



# NATIONAL PARKS AND WILDLIFE (MISCELLANEOUS) AMENDMENT ACT 1993

No. 45 of 1993

## SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 5—Interpretation
4. Amendment of s. 51—Taking of protected animals, etc.
5. Amendment of s. 60—Illegal possession of animals, etc.
6. Insertion of Division IVA into Part V
  - DIVISION IVA—FARMING OF PROTECTED ANIMALS**
  - 60a. Application of Division
  - 60b. Interpretation
  - 60c. Permit for farming protected animals
  - 60d. Code of management
  - 60e. Royalty
  - 60f. Application of fees and royalty
7. Substitution of s. 68
  68. Molestation, etc., of protected animals
8. Insertion of schedule 11

### SCHEDULE 11

*Species To Which Part V Division IVA Applies*



ANNO QUADRAGESIMO SECUNDO

# ELIZABETHAE II REGINAE

A.D. 1993

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No. 45 of 1993

**An Act to amend the National Parks and Wildlife Act 1972.**

[Assented to 20 May 1993]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *National Parks and Wildlife (Miscellaneous) Amendment Act 1993*.

(2) The *National Parks and Wildlife Act 1972* is referred to in this Act as “the principal Act”.

## Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

## Amendment of s.5—Interpretation

3. Section 5 of the principal Act is amended by inserting after the definition of “land under the jurisdiction of the Minister of Marine” the following definition:

“**marine mammal**” means a seal or sea lion (order Pinnipedia) or a dolphin or whale (order Cetacea);

## Amendment of s. 51—Taking of protected animals, etc.

4. Section 51 of the principal Act is amended by striking out the penalty provision from subsection (1) and substituting the following provision:

Penalty: In the case of a marine mammal—\$30 000 or imprisonment for 2 years.

In the case of an animal (not being a marine mammal), or the eggs of an animal, of an endangered species—\$10 000 or imprisonment for 2 years.

In the case of an animal (not being a marine mammal), or the eggs of an animal, of a vulnerable species—\$7 500 or imprisonment for 18 months.

In the case of an animal (not being a marine mammal), or the eggs of an animal, of a rare species—\$5 000 or imprisonment for 12 months.

In any other case—\$2 500 or imprisonment for 6 months.

**Amendment of s. 60—Illegal possession of animals, etc.**

5. Section 60 of the principal Act is amended by striking out the penalty provision from subsection (1) and substituting the following provision:

**Penalty:** In the case of a marine mammal or the carcass of a marine mammal—\$30 000 or imprisonment for 2 years.

In the case of an animal, (not being a marine mammal), or the carcass or eggs of an animal, of an endangered species—\$10 000 or imprisonment for 2 years.

In the case of an animal (not being a marine mammal), or the carcass or eggs of an animal, of a vulnerable species—\$7 500 or imprisonment for 18 months.

In the case of an animal (not being a marine mammal), or the carcass or eggs of an animal, of a rare species—\$5 000 or imprisonment for 12 months.

In any other case—\$2 500 or imprisonment for 6 months.

**Insertion of Division IVA into Part V**

6. The following Division is inserted after Division IV of Part V:

**DIVISION IVA—FARMING OF PROTECTED ANIMALS**

**Application of Division**

60a. This Division applies to, and in relation to, a protected animal of a species named in schedule 11.

**Interpretation**

60b. In this Division, unless the contrary intention appears—

“the business of farming animals” means the business of farming animals for one or both of the following purposes:

- (a) to produce carcasses, skins and other products upon slaughter of the animals;
- (b) to sell live animals or eggs to another person who carries on the business of farming animals of the same species.

**Permit for farming protected animals**

60c. (1) The Minister may grant to a person a permit—

- (a) to take an animal or the eggs of an animal from the wild or to slaughter or destroy in any other manner an animal in captivity;

(b) to keep an animal or to have possession or control of the eggs of an animal;

or

(c) to sell an animal or the carcass or eggs of an animal,

in the course of carrying on the business of farming animals of that species.

(2) A person is not entitled to carry on the business of farming animals pursuant to a permit granted under any other provision of this Act after the expiration of 12 months following the inclusion in schedule 11 of the species to which the animals belong.

(3) The Minister must not grant a permit under subsection (1)—

(a) if a code of management has not been adopted by the Minister under this Division in respect of the species of animal to which the permit will relate;

or

(b) if the permit would, in the Minister's opinion, be seriously at variance with the code of management referred to in paragraph (a).

(4) A person to whom the Minister grants a permit under subsection (1) must be a member of an organisation—

(a) that has as its sole object the promotion of the interests of persons who carry on the business of farming the species of animal to which the permit relates;

and

(b) that is approved by the Minister.

(5) The Minister must not grant a permit under subsection (1) to take an animal or the eggs of an animal from the wild unless he or she is satisfied that the removal of animals or eggs pursuant to the permit is desirable in order to reduce or control a population of animals that is causing, or is likely to cause, damage to the environment or to crops, stock or other property.

(6) A permit granted under subsection (1) is subject to such limitations, restrictions or conditions as are imposed by this section or by the Minister under section 69 or are prescribed from time to time by regulation.

