted by No. 86 of 1976, s. 5. (As amended by No. 28 of 1979, s.4.).

(2) Where in relation to a provision of this Act relating to flora a matter arises, or may arise, with respect to any right, power or authority of, or the discharge of any duty by, a government department or a local authority, the following provisions apply—

- (a) where the matter relates to a government department—the Minister charged with the administration of the government department may consult with the Minister;
- (b) where the matter relates to a local authority—the local authority shall refer the matter to the Minister charged with the administration of the Local Government Act, 1960, who may consult with the Minister;
- (c) where the Ministers agree, the Minister shall give such directions as are agreed to as a result of those consultations;

- (d) where the Ministers do not agree the matter shall be referred to the Governor; and
- (e) the Governor may finally and conclusively determine the matter and effect shall be given to any such determination.

(3) Where in relation to a provision of this Act relating to flora a matter arises, or may arise, with respect to the exercise of any right or the performance of any duty or obligation conferred or imposed on a person, not being a government department or local authority, by or under any Act or agreement to which the State is a party and which is ratified or approved by an Act the matter shall be finally and conclusively determined by the Minister upon a written application by that person to the Minister and effect shall be given to that determination.

(4) In this section—

“government department” includes any instrumentality of the Crown in the right of the State, whether a corporation, agency or other authority.

Authority
to succeed
Committee.
Added by
No. 45 of
1967, s. 6.
Amended by
No. 67 of
1975, s. 6.

9A. (1) On the coming into operation of the Fauna Conservation Act Amendment Act, 1975—

- (a) the body corporate formerly known as The Fauna Protection Advisory Committee of Western Australia, and thereafter known as The Western Australian Wild Life Authority, shall become and be known as The Western Australian Wildlife Authority;
- (b) the body corporate shall be preserved and continue in existence under and subject to the provisions of this Act under that name as thereafter constituted and so that the corporate identity of the body corporate shall not be affected.

(2) A reference in a law of the State and in any document in force immediately before the coming into operation of the Fauna Conservation Act Amendment Act, 1975, to the Fauna Protection Advisory Committee of Western Australia or to The Western Australian Wild Life Authority shall be read and construed as a reference to the Authority.

10. (1) For the purposes of this Act, there shall be an Authority constituted as provided in this section.

The Western Australian Wildlife Authority. Amended by No. 38 of 1954, s. 4; No. 45 of 1967, s. 7; No. 53 of 1970, s. 2; No. 67 of 1975, s. 7; No. 86 of 1976, s. 22; No. 34 of 1977, s. 4.

(2) The name of the Authority shall be The Western Australian Wildlife Authority.

(3) The Authority shall consist of twelve members including the Chairman of the Authority, of which members—

(a) four referred to in this section as *ex officio* members shall be the persons for the time being holding the office of—

(i) Director, who shall be the Chairman of the Authority;

(ii) Conservator of Wildlife under this Act, who shall be the Deputy Chairman of the Authority;

(iii) Chief Agriculture Protection Officer under the Agriculture and Related Resources Protection Act, 1976;

(iv) Conservator of Forests under the Forests Act, 1918, or a person nominated by the Conservator as his deputy; and

(b) eight referred to in this section as the appointed members, who shall be appointed by the Minister and of whom—

(i) one shall be a botanist;

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- (ii) two shall be zoologists; and
- (iii) five shall be persons who are not officers within the meaning of the Public Service Act, 1978, of whom one shall be representative of country interests, one shall have a wide practical knowledge of the native fauna of the State and one shall have such knowledge in relation to the flora.

(3a) Subject to subsection (6) of this section, each appointed member—

- (a) shall hold office as a member of the Authority for a term of three years; and
- (b) is eligible for re-appointment on the expiration of his term of office as member of the Authority.

(3b) The Authority is a body corporate with perpetual succession and a common seal and may sue and be sued and may purchase, take, hold, sell, lease, charge, mortgage and otherwise dispose of real and personal property.

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

(5) At all meetings of the Authority—

five 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 and where there is an equality of votes the question is to be determined in the negative;

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

(5a) Subject to the provisions of subsection (5) of this section, that relate to a quorum for the conduct of the business of the Authority, the exercise or performance of the functions or the powers of the Authority is not affected by reason only of there being any vacancy in the office of member of the Authority.

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

- (i) is absent without the consent of the Minister for more than three consecutive meetings of the Authority, 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 Authority 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 Authority by a person shall not of itself render the provisions of the Public Service Act, 1978, the Superannuation Act, 1871-1947,¹ or the Superannuation and Family Benefits Act, 1938-1947,² 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 Authority shall be entitled to such remuneration for his services and allowances as the Minister may determine.

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

(10) The Minister may from time to time with the concurrence of the Public Service Board appoint a person to be secretary to the Authority.

(11) Where the Chairman of the Authority is unable for any reason to attend a meeting of the Authority, the person who is appointed under subsection (3) of this section to be deputy to the Chairman, shall act as Chairman of the Authority at that meeting and while so acting has all the powers, duties and rights of the Chairman in addition to those conferred or imposed by that subsection.

Functions
of the
Authority.
Amended by
No. 45 of
1967, s. 8;
No. 67 of
1975, s. 8;
No. 86 of
1976, s. 22.

11. (1) The Authority shall inquire into and report to the Minister on any matters referred to it by him or by the Conservator of Wildlife in relation to the conservation of fauna or flora 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 Authority shall inquire into and report to the

¹ Now Superannuation Act, 1871-1970.

² Now Superannuation and Family Benefits Act, 1938-1979.

Minister on the effect or likely effect on the conservation of the fauna and of the flora of this State, of the importation into the State of the fauna or flora of any place outside the State, when required by him or by the Conservator of Wildlife, 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 native reserve or wildlife sanctuary, and, in relation to any other inquiry under this section, whenever directed by the Minister so to do, the Authority 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 Authority may then intend to submit to the Minister.

12. (1) The Authority may with the approval of the Minister carry out or cause to be carried out such research into the conservation and protection of fauna or of flora as it thinks fit.

Research.
Repealed and re-enacted by No. 38 of 1954, s. 5.
Amended by No. 45 of 1967, s. 9; No. 99 of 1969, s. 4; No. 67 of 1975, s. 9; No. 86 of 1976, s. 22.

(2) The Authority shall carry out or cause to be carried out such research relating to the conservation and protection of fauna or of flora as the Minister may direct.

12A. (1) If the appropriate written approval required by section twelve B of this Act is first obtained by the Authority, the Authority may, with the approval of the Minister, by notice published in the *Government Gazette*, classify or reclassify in accordance with this section any area of land or part thereof comprised in a nature reserve or wildlife sanctuary that is specified in the notice.

Power of Authority to classify sanctuaries.
Added by No. 45 of 1967, s. 10.
Amended by No. 67 of 1975, s. 10.

(2) Areas of land comprising the whole or part of a nature reserve or wildlife sanctuary may be classified or reclassified under subsection (1) of this section as follows:—

- (a) prohibited areas;
- (aa) restricted areas;
- (b) limited access areas;
- (c) shooting or hunting areas;
- (d) unlimited access areas;
- (e) such other classes of areas as the Authority thinks necessary for the purpose of giving effect to the objects of this Act.

(3) The Authority may by publishing a notice of cancellation in the *Government Gazette*, cancel the classification or reclassification of any area under this section and thereupon the area ceases to be an area classified or reclassified under this section.

(4) Nothing in this section shall prejudice the operation of the Land Act, 1933.

Requisite approvals for classification of areas.

Added by No. 45 of 1967, s. 11.

Amended by No. 67 of 1975, s. 11; No. 34 of 1977, s. 5.

12B. A classification or reclassification of an area comprised in a nature reserve or wildlife sanctuary shall not be made under section twelve A of this Act, unless—

- (a) in the case of land which is comprised in a nature reserve, the Minister for the time being charged with the administration of the land or with the administration of the Act, if any, to which the land is subject, approves in writing, or if there is no such Minister, the Minister so approves; and
- (b) in the case of land which is comprised in a wildlife sanctuary, the occupier of the land approves in writing, and if the occupier is not the owner of the land, the owner has also approved in writing to the making of the classification.

12C. (1) The Authority or any person authorised by the Authority in that behalf may erect or cause to be erected at such places, within or on the boundaries of any nature reserve or wildlife sanctuary, notices of such form and construction as the Authority considers necessary or desirable for the purposes of indicating publicly—

Erection of notices.
Added by No. 45 of 1967, s. 12.
Amended by No. 67 of 1975, s. 12.

- (a) that the land is a nature reserve or wildlife sanctuary;
- (b) the extent of the nature reserve or wildlife sanctuary;
- (c) that, if such is the case, the nature reserve or wildlife sanctuary or portion of it is classified or reclassified under section twelve A of this Act as a prohibited area, restricted area, limited access area, shooting or hunting area, unlimited access area or other area, as the case may be; and
- (d) the liability of any person contravening this Act with respect thereto,

or any of those things, and may from time to time cause any such notice to be removed, demolished or erased.

(2) A person is not relieved of any liability for a contravention of any provision of this Act by reason of the fact that a notice is not erected at any place pursuant to this section.

"This Act" includes regulations.
S. 4 Act No. 30 of 1918.

(3) A person shall not destroy, damage, deface, obliterate, move or interfere with a notice erected under this section.

Penalty: One hundred dollars.

(4) Where on the conviction of a person for an offence against this section, it appears to the court convicting the person that any injury to property has been occasioned by the act constituting the offence, the court may by the conviction adjudge the person convicted, to pay in addition to any fine a reasonable sum as compensation for the injury, and that sum may be recovered as a fine under this Act and when recovered shall be paid to the Authority.

Power of Authority to prepare management scheme.
 Added by No. 45 of 1967, s. 13.
 Amended by No. 99 of 1969, s. 5; No. 67 of 1975, s. 13; No. 86 of 1976, s. 22.

12D. (1) The Authority shall, in respect of each nature reserve that is classified or reclassified pursuant to section twelve A of this Act or any area of land of which the Authority is the owner, cause to be prepared a detailed written scheme of the operations that the Authority proposes to undertake on or in relation to the area for such period, not exceeding ten years, as is specified in the scheme.

(2) The objects of the scheme shall be the maintenance, study, care and restoration of the natural environment, the protection and care of fauna or flora, the propagation thereof, the promotion of the study of fauna or flora to which the scheme relates and such other objects relating to the conservation and protection of fauna or flora as the Authority recommends and the Minister approves.

(3) A scheme prepared for an area under subsection (1) of this section—

- (a) shall be submitted to the Minister for his written approval;
- (b) is subject to existing rights under concessions, leases and permits granted in respect of the area,

and if the scheme is so approved by the Minister it shall be the working plan for that area.

(4) No operations shall be undertaken on or in relation to any area of land in respect of which a working plan has been made in accordance with this section, unless those operations are in accordance with that plan.

(5) A working plan made under this section may, with the written approval of the Minister, be varied from time to time or cancelled and another plan substituted.

(6) A working plan made under this section may contain provisions for the Authority to carry out any work in connection with the improvement, development and maintenance of any area of land to which the plan relates, and the prevention and control of fires.

(7) The Authority may, with the approval of the Minister, arrange with—

- (a) the Minister administering any Government Department of the State; or
- (b) any statutory corporation,

for the carrying out by that Department or statutory corporation of any work authorised under a working plan to be carried out by the Authority in accordance with the plan.

12E. (1) Notwithstanding anything to the contrary contained in this Act, the Authority may grant a permit in writing to any person to enter and use the whole or any part of a nature reserve or wildlife sanctuary whether classified or not under section twelve A of this Act or other land under its control, subject to such terms and conditions as the Authority thinks fit and specifies in the permit.

Power of Authority to grant permit to enter sanctuary.
Added by No. 45 of 1967, s. 14.
Amended by No. 99 of 1969, s. 6; No. 67 of 1975, s. 14.

(2) Where the land is comprised in a wildlife sanctuary, the consent of the occupier of the land and if the occupier is not the owner of the land, the consent also of the owner of the land, to grant the permit shall first be obtained.

(3) A person to whom a permit is granted under this section who contravenes or fails to comply with any term or condition specified in the permit commits an offence against this Act.

Penalty: Two hundred dollars.

Agreements
for sanctu-
aries.
Amended by
No. 67 of
1975, s. 15;
No. 86 of
1976, s. 22.

13. (1) The Minister may enter into agreements with the owners of areas of land for the use of the land as a wildlife sanctuary for the conservation and protection of fauna or flora.

(2) A person shall not directly or indirectly purport to describe any area of land as a wildlife sanctuary unless he is permitted to do so pursuant to an agreement entered into under this section.

Penalty: Two hundred dollars.

Protection
of fauna.
Amended by
No. 38 of
1954, s. 6;
No. 99 of
1969, s. 7;
No. 53 of
1970, s. 3;
No. 67 of
1975, s. 16.

14. (1) Except to the extent which the Minister declares by notice published in the *Government Gazette* pursuant to the provisions of this section all fauna is wholly protected throughout the whole of the State at all times.

(2) (a) The Minister 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 or such part or parts of the State as he shall think fit,

and for these purposes may from time to time by notice published in the *Government Gazette* declare—

a close season or an open season in respect of any of the fauna and place such restrictions on either the taking or disposal or the taking and disposal of the fauna as he considers advisable.

(b) The Minister may from time to time, by notice published in the *Government Gazette*, vary the provisions and operation of a notice 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.

(ba) The Minister may, from time to time by notice published in the *Government Gazette*, declare that any fauna specified in the notice is for the purposes of this Act fauna which is likely to become extinct, or is rare, or otherwise in need of special protection and while such declaration is in operation—

- (i) such fauna is wholly protected throughout the whole of the State at all times; and
- (ii) a person who commits an offence under section sixteen of this Act with respect to or in relation to such fauna is liable, notwithstanding any other provision of this Act, to a penalty of one thousand dollars.

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

15. (1) The Minister may, in addition to any license required under the provisions of section seventeen, seventeen A or seventeen B of this Act, issue such licenses as are prescribed.

Licenses.
Amended by
No. 38 of
1954, s. 7;
No. 45 of
1967, s. 15;
No. 99 of
1969, s. 8;
No. 67 of
1975, s. 17;
No. 86 of
1976, s. 6.

(1a) Without limiting the general power conferred on the Minister by subsection (1) of this section and notwithstanding the provisions of section fourteen of this Act, the Minister, on being satisfied that injury or damage to any land or to any stock or crops or to any chattel has arisen or is likely to arise through the presence on any land of possums, and whether or not the land is a nature reserve or wildlife sanctuary, may, by license in the prescribed form, authorise the occupier of the land, or any person in the employ of, or acting with the written authority of the occupier or the authority in whom the land is vested, to kill the possums, subject to such conditions and during such period as may be specified in the license.

(1b) Without limiting the general power of the Minister to impose any conditions in a license issued under subsection (1a) of this section, each such license shall be subject to a condition that the skin of each possum killed by authority of the license shall be, as soon as practicable after it is so killed, forwarded to the Conservator of Wildlife—

- (a) who is authorised on behalf of the Authority to sell the skin; and
- (b) who shall pay the nett proceeds arising from the sale to the Fund.

(2) (a) 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.

(b) Where the holder of a license contravenes or fails to comply with any conditions endorsed upon or attached to the license the Minister may, at any time and from time to time, by notice in writing given to the holder of a license, cancel the license or suspend it for such period as the Minister thinks fit.

(c) Where the Minister considers that in the interest of conservation the operation of a license should not be permitted to continue the Minister may, at any time and from time to time, by notice in writing given to the holder of a license, cancel the license or suspend it for such period as the Minister thinks fit.

(d) Where the holder of a license cannot reasonably be served with a notice required by this section or his whereabouts are unknown, the service of that notice may be effected by an advertisement published in a newspaper circulating in the general area in which he was last known to be.

(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 Conservator of Wildlife, or to any wildlife officer.

(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) Subject to section twenty-three D of this Act, 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 or flora, 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.

16. (1) 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 section seventeen, or of section twenty-three of this Act,

commits an offence against this Act.

(2) A person who fails to observe any of the restrictions placed on the taking or disposal or the taking and disposal of fauna pursuant to subsection (2) of section fourteen of this Act commits an offence against this Act.

Taking of protected fauna an offence.
Amended by No. 45 of 1967, s. 16; No. 53 of 1970, s. 4.

Contra-vening restrictions or taking or disposal, etc., of fauna an offence.

Unlawful possession of protected fauna.

Added by No. 53 of 1970, s. 5.
Amended by No. 67 of 1975, s. 18.

"This Act" includes regulations of Act No. 30 of 1918.

16A. (1) A person who has in his possession the skin or carcass of any protected fauna, except where the fauna was lawfully taken, commits an offence against this Act.

(2) A person who sells, buys, transports or has in his possession or control the skin or carcass of any fauna to which a tag is required to be affixed under this Act and to which no such tag is affixed commits an offence against this Act unless the provisions of subsection (3) of this section apply.

(3) The provisions of subsection (2) of this section do not apply to any skin or carcass, or any part thereof, lawfully taken and processed for the purposes of sale pursuant to section seventeen A of this Act.

Certain dealings in fauna prohibited unless by authority of license.

Amended by No. 38 of 1954, s. 8;
No. 45 of 1967, s. 17;
No. 99 of 1969, s. 9;
No. 34 of 1977, s. 6.

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

(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 fauna or, for the purpose of stocking the farm, take any kind of fauna;
- (b) commence or keep an establishment for the breeding or holding of fauna for gain or reward;
- (c) bring any fauna into the State;
- (d) export fauna from the State;
- (e) sell, or take for the purpose of sale, any fauna other than fauna that has been taken for the purposes of sale under the authority of a license granted by or under the Fisheries Act, 1905, or the Whaling Act, 1937 or a license or permit granted by or under any other Act;

- (f) bring into the State from any place outside the State, or keep in the State, any animal, or class of animal, whose habits or nature might in the opinion of the Minister become or threaten to become injurious to fauna;
 - (g) process fauna, other than fauna that is processed pursuant to a license granted by or under the Fisheries Act, 1905 or the Whaling Act, 1937, for the purposes of sale; or
 - (h) release from confinement any animal in any part of the State where it is not ordinarily found in a condition of natural liberty in that part or to keep any such animal in confinement for the purpose of so releasing it.
- (3) A person who—
- (a) uses any means or device prescribed by the regulations as an illegal means or device in the taking of fauna;
 - (b) permits or suffers any such illegal means or device to be used in the taking of fauna on land of which he is the occupier; or
 - (c) permits or suffers any such illegal means or device to be on land of which he is the occupier,

commits an offence against this Act.

17A. After the expiration of three months from the date of the coming into operation of the Fauna Protection Act Amendment Act, 1967, a person shall not—

- (a) process fauna for the purposes of sale; or
- (b) carry on or cause to be carried on a processing establishment,

License to process fauna and processing establishments.
Added by No. 45 of 1967, s. 18.

unless he is the holder of a current—

- (c) license issued by the Minister under section fifteen of this Act authorising him to do so;
- (d) license under the Fisheries Act, 1905, or the Whaling Act, 1937 authorising him to do so; or
- (e) certificate of exemption from the provisions of this section granted by the Minister.

Penalty: One hundred dollars, and in the case of a continuing offence a further penalty of not less than five dollars or more than twenty dollars for each day the offence continues after the Minister serves notice of the offence on the offender.

Regulation
of the taking
of certain
species of
game.
Added by
No. 45 of
1967, s. 19.
Amended by
No. 67 of
1975, s. 19.

17B. (1) The Minister, in respect of any species of wild duck, goose and quail or other prescribed species of game for which, in any specified part or parts of the State, an open season has been proclaimed or declared pursuant to section fourteen of this Act, may, by notice published in the *Government Gazette*—

- (a) declare that species to be a game species in that part or those parts;
 - (b) limit the number of the species that may be taken by any one person in any stipulated period or periods of time;
 - (c) limit the number of the species that may be in the possession of any one person;
 - (d) specify such other conditions (if any) as he thinks fit to impose, respecting the taking during that open season of the species.
- (2) A person—
- (a) shall not take any species of wild duck, goose or quail or other prescribed species of game to which a notice published pursuant to subsection (1) of this section relates; or

- (b) shall not be in possession of any such species of wild duck, goose, quail or other prescribed species of game,

otherwise than in terms of the notice and pursuant to a license granted to him for the purpose.

Penalty: One hundred dollars.

(3) The Minister may, at any time before the expiration of the open season, in like manner vary any notification given under subsection (1) of this section or revoke it and issue another notification in its stead.

17C. (1) For the purposes of this Act there shall be established a fund to be called "The Wildlife Conservation Trust Fund" and that Fund shall be administered and controlled by the Minister.

Establishment of Wildlife Conservation Trust Fund. Added by No. 45 of 1967, s. 20. Amended by No. 39 of 1969, s. 10; No. 67 of 1975, s. 20; No. 86 of 1976, s. 7.

(2) Any moneys from time to time belonging to the Fund shall be deposited in the account to be called "The Wildlife Conservation Trust Fund Account" which shall be kept at the Treasury.

(3) The Fund shall consist of—

- (a) the money received as fees for licenses required under section seventeen B of this Act;
- (b) any money that is paid or payable to the Fund, by way of gift, bequest or otherwise for the purposes of this Act;
- (c) the proceeds of any gifts other than money made for or towards the carrying out of the purposes of this Act;
- (d) the income derived from the investment of any money forming part of the Fund;
- (e) the nett proceeds of the sale of—
 - (i) possum skins, paid into the Fund by the Conservator of Wildlife pursuant to section fifteen of this Act; and

(ii) any other skins or carcasses of fauna taken by or on behalf of the Authority from a nature reserve or wildlife sanctuary or any land of which the Authority is the owner, pursuant to a scheme approved by the Minister under section twelve D of this Act, which are sold by the Authority pursuant to the power conferred on it by subsection (3b) of section ten of this Act; and

(f) the money received as fees for licenses issued under sections twenty-three C and twenty-three D of this Act and the money received as royalties payable for the taking of protected flora on Crown land.

Power of Minister to invest moneys from Fund.
Added by No. 45 of 1967, s. 21.

17D. When any money forming part of the Fund is not immediately required for the purposes of this Act, the Minister may invest it in any investments authorised by law as those in which trust funds may be invested.

Application of money in Fund.
Added by No. 45 of 1967, s. 22.
Amended by No. 86 of 1976, s. 8.

17E. (1) The Minister may use and apply, except as provided in this section, money in the Fund for all or any of the purposes of research relating to fauna and flora conservation and for any other purposes relating to the conservation of fauna and flora that are recommended by the Authority to the Minister.

(2) Where any gift or bequest has been made for the purposes of this Act upon conditions, the Minister shall use or apply money representing that gift or bequest in accordance with those conditions.

Accounts.
Added by No. 45 of 1967, s. 23.

17F. (1) The Minister shall cause to be kept true and regular accounts—

(a) of money paid into and belonging to the Fund; and

- (b) of money paid out of the Fund and the person to whom and the purposes for which it has been paid.

(2) The Minister shall cause the accounts to be balanced at each thirtieth day of June.

(3) The Auditor General appointed under the Audit Act, 1904—

- (a) has in respect of the accounts the powers conferred on him under that Act;
- (b) shall arrange for the audit of the accounts; and
- (c) shall, as soon as practicable after the completion of each audit prepare and deliver to the Minister a report of the audit of the accounts.

18. (1) (a) Subject to the provisions of paragraph (b) of this subsection, the skins of fauna taken in the State, and whether taken lawfully or not, and the carcasses of such species of kangaroo as is prescribed which are so taken, are charged with payment of royalty to the Crown at the rates prescribed by the regulations.

Royalty on skins.
Amended by No. 38 of 1954, s. 9; No. 99 of 1969, s. 11; No. 67 of 1975, s. 21; No. 34 of 1977, s. 7.

(aa) The rates of royalty so prescribed may be uniform or vary according to the kind of fauna from which the skin is taken or the kind of carcass and the purpose for which the skin or carcass is taken, unless by the regulations the skin or carcass is exempt from payment of royalty.

(b) The Minister may from time to time and for such period as he thinks fit, by notice published in the *Gazette* exempt from the payment of royalty skins or carcasses taken from a specified part of the State by a specified class or classes of persons.

(c) The Minister may from time to time cancel the notice or vary it by way of addition, substitution or otherwise.

(2) Where a person removes the skin of fauna which he has taken for the purpose of selling the skin or the carcass of the fauna or both for profit, he shall pay the prescribed royalty in respect of the skin or the carcass of the fauna or both unless exempted pursuant to the provisions of the regulations or the notice referred to in paragraph (b) of subsection (1) of this section.

(3) A person who buys or sells skins or carcasses of fauna, whether as principal or agent shall, unless the skins or carcasses 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 or carcass in respect of which the royalty is paid, as evidence of the payment.

(5) Skins or carcasses 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 or carcass upon which royalty is payable but has not been paid and may retain the skin or carcass until the royalty is paid or it is sold or otherwise disposed of pursuant to the provisions of section twenty A of this Act.

(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 or carcass, and where a skin or carcass 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 neglects or fails to make, or who evades, or attempts to evade, payment of royalty payable by him pursuant to the provisions of this section, commits an offence against this Act.

19. For the purposes of this Act, the following persons shall be wildlife officers—

Wildlife officers.
Amended by
No. 38 of
1954, s. 10;
No. 99 of
1964, s. 12;
No. 67 of
1975, s. 22.

- (a) the person for the time being occupying or acting in the office of Conservator of Wildlife;
- (b) persons appointed to the office of wildlife officer pursuant to the provisions of sub-section (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 Director of Fisheries, or the office of inspector, pursuant to the provisions of the Fisheries Act, 1905-1949;¹
- (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;²
- (f) a person, who for the time being is a member of the Authority.

20. (1) [*Deleted by No. 67 of 1975, s. 23.*]

Authority of Wildlife Officers.
Amended by
No. 38 of
1954, s. 11;
No. 45 of
1967, s. 24;
No. 99 of
1969, s. 13;
No. 67 of
1975, s. 23;
No. 86 of
1976, s. 9.

(2) A wildlife officer who is not a member of the Police Force and who finds a person committing an offence against this Act or the regulations or who on reasonable grounds suspects that an offence

¹ Now Fisheries Act, 1905-1979.
² Now Forests Act, 1918-1976.

against this Act or the regulations has been committed or is about to be committed may, without warrant other than the provisions of this section—

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

(a) take possession and control of—

any weapon, instrument, illegal device or other thing or means which the wildlife officer, 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 or flora which the wildlife officer on reasonable grounds believes to be involved in the commission of the offence,

and deliver any firearms into the custody of a member of the Police Force, detaining or delivering to any person appointed in writing by the Minister for the purpose any fauna or flora or other thing so taken to be dealt with according to law but if the wildlife officer is of opinion that it is impracticable detain or deliver up any fauna because of the number thereof, the lack of food or water for the fauna, the distance to be travelled or any like cause, the wildlife officer may turn at large the fauna;

(b) stop, detain and search any vehicle, vessel or conveyance or enter upon and search any land not being a dwelling house or enter and search any hut, tent, caravan or other erection, which is not a permanent residence, or enter and search any shop, warehouse, factory, bond store office or any other premises of whatever description or enter into or upon and search any lake, river, pond, lagoon or other water whether natural or artificially constructed in which the wildlife officer, on reasonable grounds, suspects there is any fauna or flora 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, and to seize the fauna or flora, weapon, instrument, illegal device or other thing or means found and deliver any firearm into the custody of a member of the Police Force, detaining or delivering to any person appointed in writing by the Minister for the purpose any fauna or flora or other thing so seized to be dealt with according to law;

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

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

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 wildlife officer his name and address, or gives to the wildlife officer a false name and address, until he can be delivered to a member of the Police Force, or the wildlife officer 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.

(2a) Where a wildlife officer pursuant to paragraph (b) of subsection (2) of this section—

- (a) has searched a vehicle; and
(b) has found therein and seized fauna or flora which, on reasonable grounds, he believes to be involved in the commission of an offence against this Act or the regulations,

and there is then no sufficient means of transport available to the wildlife officer for the purpose of delivering the fauna or flora to a suitable place of

detention or to a person appointed by the Minister, as required by that paragraph, the wildlife officer may direct the person apparently in charge thereof to drive the vehicle, together with the fauna or flora, to the nearest police station as the wildlife officer for the purpose directs.

(2b) A person to whom a direction is given under subsection (2a) of this section shall comply with the direction.

Penalty: Two hundred dollars.

(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 of the premises excepted under paragraph (b) of subsection (2) of this section—

- (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 wildlife officer named therein, or all wildlife officers, to search the premises 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.

(c) Where a wildlife officer enters upon or searches the enclosed garden or curtilage of a dwelling house the owner or occupier of that

dwelling house may make a complaint on oath before a justice of the peace alleging that in his opinion there had been no reasonable grounds for the exercise of that power, and thereupon the justice shall cause the matter to be inquired into and shall make his findings known to the complainant and to the Minister.

(4) In respect of fauna or flora 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 wildlife officer who is a member of the Police Force, the provisions of this Act relating to wildlife officers are not in derogation of but are in addition to those of other Acts relating to members of the Police Force.

20A. (1) Where an officer authorised to receive royalty under section eighteen or to receive fauna or flora or other things taken or seized pursuant to section twenty of this Act takes control of any fauna or flora, or the skin or carcass of any fauna, or any other thing likely, in his opinion, to suffer, deteriorate or perish if no action is taken to protect it, he may take such action by way of care, processing, sale or other disposal as appears to him to be reasonably necessary.

Powers of disposal and proceeds of sale.
Added by No. 67 of 1975, s. 24.
Amended by No. 86 of 1976, s. 10.

(2) The payment of the charges and expenses attributable to any action taken by an officer under subsection (1) of this section shall be deducted from any moneys thereby derived, and the nett proceeds thereafter brought to account in accordance with the provisions of the Audit Act, 1904, and dealt with according to law.

21. [*Repealed by No. 67 of 1975, s. 25.*]

Property in
fauna.

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

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

Exemption
in certain
cases.
Amended by
No. 38 of
1954, s. 13;
No. 67 of
1975, s. 26;
No. 86 of
1976, s. 11.

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

who is “a person of Aboriginal descent” as that term is defined in section four of the Aboriginal Affairs Planning Authority Act, 1972,

may take fauna or flora—

upon Crown land or upon any other land, not being a nature reserve or wildlife 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 the provisions of this section are being abused or that any species of fauna or flora which is being taken under the authority of this section is likely to become unduly depleted, by regulation suspend or restrict the operation of this section in such manner and for such period and in such part or parts of the State as he thinks proper.

(2) The Conservator of Wildlife may issue a certificate to any person authorising him to sell the skins of kangaroos which he has lawfully taken for food under the provisions of this section.

Property in
protected
flora on
Crown land.
Added by
No. 86 of
1976, s. 12.

23A. (1) The property in protected flora on Crown land, until lawfully taken, is, by virtue of this Act, vested in the Crown.

(2) The provisions of subsection (1) of this section do not entitle any person to compensation.

23B. (1) A person shall not on Crown land wilfully take any protected flora unless the taking of the protected flora is authorised by, and carried out in accordance with the terms and conditions of, a license issued to him under section twenty-three C of this Act.

Protected flora on Crown land not to be taken without a license. Added by No. 86 of 1976, s. 13 (As amended by No. 28 of 1979, s. 5.).

(2) In any proceedings for an offence against subsection (1) of this section it is a defence for the person charged to prove that the taking occurred as an unavoidable incident or consequence in the performance of any right, power or authority conferred upon, or in the discharge of any duty or obligation imposed upon, the person by or under any Act or agreement to which the State is a party and which is ratified or approved by an Act or notwithstanding the fact that the performance of that right, power or authority, or the discharge of the duty or obligation, was exercised in a reasonable manner.

23C. (1) Any person may, in the prescribed form containing or accompanied by the prescribed particulars and on payment of the prescribed fee, apply to the Minister for the issue to him of a license to take protected flora on Crown land—

Licenses to take protected flora. Added by No. 86 of 1976, s. 14.

- (a) for commercial purposes; or
- (b) for scientific purposes or any prescribed purpose,

and the Minister may issue or refuse to issue such a license.

(2) Until revoked a license issued authorises the license holder, subject to such terms and conditions as are specified in the license, to take for the purposes so specified on such areas of Crown land as are so specified and during such period or periods as are so specified, the classes or descriptions of protected flora so specified.

(3) Without limiting the terms or conditions which may be included in a license issued under this section, the terms and conditions on which a license to take protected flora for commercial purposes may be granted may include terms or conditions—

- (a) providing that flora taken under the authority of the license be charged with payment of royalties to the Conservator of Wildlife by the license holder at such rate or rates as are specified in the terms or conditions;
- (b) requiring the license holder to ensure that any protected flora taken pursuant to the license is marked, tagged or otherwise made identifiable as flora taken by him.

(4) Any royalties payable pursuant to the terms or conditions of a license issued under this section—

- (a) shall be paid by the Conservator of Wildlife into the Fund; and
- (b) may be sued for and recovered by the Conservator as a debt due to him in his capacity as such.

(5) The Minister may at any time, by notice in writing served on a person to whom a license has been issued under this section, revoke the license, but the revocation does not affect any liability or obligation incurred by the person prior to the revocation.

23D. (1) A person shall not take any protected flora on private land unless—

- (a) he is the owner or occupier of the private land; or
- (b) he is authorised so to do by the owner or occupier of the private land.

Taking and sale of protected flora on private land.

Added by No. 86 of 1976, s. 15 (As amended by No. 28 of 1979, s. 6.).

(1a) In any proceedings for an offence against subsection (1) of this section it is a defence for the person charged to prove that the taking occurred as an unavoidable incident or consequence in the performance of any right, power or authority conferred upon, or in the discharge of any duty or obligation imposed upon, the person by or under any Act or agreement to which the State is a party and which is ratified or approved by an Act or notwithstanding the fact that the performance of that right, power or authority, or the discharge of the duty or obligation, was exercised in a reasonable manner.

(2) A person shall not sell any protected flora taken by him on private land unless—

(a) he is the holder of a commercial producer's license or a nurseryman's license issued under this section;

(b) the flora—

(i) if taken by a person who is the holder of a commercial producer's license—is of a class or description specified in his license and is taken from the private land specified in the license; and

(ii) if taken by a person who is the holder of a nurseryman's license—is of a class or description specified in his license and has been grown and cultivated by him on the private land specified in the license; and

(c) the flora is marked, tagged or otherwise identified in accordance with the terms and conditions of his license.

(3) Any owner or occupier of private land may on payment of the prescribed fee apply to the Minister for the issue to him of a commercial producer's license or a nurseryman's license.

(4) An application under subsection (3) of this section shall be in the prescribed form and shall specify—

- (a) the land to which the application relates;
- (b) the classes or descriptions of flora to which the application relates.

(5) Subject to subsection (6) of this section, the Minister shall issue a license to any person who has made an application in accordance with the provisions of this section, but the license shall be issued subject to such conditions as, having regard to the conservation of protected flora, the Minister considers fit, which conditions shall be endorsed upon or attached to the license.

(6) The Minister may—

- (a) by notice in writing served on the person, revoke any license issued under this section if the person to whom the license has been issued is convicted of any offence against this Act; and
- (b) refuse to issue a license to a person who has been convicted of an offence against this Act.

Dealings in
protected
flora.
Added by
No. 86 of
1976, s. 16.

23E. (1) A person shall not sell any protected flora unless—

- (a) the sale is lawful by virtue of the provisions of section twenty-three C or twenty-three D of this Act; or
- (b) he purchased the flora from another person lawfully entitled to sell the flora to him and forthwith after the purchase he made or obtained a legible record of—
 - (i) the quantity and class or description of flora so purchased;
 - (ii) the date of the purchase; and
 - (iii) the name and address of the person from whom he purchased the flora.

(2) A person who makes or obtains a record pursuant to paragraph (b) of subsection (1) of this section shall retain the record for not less than twelve months and produce it on demand to a wildlife officer.

23F. (1) In this section "rare flora" means flora for the time being declared to be rare flora for the purposes of this section.

Rare or endangered species of flora.
Added by No. 36 of 1976, s. 17 (As amended by No. 28 of 1979, s. 7.).

(2) Where the Minister is of opinion that any class or description of protected flora is likely to become extinct or is rare or otherwise in need of special protection, he may, by notice published in the *Government Gazette* declare that class or description of flora to be rare flora for the purposes of this section throughout the State.

(3) The Minister may vary or revoke a notice published under subsection (2) of this section by subsequent notice or notices published in the *Government Gazette*.

(4) A person shall not, whether or not he is—

- (a) the holder of a license issued under this Act to take protected flora;
- (b) the owner or occupier of private land on which rare flora exists; or
- (c) authorised by the owner or occupier of land on which rare flora exists,

take any rare flora unless—

- (d) where he is not the holder of a license issued under this Act, he first obtains the consent thereto in writing of the Minister;
- (e) where he is the holder of a license issued under this Act, he first obtains the further consent thereto in writing of the Minister.

(5) [*This subsection was in section 23F. as added by No. 86 of 1976, however it was repealed by No. 28 of 1979 at the time section 23F. came into operation.*]

(6) A person who takes any rare flora contrary to the provisions of this section is liable on conviction to a penalty not exceeding one thousand dollars.

(7) Where an owner or occupier of private land who has been refused consent to take rare flora on that land satisfies the Minister that he will suffer loss of use or enjoyment of the land by reason of that refusal, the Minister shall inform the Treasurer in writing accordingly and the owner or occupier shall be paid compensation for that loss at such rate or rates per annum as—

- (a) is agreed between the owner or occupier and the Treasurer; or
- (b) in default of agreement, is determined by a valuer appointed by agreement between the Treasurer and the owner or occupier, or in default of agreement on such an appointment, by a valuer appointed by the Minister,

for such period, not exceeding five years, as the loss continues.

(8) Where compensation has been paid under subsection (7) of this section for a period of five years in respect of any particular land, the Minister shall not refuse an application by the owner or occupier of that land to take rare flora on that part of the land for the loss of use or enjoyment of which compensation has been so paid.

(9) Notwithstanding that compensation has been paid under subsection (7) of this section, whether for a period of five years or for a lesser period, for the loss of use or enjoyment of any land, that land may at any time be taken by the Governor under and subject to the Public Works Act, 1902 for any of the purposes of this Act.

24. (1) No matter or thing done by the Minister, any member of the Authority, the Conservator of Wildlife, a wildlife officer, an honorary wildlife officer, or any other 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.

Protection of officers.
Amended by No. 99 of 1969, s. 14; No. 67 of 1975, s. 27.

(2) [*Repealed by No. 73 of 1954, ss. 5 and 8.*]

25. (1) No person shall—

- (a) wilfully mislead, hinder, assault, resist or obstruct, incite or encourage any other person to mislead, hinder, assault, resist 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 wildlife officer;
- (d) refuse to state his name or address when lawfully required to do so by a wildlife officer;
- (e) state a false name or address to a wildlife officer when lawfully required by a wildlife officer to give his name and address;
- (f) use abusive language to a wildlife officer;
- (g) fail to observe the conditions of any license issued to him pursuant to the provisions of this Act;

Certain offences.
Amended by No. 38 of 1954, s. 14; No. 113 of 1965, s. 8; No. 99 of 1969, s. 15; No. 67 of 1975, s. 28.

(h) refuse, or without lawful excuse, neglect to furnish any return required under the regulations to be furnished by him, or furnish or cause to be furnished any such return that is false in any material particular.

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

(3) Where a person is convicted of the offence of assaulting a person in contravention of the provisions of paragraph (a) of subsection (1) of this section, the justices before whom the complaint is heard, may, in addition to imposing any penalty, order a sum of money sufficient but not exceeding the sum of one hundred dollars to cover any damage or injury sustained by the person assaulted to be paid by the defendant to that person, which such sum may be recovered in the like manner as a penalty under this Act may be recovered.

Offences.
Amended by
No. 45 of
1967, s. 25;
No. 28 of
1979, s. 8.

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 four hundred dollars in the case of a contravention or failure to comply with a provision of the Act and of two hundred dollars in the case of a contravention or failure to comply with a provision of a regulation, and any license issued pursuant to the provisions of this Act and held by him may be cancelled.

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

(3) All proceedings in respect of any such offences shall be taken by and in the name of the Director or by and in the name of any person authorised in that behalf by the Director.

27. (1) Where any fauna, flora, weapon, instrument, illegal means or device, or thing, which is seized by a wildlife officer 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.
Amended by
No. 99 of
1969, s. 16;
No. 67 of
1975, s. 29;
No. 86 of
1976, s. 18.

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 subsection in the manner prescribed in the Justices Act, 1902-1948.¹

(3) The provisions of this section do not apply to any vehicle, vessel or aircraft, unless the court of petty sessions convicting the offender is satisfied that the vehicle or vessel has been abandoned.

27A. (1) Subject to the provisions of section twenty-seven of this Act, when and as often as any illegal device or any fauna or flora is found by a wildlife officer or honorary wildlife officer, and the owner thereof cannot be found, he shall give notice of the finding in the prescribed form, and thereafter shall cause the illegal device or fauna or flora so found to be taken before a justice, who may, if satisfied that there are reasonable grounds for believing that the illegal device had been or was intended to be used or the fauna or flora had been taken or consigned for sale in contravention of this Act or regulations or proclamation made under this Act, condemn the same as forfeited to Her Majesty and thereupon it is forfeited accordingly.

Illegal
devices, etc.
found
may be
forfeited.
Added by
No. 38 of
1954, s. 15.
Amended by
No. 67 of
1975, s. 30;
No. 86 of
1976, s. 19.

¹ Now Justices Act, 1902-1979.

(2) A person making a claim to ownership of any illegal device or fauna or flora so found may appear before the justice before whom the illegal device or fauna or flora is taken and he may make such proper representations to the justice as he may think fit.

Power to seize forfeited articles.

Added by No. 38 of 1954, s. 15.
Amended by No. 67 of 1975, s. 31; No. 86 of 1976, s. 20.

27B. The Conservator of Wildlife may, with the approval of the Minister, in manner prescribed and after the expiration of the time limited for appeal by the Justices Act, 1902-1948,¹ sell or dispose of all illegal devices or fauna or flora forfeited under the provisions of section twenty-seven A of this Act.

Proof of exemption upon person pleading it.

Added by No. 38 of 1954, s. 15.

27C. Where the defendant or person charged with an offence against this Act, pleads in answer to the charge any exemption contained in this Act, the proof thereof is upon the defendant or person charged.

Presumption as to identity.

Added by No. 67 of 1975, s. 32.

27D. Where, in a complaint of an offence against this Act, the name of the person against whom the complaint is made is that given by the alleged offender at the time of, or immediately following the occurrence giving rise to the complaint, there is a presumption, rebuttable by evidence to the contrary, that the person named in the complaint is the alleged offender.

Regulations.

Amended by No. 38 of 1954, s. 16; No. 45 of 1967, s. 26; No. 99 of 1969, s. 17; No. 67 of 1975, s. 33; No. 86 of 1976, ss. 21 and 22; No. 34 of 1977, s. 8.

28. (1) 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 and conservation of fauna and flora in nature reserves and wildlife sanctuaries and for the control—

(i) of nature reserves, by the Authority or such other persons as the Governor may appoint; and

¹ Now Justices Act, 1902-1979.

- (ii) of wildlife sanctuaries, in accordance with the terms of any agreement made under section thirteen of this Act relating thereto;
- (aa) prohibiting or restricting any right of entry to a nature reserve or wildlife sanctuary, including the exclusion therefrom or from any prescribed portion thereof, of any persons or classes of persons, and prohibiting or restricting access to a nature reserve or wildlife sanctuary by means of any or all animals or vehicles or aircraft;
- (ab) prohibiting or restricting the taking for any purpose of any fauna or flora in a nature reserve or wildlife sanctuary, the taking, destruction or disturbance of the eggs or spawn of any fauna, the taking for any purpose or interference with vegetation of any description in a nature reserve or wildlife sanctuary, the introduction or liberation in a nature reserve or wildlife sanctuary of any living creature or the eggs or spawn of any living creature or the introduction or planting in a nature reserve or wildlife sanctuary of any vegetation of any description or the spores or seeds of any vegetation of any description;
- (ac) prohibiting or restricting of the burning or clearing by any means whatsoever of any trees, shrubs, grasses or other plant life in a nature reserve or wildlife sanctuary or in any prescribed portion thereof, either generally or for such period or by such persons or classes of persons, as may be prescribed;
- (ad) prohibiting or restricting any sport or camping or any other prescribed form of relaxation in a nature reserve or wildlife sanctuary or in any specified portion thereof, either generally or for such periods or by any persons or classes of persons, as may be prescribed;

- (ae) prohibiting or restricting the lighting of fires or the doing of anything likely to cause a fire in a nature reserve or wildlife sanctuary or in any prescribed portion thereof, either generally or for such periods and by such persons or classes of persons, as may be prescribed;
- (af) prohibiting or restricting the use in a nature reserve or wildlife sanctuary or portion thereof of any launch, boat, canoe or other type of boat of whatsoever kind and whether propelled by mechanical power or not and the use of vehicles in a nature reserve or wildlife sanctuary or in any prescribed portion thereof and by any persons or classes of persons, as may be prescribed;
- (ag) prohibiting the wilful disturbance of any fauna in a nature reserve or wildlife sanctuary by noise in the vicinity or otherwise;
- (ah) prohibiting or restricting the use of firearms or explosives in a nature reserve or wildlife sanctuary or in any portion thereof, either generally or in respect of any type of firearms or explosives or by any persons or classes of persons or during any periods, as may be prescribed;
- (ai) prohibiting or restricting the taking or keeping of domestic animals or domestic birds into or in a nature reserve or wildlife sanctuary or any portion thereof either generally or in respect of any species of domestic animal or domestic bird or in respect of possession thereof by any persons or classes of persons, as may be prescribed;
- (aj) prohibiting the depositing of rubbish and leaving litter in a nature reserve or wildlife sanctuary and prohibiting or restricting the erection of any shed, cottage, building or any structure whatsoever in a nature reserve or wildlife sanctuary or the

depositing therein of any property and providing for the removal and disposal of the rubbish, litter, shed, cottage, building, structure or property and the cost of the removal and disposal and providing for the disposal of the proceeds thereof;

- (ak) prohibiting or restricting the control of the cutting, construction or maintenance of roads, tracks, tramways or other means of communication in a nature reserve or wildlife sanctuary;
- (al) prohibiting or restricting the doing, without the prior approval of a wildlife officer, of any thing in a nature reserve or wildlife sanctuary that interferes with the natural environment of any fauna or flora therein;
- (am) prohibiting or restricting the introduction or use in a nature reserve or wildlife sanctuary of any dangerous, poisonous or noxious substance;
- (an) prescribing all or any matters or things considered necessary or desirable by the Governor to give effect to the provisions of section eighteen of this Act, and without limiting the generality of the powers conferred on the Governor by this paragraph, the regulations may make provision for all or any of the following—
 - (i) prescribing methods of collecting royalty payable under this Act and the manner of payment thereof;
 - (ii) the branding or marking of, or the affixing of a prescribed tag to, skins or carcasses, or the doing of any other act or thing to indicate that royalty is payable thereon or has been paid thereon in accordance with this Act;
 - (iii) regulating the manufacture, issue, sale and use of such tags and prescribing the fee payable therefor;

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- (iv) prohibiting dealings in protected flora or in fauna or the carcasses thereof or the tanning or dressing of skins thereof until all royalty payable thereon has been paid;
- (v) prescribing the powers and duties of officers with respect to the collection of royalty;
- (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 protected flora or of live or dead 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 in accordance with the requirements of this Act 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 or flora, 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;
- (g) prescribing the licenses required under and for the purposes of the provisions of this Act, and the minimum and maximum fees payable for any license, enabling the differentiation of fees payable in respect of any particular kind of license;

- (h) providing penalties, not exceeding two hundred dollars, for the breach of any regulation and providing for the manner of the sale or disposal of any instrument, weapon, illegal device, or other things forfeited to Her Majesty in accordance with the provisions of section twenty-seven A of this Act;
- (i) prescribing the animals or birds or the species of animals or birds which may be prohibited from being brought into the State under the provisions of section seventeen of this Act;
- (j) prescribing the maximum number of any species of fauna that a person may take during any period or periods of time in an open season and the maximum number that a person may have under his control or in his possession or keep in any cool store or any freezing chamber or other premises at any one time; and
- (k) prescribing the powers and duties of honorary wildlife officers.

(2) Regulations may be made to apply or to have operation throughout the State or any prescribed part or parts of the State, may be of general or specially limited application according to time, place, purposes or circumstances, and may be general or restricted to any prescribed class or subject matter.

(3) No regulation shall be made in relation to a wildlife sanctuary unless—

- (a) the agreement made under section thirteen of this Act relating thereto so authorises, either generally or specifically; or
- (b) the owner of the land has been consulted.