(7) An animal taken from the wild or an animal raised from an egg taken from the wild cannot be slaughtered or destroyed in any other manner pursuant to a permit granted under subsection (1) except—

(a) as a last resort to terminate the animal's suffering;

or

(b) to prevent the spread of a disease with which the animal is infected.

(8) A permit that enables the holder to take an animal or the eggs of an animal from the wild is subject to a condition requiring the holder within 14 days after taking animals or eggs pursuant to the permit to deliver to the Minister a report in the prescribed form stating the number of animals and eggs taken.

(9) A permit granted under subsection (1) authorises—

(a) the sale of eggs of the species to which the permit relates to a person who carries on the business of farming animals of that species;

and

(b) the sale of eggs of that species to any other person subject to the written approval of the Minister.

(10) It is lawful to—

(a) take a protected animal or the eggs of a protected animal from the wild or to slaughter or destroy in any other manner an animal in captivity;

(b) keep a protected animal or to have possession or control of the eggs of a protected animal;

or

(c) sell a protected animal or the carcass or eggs of a protected animal,

pursuant to a permit granted under subsection (1).

#### **Code of management**

**60d.** (1) The Minister must prepare a draft code of management in respect of each species of animal named in schedule 11.

(2) A draft code must address the following matters:

(a) the effect of taking individual animals or eggs from the wild on the species concerned and on the ecosystem of which they formed part;

(b) the welfare of the animals in captivity;

(c) the need for research in relation to farming the species concerned;

(d) the identification of animals and animal products;

and

(e) any other matters that should, in the opinion of the Minister, be addressed.

(3) A draft code may incorporate the whole or part of the Australian Model Code of Practice for the time being applicable to the welfare of the species to which the draft code relates by reference to the model code or to the relevant parts of it.

(4) The Minister must provide the Minister of Primary Industries with a copy of the draft code of management for comment.

(5) A draft code must be made available to the public for at least three months for comment before adoption by the Minister.

(6) Before adopting a draft code of management the Minister must have regard to comments (if any) made by the Minister of Primary Industries or by members of the public and may, if the Minister thinks fit, vary the draft code to take account of those comments.

(7) A code of management adopted by the Minister must be published in the *Gazette* and a notice stating the place or places at which copies of the code may be inspected or purchased must be published in a newspaper circulating generally throughout the State.

(8) A code of management may be replaced or varied by a further code prepared and adopted by the Minister in accordance with this section.

#### **Royalty**

**60e.** (1) Where royalty is payable under this Act in respect of a species to which a permit granted under this Division applies, royalty is payable—

(a) in respect of an animal or the eggs of an animal of that species taken from the wild pursuant to the permit;

and

(b) in respect of an animal of that species slaughtered in captivity pursuant to the permit.

(2) Where a permit relates to animals in respect of which a royalty is payable under this Act, the Minister may require the applicant to pay (when the permit is granted or at any later time) an amount equal to the total amount of royalty that would be payable if all the animals that could be taken or slaughtered, and all the eggs that could be taken, pursuant to the permit were taken or slaughtered.

#### **Application of fees and royalty**

**60f.** (1) Fees paid in respect of permits granted under this Division and royalty paid under this Act in respect of animals or eggs to which those permits relate must be paid into the Wildlife Conservation Fund and must be applied from the Fund—

(a) in payment of the costs of administering this Division;

(b) for the benefit of the industry of farming the species of animal to which the permits relate;

and

(c) for research into the impact upon the species of animal to which the permits relate of the taking of animals and eggs from the wild pursuant to those permits.

(2) The fees fixed by regulation in respect of permits granted under this Division may exceed the Minister's costs in granting the permits and administering this Division in relation to the permits.

#### **Substitution of s. 68**

7. Section 68 of the principal Act is repealed and the following section is substituted:

#### **Molestation, etc., of protected animals**

68. (1) A person must not—

(a) injure or molest, or cause or permit the injury or molestation of, a protected animal;

(b) undertake or continue an act or activity that is, or is likely to be, detrimental to the welfare of a protected animal after being directed by a warden not to undertake, or to stop, that act or activity;

or

(c) undertake or continue an act or activity in relation to a protected animal that is contrary to regulations promulgated under this section,

unless he or she acts in pursuance of this Act or a permit granted by the Minister under this section or another provision of this Act or in pursuance of some other Act or statutory instrument.

**Penalty:** In the case of a marine mammal—\$30 000 or imprisonment for 2 years.

In the case of an animal (not being a marine mammal) of an endangered species—\$10 000 or imprisonment for 2 years.

In the case of an animal (not being a marine mammal) of a vulnerable species—\$7 500 or imprisonment for 18 months.

In the case of an animal (not being a marine mammal) of a rare species—\$5 000 or imprisonment for 12 months.

In any other case—\$2 500 or imprisonment for 6 months.

(2) The Minister may grant a permit to a person to undertake an act or activity that would otherwise contravene paragraph (a), (b) or (c) of subsection (1).

**Insertion of schedule 11**

8. The following schedule is inserted after schedule 10 of the principal Act:

**SCHEDULE 11**

*Species To Which Part V Division IVA Applies*

Emu

DROMAIUS NOVAEHOLLANDIAE

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor