

1 GEO. VI. No. 22, 1937. *Fauna Protection Act.*

FAUNA.

An Act to Consolidate and Amend the Law relating to the Protection of Fauna, and to the Introduction, Preservation, and Propagation of Fauna; and for other purposes.

1 Geo. VI.
No. 22.
THE FAUNA
PROTECTION
ACT OF 1937.

[ASSENTED TO 19TH NOVEMBER, 1937.]

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

1. *This Act may be cited as "*The Fauna Protection Act of 1937*," and shall, except as otherwise provided, come into operation on a date to be proclaimed by the Governor in Council by Proclamation published in the *Gazette*, which date is hereinafter referred to as the commencement of this Act.

Short title
and
commence-
ment.

2. (1.) † "*The Animals and Birds Acts, 1921 to 1924*," are hereby repealed:

Repeal of
"*The
Animals and
Birds Acts,
1921 to
1924*."

Provided that, without limiting the operation of ‡ "*The Acts Shortening Acts*"—

(a) All Proclamations, Orders in Council, orders, notifications, and approvals published, made, and given, all appointments made, all regulations and forms made and promulgated, all districts constituted or purporting to be constituted, all opossum districts constituted or purporting to be constituted, and all things done or purporting to be done under the said repealed Acts or any of them and in force or subsisting at the commencement of this Act shall continue in full force and effect, and shall, so far as is consistent with this Act, be deemed to have been published, made, declared, promulgated, constituted, and done under and for the purposes of this Act;

Savings.

* Act proclaimed in force as from 18th January, 1938, by Proclamation of 10th December, 1937 (*Gazette* of 11th December, 1937, page 2021).

† 12 Geo. V. No. 20 and amending Act, *supra*, pages 9645 *et seq.*

‡ 31 Vic. No. 6 and amending Acts, *supra*, pages 15 *et seq.*

- (b) Every sanctuary constituted under any of the said repealed Acts and existing at the commencement of this Act shall be deemed to have been constituted and to be a sanctuary under and subject to this Act ;
- (c) All moneys to the credit at the Treasury of the Animals and Birds Fund shall be transferred to the Consolidated Revenue Fund, and the Animals and Birds Fund shall be closed ;
- (d) All matters and proceedings commenced under the said repealed Acts and pending or in progress at the commencement of this Act may be continued, completed, and enforced under this Act.

(2.) Paragraph (c) of subsection one of this section shall have operation and effect upon the passing of this Act.

Definitions.

3. In this Act, unless the context otherwise requires, the following terms have the meanings respectively assigned to them, that is to say :—

Bird.

“ Bird ”—Any bird, whether native, introduced, or imported to which the provisions of this Act apply: the term includes the eggs and/or young of any such bird ;

Collector.

“ Collector ”—A collector of royalties appointed under this Act ;

Close season.

“ Close season ”—The period which is for the time being prescribed as the close season for the fauna concerned ;

District.

“ District ”—A district constituted under this Act ;

Fauna.

“ Fauna ”—Any mammal or bird to which the provisions of this Act apply ;

Fauna dealer.

“ Fauna dealer ”—A person engaged or about to engage in the business of dealing in fauna, whether by purchase, sale, or auction, and whether on his own behalf or on behalf of any other person : the term, where necessary, includes the agent or servant of a fauna dealer ;

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- “ Holding ”—Any portion of country land, Holding. whether held in fee-simple or under lease, license, or other form of tenure from the Crown: when the same person is the owner of two or more parcels of land adjoining each other, whether such parcels are held under the same form or under different forms of tenure, such parcels shall be taken as one portion, and be regarded for the purposes of this Act as one holding ;
- “ Land ”—Includes land covered by water, and Land. any waters within the territorial jurisdiction of Queensland ;
- “ Mammal ”—Any undomesticated mammal, Mammal. whether native, introduced, or imported to which the provisions of this Act apply: the term includes the eggs and/or young of any such mammal ;
- “ Manager ”—The resident manager of a holding ; Manager.
- “ Minister ”—The Secretary for Agriculture and Minister. Stock or other Minister of the Crown charged for the time being with the administration of this Act ;
- “ Officer ”—An officer or person authorised by the Officer. Minister to act in the execution of this Act, a protector or a collector ;
- “ Opossum district ” — An opossum district Opossum district. constituted under this Act ;
- “ Opossum trapper ”—A person holding a sub- Opossum trapper. sisting permit under this Act to take or kill opossums ;
- “ Owner ”—The person for the time being entitled Owner. to possession of a holding ;
- “ Person ”—Includes a partnership and joint Person. stock company and any association of persons, whether corporate or unincorporate ;
- “ Prescribed ”—Prescribed by this Act ; Prescribed.
- “ Protector ”—A protector of fauna appointed Protector. under this Act: the term includes an honorary protector of fauna ;
- “ Regulations ”—Regulations made under this Regulations. Act ;

- Retail skin dealer. "Retail skin dealer"—The agent of a skin dealer ;
- Sale. "Sale" (with its derivatives)—Includes auction and offering or attempting to sell or auction, or having in possession for sale or auction, or exposing for sale or auction, or sending, forwarding, or delivering for sale or auction, or causing or suffering or permitting or allowing to be sold or auctioned, or offered or exposed for sale or auction ;
- Sanctuary. "Sanctuary"—Any part of Queensland, whether Crown land or not, constituted a sanctuary under this Act, and any part of Queensland which is a State Forest or a National Park under and within the meaning of **The State Forests and National Parks Acts, 1906 to 1934* ;
- Skin. "Skin"—The untanned skin or any part of the untanned skin of any mammal or bird ;
- Skin dealer. "Skin dealer"—A person engaged or about to engage in the business of dealing in skins of any specified fauna whether by purchase, sale, or auctioning of the same or any of them ;
- Swivel gun. "Swivel gun"—Every gun or fowling-piece—
- (a) Having a barrel exceeding forty-two inches in length, or
 - (b) Having a single barrel exceeding eight pounds avoirdupois in weight, or having a double barrel exceeding fourteen pounds avoirdupois in weight, or
 - (c) Having a single barrel the bore of which exceeds eight calibre, or having a double barrel either bore of which exceeds ten calibre, or
 - (d) Being of a weight exceeding sixteen pounds avoirdupois, or
 - (e) Having more than two barrels, or.

* 6 Edw. VII. No. 20 and amending Acts, *supra*, pages 790 *et seq.*

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(f) Not being such a gun or fowling-piece as is habitually raised at arm's length and fired without other support from the shoulder,

and every combination of more than two guns or fowling-pieces temporarily or permanently secured together :

But no firearms belonging to or used by His Majesty or the Naval or Military Forces or the Police Force shall be deemed to be swivel guns ;

“ Take or kill ”—The hunting, shooting, killing, destroying, poisoning, netting, snaring, liming, spearing, pursuing, taking, disturbing, or injuring of any mammal or bird, or the offspring, young, or eggs thereof ; Take or kill.

“ This Act ”—This Act and all Proclamations, Orders in Council, regulations, orders, directions, permits, licenses, or registrations made, granted, or given thereunder ; This Act.

“ Trapper ”—A person who holds a subsisting permit under this Act to take fauna : this definition does not apply to an opossum trapper ; Trapper.

“ Vessel ”—Any boat, punt, raft, or navigable vessel of any kind ; Vessel.

“ Weapon ”—Includes a firearm of any description, and any air gun or other kind of weapon from which any shot, bullet, or other missile can be discharged : where a weapon is carried in parts by two or more persons in company, each and every one of such persons shall be deemed to carry the weapon. Weapon.

4. (1.) The Governor in Council may from time to time by Order in Council— Powers of the Governor in Council.

(i.) Declare, except where otherwise provided in this Act, the fauna to which this Act shall extend and apply ;

(ii.) Declare any part of the State to be a district for the purposes of this Act, or alter the boundaries of or abolish any district ; Districts.

- Opossum districts. (iii.) Declare any part of the State to be an opossum district for the purposes of this Act, or alter the boundaries of or abolish any opossum district ;
- Societies. (iv.) Approve of the constitution and rules of any society duly formed for the furtherance of the objects of this Act ;
- Close season. (v.) Fix a period of close season for all or any species of fauna for which the close season is not fixed by this Act, whether for the whole State or for any defined part or parts thereof, which close season may be for different periods for different species of fauna, or may be for different periods for the same species of fauna in different parts of the State ;
- Sanctuaries. (vi.) Declare any specified area of land (whether Crown land or not) to be a sanctuary ;
- Prohibition of sale of fauna. (vii.) Prohibit the selling or exposing for sale of fauna of any specified species and/or the skins, plumage, or eggs of fauna of any specified species, or declare conditions under which sales of fauna of any specified species and/or the skins or plumage or eggs of fauna of any specified species may be sold for such period as is fixed by the order ;
- Limiting, taking, or killing of fauna. (viii.) Prescribe the maximum number of fauna of any specified species which any one person may take or kill or have in possession on any one day or within any specified period ;
- Control of sanctuaries by local authorities. (ix.) Subject to such terms, conditions, limitations, and provisions as may be prescribed, place any sanctuary under the permanent or temporary control of a local authority ;
- Open season. (x.) For any specified fauna in any district, declare an open season within which it may be lawful to take or kill the same in accordance with the regulations ;
- Delegation to local authority. (xi.) Delegate to a local authority the power and authority to implement within its area any provision or provisions of this Act, which delegation may be made subject to such terms, provisions, limitations, and conditions as are set forth in the relevant Order in Council.

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(2.) The power and authority conferred upon the Governor in Council by this section to make an Order in Council shall include and be deemed to include the power and authority to make such one or more Orders in Council as he shall deem necessary or expedient; and, moreover, shall include and be deemed to include power and authority to vary, repeal, amend, extend, or supersede any Order in Council so made by a subsequent Order in Council.

Any such Order in Council may be made on the passing of this Act.

(3.) Nothing in this section contained shall require or be deemed to require—

(a) Any Order in Council to be made declaring any State Forest or National Park under and within the meaning of **The State Forests and National Parks Acts, 1906 to 1934,*” to be a sanctuary; or

(b) Any Order in Council to be made declaring the period of the close season for native bears (koalas),

and nothing in this section contained shall authorise or be deemed to authorise any Order in Council to be made declaring an open season for native bears (koalas).

5. The Governor in Council may from time to time appoint protectors, collectors, officers in charge of opossum districts, and other officers for the purposes of this Act. Appoint-
ment of
officers, &c.

Every person who at the date of the commencement of this Act holds office as a ranger under the Acts repealed by this Act shall, without any further or other appointment whatsoever, be and be deemed to be a protector appointed under this Act.

Every forest officer within the meaning of **The State Forests and National Parks Acts, 1906 to 1934,*” and every member of the Police Force and every approved field officer of the Department of Agriculture and Stock and the Department of Public Lands shall *ex officio* be and be deemed to be a protector appointed under this Act.

* 6 Edw. VII. No. 20 and amending Acts, *supra*, pages 790 *et seq.*

Protectors, collectors, officers in charge of opossum districts, and other officers shall have such powers and duties as are conferred or imposed upon them by this Act or as may be prescribed, and such other powers and duties consistent with this Act as the Minister may from time to time direct.

Protecting
sanctuary.

6. (1.) Every person is hereby prohibited from at any time taking or killing fauna in a sanctuary unless such taking or killing is authorised by this Act.

(2.) Any person who without the authority of this Act takes or kills, or attempts to take or kill, or uses, or attempts to use, any instrument whatever, weapon, net, or other means for the purpose of taking or killing, or with intent to take or kill, fauna in a sanctuary shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than twenty pounds, and in addition to a penalty of not less than five shillings nor more than ten shillings for each mammal or bird so taken or killed.

(3.) Any person who without the authority of this Act enters upon a sanctuary in search or pursuit of or for the purpose of taking or killing, or with intent to take or kill, fauna shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than twenty pounds.

Baits for
pests.

(4.) Any person who without the authority of this Act puts or places or permits to be put or placed, or assists or attempts to put or place any poisonous material injurious to fauna in or upon a sanctuary shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than fifty pounds.

(5.) There may be set up at convenient and conspicuous places on the boundaries of every sanctuary notices legibly written or printed stating that the sanctuary has been constituted, and indicating in a concise manner the extent of the sanctuary.

Any person who removes, damages, or defaces any such notice shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than twenty pounds.

(6.) The provisions of this section shall apply and extend to every species of fauna, and nothing in this Act shall require or be deemed to require any provision of this section to be extended or applied to any species of fauna by Order in Council.

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7. Section six of this Act shall not prevent or be deemed to prevent any person from taking or killing, and any person is hereby authorised to take or kill in or upon a sanctuary fauna of any kind which—

Taking or killing of pests in or upon sanctuaries.

- (a) The Governor in Council has by Order in Council declared to be a pest ; or
- (b) Is a pest within the meaning of **“ The Local Government Act of 1936 ”* (or of any Act amending or in substitution for that Act) and is not fauna of a species for which a close season fixed under this Act is in force ; or
- (c) Is vermin within the meaning of †*“ The Stock Routes Improvement and Animal and Vegetable Pests Destruction Act of 1936 ”* (or of any Act amending or in substitution for that Act) and is not fauna of a species for which a close season fixed under this Act is in force ;
- (d) Is a cane pest within the meaning of ‡*“ The Sugar Experiment Stations Acts, 1900 to 1934 ”* (or of any Act amending or in substitution for those Acts) and is not fauna of a species for which a close season fixed under this Act is in force.

8. (1.) Native bears (koalas) shall and are hereby declared to be fauna to which the provisions of this Act apply and extend.

Act applied to native bears.

(2.) The close season for native bears (koalas) is hereby fixed without limit of time.

Native bears protected.

(3.) The provisions of this section shall apply and extend notwithstanding that no Order in Council has been made under this Act extending and applying this Act to or fixing a period of close season for native bears (koalas) and, moreover, no Order in Council made under this Act shall prejudice or affect any provision of this section.

Savings.

9. (1.) No person shall act as or carry on or advertise or notify that he acts as or carries on the business of a fauna dealer unless he is licensed under this Act as a fauna dealer.

Fauna dealers to be licensed.

* 1 Geo. VI. No. 1, *supra*, page 16035.

† 1 Edw. VIII. No. 8, *supra*, page 15696.

‡ 64 Vic. No. 17 and amending Acts, *supra*, pages 3426 *et seq.*

Skin dealers
and retail
skin
dealers to be
licensed.

(2.) No person shall act as or carry on or advertise or notify that he acts as or carries on the business of a skin dealer or retail skin dealer unless he is licensed under this Act as a skin dealer or, as the case may be, a retail skin dealer.

Registration
of premises.

(3.) Every fauna dealer, skin dealer, or retail skin dealer shall register each and every premises in or upon which he carries on his respective business.

(4.) Any person, other than a person licensed under this Act as a fauna dealer, who acts as or carries on business as a fauna dealer, or who advertises or notifies that he acts as or carries on business as a fauna dealer, shall be guilty of an offence and liable to a penalty of not less than five pounds nor more than twenty pounds.

(5.) Any person other than a person licensed under this Act as a skin dealer or a retail skin dealer who acts as or carries on business as a skin dealer or, as the case may be, a retail skin dealer, or who advertises or notifies that he acts as or carries on business as a skin dealer or, as the case may be, a retail skin dealer shall be guilty of an offence and liable to a penalty of not less than ten pounds nor more than fifty pounds.

(6.) Any person licensed under this Act as a fauna dealer, skin dealer, or retail skin dealer who fails to register any premises in or upon which he carries on his business as a fauna dealer, skin dealer, or retail skin dealer, as the case may be, shall be guilty of an offence and liable to a penalty of not less than five pounds nor more than twenty pounds.

Prohibition
of taking or
killing fauna
during close
season.

10. (1.) Every person is hereby prohibited from at any time taking or killing fauna during a close season unless such taking or killing is authorised by this Act.

Offence to
take or kill
fauna during
close season.

(2.) Any person who without the authority of this Act at any time during any close season—

(i.) Takes or kills or attempts to take or kill any fauna, or uses or attempts to use any instrument whatever, weapon, net, or any other means for the purpose of taking or killing, or with intent to take or kill, any fauna ; or

(ii.) Takes or kills, destroys, or injures any fauna by poisoning, or attempts so to do, or lays

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poison for the purposes of taking or killing, injuring or destroying, or with intent to take or kill, destroy, or injure any fauna,

shall be guilty of an offence and liable subject as hereinafter provided to a penalty of not less than two pounds nor more than fifty pounds :

Provided that any person convicted of an offence against this section in respect of any opossum or opossums shall, in lieu of being liable to the penalty hereinbefore provided, be liable to a penalty of not less than five pounds nor more than fifty pounds, and in addition to a penalty of not more than five shillings for each opossum in respect of which he was so convicted :

Provided further, that any person convicted of an offence against this section in respect of any native bear (koala) or native bears (koalas) shall, in lieu of being liable to the penalty hereinbefore provided, be liable to a penalty of not less than ten pounds nor more than fifty pounds, and in addition to a penalty of one pound for each native bear (koala) in respect of which he was so convicted.

(3.) A person convicted of an offence against this section shall not be eligible to be granted or to hold any permit under this Act until the expiration of a period of two years from and after the date of such conviction :

Disqualification from holding permit.

Provided that where such conviction is in respect of any opossum or opossums or native bear (koala) or native bears (koalas) the period of such disqualification as aforesaid shall, in lieu of being such period as aforesaid, be the period from and after the date of such conviction to and including the last day of the next ensuing period which is not fixed as a close season for opossums.

11. Any person who at any time—

Prohibition of swivel guns.

- (i.) Takes or kills or destroys, or attempts to take or kill or destroy any fauna with any swivel gun ;
- (ii.) Is found in any vessel having therein or attached thereto a swivel gun ;
- (iii.) Has in his possession or custody, or has in any vehicle or vessel in his care or control, any swivel gun or any part of such gun,

shall be guilty of an offence and liable, upon conviction for a first offence, to a penalty of not less than two

pounds nor more than twenty pounds and, upon conviction for a second or subsequent offence, to a penalty of not less than five pounds nor more than fifty pounds.

Prohibition of taking or destroying eggs of fauna during close season.

12. (1.) Every person is hereby prohibited from at any time during any close season taking or destroying the eggs of fauna unless such taking or destroying is authorised by this Act.

Offence to take or destroy eggs during close season.

(2.) Any person who without the authority of this Act—

- (i.) Wilfully takes or attempts to take out of the nest, or destroys or attempts to destroy in the nest, the eggs of any fauna during any close season ; or
- (ii.) Has in his possession the eggs (whether blown or not) of any fauna knowing such eggs to have been taken or obtained during any close season,

shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than ten pounds, and in addition to a penalty of not more than five shillings for each egg in respect of which he was so convicted.

Traffic in fauna, &c., during close season.

13. Any person who without the authority of this Act buys, sells, consigns, or knowingly has in his possession or control—

- (i.) Any fauna or the carcass or the plumage thereof at any time during the close season shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than ten pounds unless, in the case of a person charged with knowingly having in his possession or control fauna or the carcass or plumage thereof contrary to this paragraph, such person proves that the fauna, or the carcass or plumage thereof in respect of which he is so charged, did not come into his possession or control during any close season ;
- (ii.) Any untanned skin or skins of any fauna taken or killed during the close season shall be guilty of an offence and liable, except as

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hereinafter provided, to a penalty of not less than five pounds nor more than twenty pounds:

Provided that any person convicted of an offence against this paragraph in respect of any untanned skin or skins of an opossum or opossums taken or killed during any close season shall, in lieu of being liable to the penalty hereinbefore provided, be liable to a penalty of not less than five pounds nor more than fifty pounds and liable in addition to a penalty of not more than five shillings for each skin in respect of which he is convicted of an offence against this paragraph :

Provided further, that any person convicted of an offence against this paragraph in respect of the untanned skin or skins of a native bear (koala) or native bears (koalas) taken or killed shall, in lieu of being liable to the penalty hereinbefore provided, be liable to a penalty of not less than ten pounds, nor more than fifty pounds, and liable in addition to a penalty of one pound for each skin in respect of which he is convicted of an offence against this paragraph :

Provided that any fauna or the skins or plumage of any fauna legally taken or killed may subject to this Act be bought, sold, consigned, or kept in possession during the ten days next following the commencement of the close season for such fauna or such longer period as is authorised by the Minister, and the carcass of any such fauna may at any time be kept in cold storage for human consumption.

14. No native bear (koala) or opossum shall be kept in confinement other than in a registered zoo unless with the written approval of the Minister.

When native bears or opossums may be kept in captivity.

15. Subject as hereinafter provided, all fauna and all skins or plumage thereof shall be and are hereby declared to be the property of the Crown :

Animals and birds the property of the Crown.

Provided that any fauna or the skins or plumage of any fauna lawfully taken or killed under this Act shall except where otherwise provided cease to be the property of the Crown.

Royalty to
be paid upon
fauna, &c.

16. (1.) Royalty at a prescribed rate may be charged in respect of—

- (i.) Fauna of any species taken within this State for the purposes of the export thereof to any other State or Territory of the Commonwealth or to any other country without the Commonwealth, or fauna taken within this State which is exported to any other State or Territory of the Commonwealth or to any other country without the Commonwealth ; or
- (ii.) Fauna of any species taken within the State for the purposes of sale or which is sold ; or
- (iii.) The skin of any species of fauna which is taken or killed.

(2.) Royalty at the prescribed rate shall be due and payable by the following persons, that is to say :—

- (a) In the case of any fauna mentioned in paragraph (i.) or paragraph (ii.) of subsection one of this section, both the person who takes the fauna concerned, who shall become liable for payment of such royalty forthwith upon taking such fauna, and any fauna dealer who at any time has possession of such fauna, and who shall become liable for the payment of such royalty forthwith upon such fauna coming into his possession ; and
- (b) In the case of any skin mentioned in paragraph (iii.) of subsection one of this section, both the person who takes or kills the fauna to which such skin belongs, who shall become liable for the payment of such royalty forthwith upon taking or killing such fauna, and any skin dealer or retail skin dealer who at any time has possession of such skin, and who shall become liable for the payment of such royalty forthwith upon such skin coming into his possession :

Provided, however, that royalty shall not be payable more than once in respect of any fauna or skin as aforesaid.

(3.) Where any fauna or skin in respect of which royalty is payable comes into the possession of a fauna dealer or a skin dealer or retail skin dealer, as the case

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may be, and such dealer is not satisfied that royalty in respect thereof has been paid in full he may deduct from any moneys payable by him to any other person for or on account of such fauna or skin the amount of the royalty payable thereon.

(4.) On receipt of the prescribed royalty upon skins a collector shall, in the case of opossum skins, cause the skins or the bale containing the skins in respect of which the royalty has been collected, or, in the case of skins of any other species of fauna, cause, according as may be prescribed, the skins or the bale containing the skins in respect of which the royalty has been collected, to be branded in the prescribed manner with a prescribed brand as evidence of payment of the royalty.

(5.) A collector may seize any skin charged with the payment of royalty under this section in respect of which royalty has not been paid, and may keep possession thereof until royalty is paid.

(6.) The amount of any royalty due and payable under this Act and unpaid may be recovered as a debt from any person liable to pay same by action in any court of competent jurisdiction in the name of the Minister or of any person authorised by him.

An unsatisfied judgment or order of any court for the recovery of any royalty payable under this Act from any person shall not be a bar to the recovery thereof from any other person liable under this Act to the payment thereof.

(7.) Any person who evades or attempts to evade payment of royalty under this Act shall be liable to a penalty not exceeding fifty pounds and an additional penalty of twice the amount of royalty evaded.

17. The following powers and authorities are hereby conferred on an officer, collector, or protector other than an honorary protector:— Powers of officers and protectors.

- (1) He may, on production of his authority, at all times seize and take possession of any fauna or the skin of any fauna in respect of which he reasonably suspects that there has been any contravention of or failure to comply with this Act, or of any instrument, weapon, net, poison, or other means which he

finds any person making use of in taking or killing or attempting to take or kill any fauna in contravention of this Act, or which he reasonably suspects is intended to be so used ;

Entry.

- (2) He may at all times and seasons, on production of his authority, without any let or hindrance whatsoever, enter into or upon and pass over or along any lands or premises, and enter any vessel and examine any nets, traps, or other instruments whatsoever which are being used or could be used in contravention of this Act, and do all such other acts and things as he is required or authorised to do by this Act ;

Search.

- (3) If he has reasonable grounds to suspect that there is kept or stored or had in possession by any person in or upon any building, store, shop, hut, tent, camping place, or other premises or place, or any vehicle or vessel—

(a) Any fauna, or any eggs, flesh, carcass, skin, feathers, or other portion of any fauna, or

(b) Any poison,

apparently in contravention of this Act, or in respect of which there has been a contravention of or failure to comply with this Act, he may at any time on production of his authority enter upon and search such structure, premises, place, vehicle, or vessel, and any basket, box, receptacle, or package there, and may seize all fauna and any eggs, flesh, carcass, skin, feathers, or other portion of any fauna and any poison found there.

Any thing so seized as aforesaid may, at the discretion of the Minister and notwithstanding that no person is proceeded against or convicted of an offence against this Act in respect thereto, be forfeited to His Majesty, and in that event shall be dealt with as the Minister directs.

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18. (1.) A protector, collector, or officer may require any person offending against this Act to give his name in full and place of abode, and to deliver up any fauna or skins or instrument, weapon, net, or other means of destruction or capture in his possession.

Additional powers of officers and protectors.

If any such person upon being so required fails to give his full name or place of abode, or gives a false name or place of abode, or fails to deliver up any fauna or skins or instruments, weapon, net, or other means of destruction or capture to the officer, protector, or collector requiring him so to do, he shall be guilty of an offence and may be arrested and taken before a court of petty sessions and there charged with such offence, and shall be liable upon conviction to a penalty of not less than five pounds nor more than twenty pounds :

Provided that the power to arrest shall not limit or be deemed to limit the power and authority to proceed against an offender by complaint and/or summons under **"The Justices Acts, 1886 to 1932."*

(2.) A protector, collector, or officer may require any trapper, opossum trapper, fauna dealer, skin dealer, or retail skin dealer to produce his permit, license, or certificate of registration for inspection ; and if such person without reasonable excuse, the proof of which shall be upon him, fails to so produce his permit or certificate of registration, he shall be guilty of an offence and liable to a penalty not exceeding five pounds.

19. Any person who obstructs, resists, or assaults, or incites or encourages any person to obstruct, resist, or assault, any officer, protector, collector, or any other person in the execution of his powers or in the discharge of his duties under this Act shall be guilty of an offence and liable to a penalty of not less than five pounds nor more than fifty pounds in addition to any other penalty he may have incurred under this Act, and the adjudicating court may also order and award a sum sufficient to cover any damage which any such officer protector, collector, or person has sustained by such obstruction, resistance, or assault, such sum to be recoverable in the same manner as the penalty.

Obstructing &c., officers and protectors.

* 50 Vic No. 17 and amending Acts, *supra*, pages 1132 *et seq.*

Powers
of the
Minister.

20. (1.) Notwithstanding anything in this Act contained, the Minister may by order in writing—

- (i.) Permit the trustees or managers of any public gardens, museum, grounds, or exhibition to have and keep in their possession or control any fauna of any kind specified in such order, or any eggs, flesh, skin, or feathers thereof;
- (ii.) Permit any person to collect for scientific purposes any fauna or their eggs;
- (iii.) Permit any person to retain in a state of domestication or captivity such fauna as are specified.

(2.) The period during which any such permit is to be in force shall be specified in such order.

(3.) The Minister may at his absolute discretion refuse to issue any permit, authority to issue which is conferred upon him by this section, or at any time cancel any such permit which has been issued by him.

Taking or
killing fauna
other than
during close
season.

21. (1.) During any period which is not fixed as a close season for any species of ducks or quail any person may, subject to such terms, provisions, limitations, and conditions as may be prescribed, take or kill ducks or quail of such species.

(2.) During any period which is not fixed as a close season for any species of fauna (other than opossums, or ducks, or quail) to which this Act applies and extends, any person who holds a subsisting permit under this Act as a trapper may, subject to such terms, provisions, conditions, and limitations as may be prescribed, take or kill such species of fauna.

Nothing in this subsection contained shall require or be deemed to require any person to hold a subsisting permit as a trapper in order to take or kill ducks or quail of any species during any period which is not a close season for such species, and nothing in this subsection contained shall authorise or be deemed to authorise any person who holds a subsisting permit as a trapper to take or kill any opossum during any period which has not been fixed as a close season for opossums.

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(3.) During any period which is not fixed as a close season for opossums, any person who holds a subsisting permit under this Act as an opossum trapper may, subject to such terms, provisions, conditions, and limitations as may be prescribed, take or kill opossums.

(4.) Any person other than a person holding a subsisting permit under this Act as a trapper, who at any time during any period which has not been fixed as a close season for any species of fauna (other than opossums, or ducks, or quail) to which this Act applies and extends—

- (i.) Takes or kills or attempts to take or kill any fauna of such species, or uses or attempts to use any instrument whatever, weapon, net or any other means for the purpose of taking or killing or with intent to take or kill any fauna of such species ; or
- (ii.) Takes or kills, destroys, or injures any fauna of such species by poisoning or attempts so to do, or lays poison for the purpose of taking or killing, or destroying, or injuring, or with intent to take or kill, or destroy, or injure any fauna of such species,

shall be guilty of an offence and liable to a penalty of not less than two pounds nor more than fifty pounds.

(5.) Any person other than a person holding a subsisting permit under this Act as an opossum trapper who at any time which has not been fixed as a close season for opossums—

- (i.) Takes or kills or attempts to take or kill any opossum or opossums, or uses or attempts to use any instrument whatever, weapon, net, or any other means for the purpose of taking or killing or with intent to take or kill any opossum or opossums ; or
- (ii.) Takes or kills, destroys, or injures any opossum or opossums by poisoning or attempts so to do, or lays poison for the purpose of taking or killing, or destroying, or injuring or with intent to take or kill, or destroy, or injure any opossum or opossums,

shall be guilty of an offence and liable to a penalty of not less than five pounds nor more than fifty pounds, and in addition to a penalty of not more than five shillings for each opossum in respect of which he is convicted of an offence against this subsection.

(6.) Nothing in this section contained shall authorise or be deemed to authorise any person to take or kill fauna of any species whatsoever in or upon a sanctuary.

This Act not to authorise use, &c., of cyanide.

22. (1.) Nothing in this Act shall authorise or be deemed to authorise any person to obtain, and/or have in his possession, and/or use, and/or sell, and/or give to any other person whomsoever any cyanide of potassium or any other poisonous compound of cyanogen, and to the intent that no authority conferred upon any person under this Act in relation to the obtaining, using, selling, and/or giving to any other person whomsoever of any poison shall relate or be deemed to relate to cyanide of potassium or any poisonous compound of cyanogen.

Penalty for unlawful use of cyanide, &c.

(2.) Any trapper, opossum trapper, or other person whomsoever who uses or attempts to use any cyanide of potassium or any other poisonous compound of cyanogen for the purpose of taking or killing or with intent to take or kill fauna, or any trapper or opossum trapper who keeps, stores, or has in his possession or under his control any cyanide of potassium or any other poisonous compound of cyanogen shall be guilty of an offence and liable to a penalty of not less than ten pounds nor more than fifty pounds :

Provided that where any act or omission constitutes the same offence both under this subsection and under some other Act or law, any person doing or omitting to do such act may be proceeded against either under this Act or under such other Act or law, but so that no person shall be twice punished for the same offence.

Prohibition of use of bird lime.

23. No person shall in taking or attempting to take or for the purpose of taking any bird use or have in his possession bird lime or any viscid or adhesive substance.

No person shall use, apply, or expose bird lime or any viscid or adhesive substance in such manner or in such circumstances that the same may catch or ensnare any bird.

When land owner may obtain permit to destroy fauna.

24. If it is proved to the satisfaction of the Minister or of any person authorised by the Minister to grant permits under this section that any fauna are in such numbers as to lead to serious damage to any vineyard, orchard, or garden, or to any crops or grass upon any land owned or occupied by any person, the Minister

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or such authorised person may permit in writing such person and/or his employees to take or kill any such fauna upon such land, notwithstanding that the fauna may at the time be fauna in respect of which a close season is in force or that the land is included within a sanctuary.

Every permit granted under this section shall be subject to such terms, provisions, conditions, and limitations as may be prescribed.

The Minister may at any time at his absolute discretion revoke any permit granted by him or by any authorised person under this section.

Nothing in this section contained shall deprive or be deemed to deprive the Crown of its property in any fauna or in the skins or plumage of any fauna permitted to be taken or killed hereunder.

25. This Act, except the provisions thereof prohibiting the use of poison, shall not apply to any aboriginal killing any native fauna for his own food.

When Act not to apply to aboriginals.

26. No fauna or untanned skin of any fauna shall be removed from one portion of the State to another unless a permit for its removal has been obtained from a protector, collector, officer, or police officer so to do.

Removal of fauna, &c., within the State.

27. (1.) No fauna shall be removed from this State to any other State or Territory of the Commonwealth unless and until a permit for its removal has been granted in this State, and a permit for its importation has been granted by the relevant authority in the State or Territory concerned.

Exportation and importation of fauna.

(2.) No fauna shall be introduced into this State from any other State or Territory of the Commonwealth unless and until a permit for its introduction has been granted in this State, and a permit for its removal has been granted by the relevant authority in the State or Territory concerned.

28. (1.) In any proceedings under this Act—

Evidence.

(i.) No proof shall be required—

(a) Of any order to prosecute, or of the particular or general appointment of any officer, or protector, or collector of royalty, or

- (b) Of the authority of any officer, or protector, or collector of royalty under this Act if such officer purported to act thereunder, or
- (c) Of the boundaries of a sanctuary ;
- (ii.) Possession of any fauna or of any part thereof shall be *primâ facie* evidence of the unlawful taking or killing thereof ;
- (iii.) Having in possession, when trespassing upon any sanctuary or other land, any implements or means for taking or killing fauna shall be *primâ facie* evidence of the purpose of the entry on such land ;
- (iv.) When it is proved that a gun was fired in or from any vessel without having been raised at arm's length and fired from the shoulder without other support, such proof shall, without prejudice to any other evidence available, be sufficient evidence that such gun was a swivel gun ;
- (v.) Where any person is charged with buying, selling, consigning, or having in his possession or control any fauna or carcass, flesh, skin, eggs, feathers, or other portions of any fauna contrary to this Act, the onus of proof that such fauna, carcass, or flesh, skin, eggs, feathers, or other portions were lawfully bought, sold, consigned, or in his possession or control shall be upon the defendant ;
- (vi.) In any proceedings under this Act in respect of the payment of royalty on any fauna or the untanned skin of any fauna, the onus of proof that royalty has been paid on such fauna or such untanned skin of any fauna shall be upon the defendant ;
- (vii.) In any proceedings for an offence against this Act in respect of which it is necessary to prove as an element of the offence that the person charged therewith acted—
- (a) Without the authority of this Act, and/or
- (b) Knowingly, and/or
- (c) Wilfully,

then, and in any such case, the averment in the complaint that the person so charged

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acted without the authority of this Act, and/or knowingly, and/or wilfully shall, in the absence of proof beyond reasonable doubt to the contrary, be sufficient evidence of the fact or facts so averred.

(2.) A complaint for an offence against this Act in respect of the taking or killing of any fauna may be heard and determined either within a petty sessions district within or within twenty miles of the boundary of which such fauna were taken or killed, or within a petty sessions district within or within twenty miles of the boundary of which such fauna or any carcass or carcasses thereof are found in the possession or control of any person subsequent to the taking or killing thereof. It shall be immaterial that the person charged with such offence is not the person in whose possession or control such fauna or any carcass or carcasses thereof are so found.

Jurisdiction
in respect
of certain
offences.

29. The expenses on and after the first day of July, one thousand nine hundred and thirty-seven, of the administration of the Acts repealed by this Act and the expenses of the administration of this Act shall be defrayed from the Consolidated Revenue Fund, which is hereby appropriated accordingly.

Funds.

Any such appropriation made prior to the commencement of this Act is hereby validated and confirmed.

All royalties, penalties, and other moneys received or recovered under this Act shall be paid into and form part of the Consolidated Revenue Fund.

30. (1.) Proceedings for an offence against this Act may be instituted by any person who is authorised in that behalf by the Minister.

Offences, &c.

(2.) (i.) All complaints for offences against this Act may be heard and determined in a summary way under **"The Justices Acts, 1886 to 1932."*

(ii.) Proceedings for an offence against this Act may be instituted at any time within six months after the commission thereof or within four months after the discovery of the commission thereof by the complainant, whichever is the later date.

* 50 Vic. No. 17 and amending Acts, *supra*, pages 1132 *et seq.*

(iii.) Notwithstanding anything in any Act to the contrary, where any person is convicted of any offence against this Act the penalty to be imposed in respect of such offence shall not be reduced below any prescribed minimum amount of penalty.

(3.) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and shall, if no specific penalty is prescribed in respect of such offence, be liable to a penalty of not less than two pounds nor more than twenty pounds.

(4.) All fauna and carcasses and flesh of fauna and skins, eggs, and feathers thereof and all poison in respect of which there has been a contravention of or failure to comply with this Act, and all instruments, weapons, nets, and other articles seized by an officer under this Act shall by the conviction of the offender be and become forfeited to His Majesty, and the same may be destroyed or otherwise disposed of in accordance with the directions of the Minister.

(5.) In addition to any penalty imposed upon any person convicted of any offence against this Act, the court may in its discretion order that any permit, authority, license, or registration held by the defendant shall be entirely revoked, or that it shall be suspended for such period, but not beyond its currency, as the court thinks fit.

Regulations.

31. (1.) The Governor in Council may from time to time make regulations providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act.

Without limiting the generality of the foregoing provisions, the regulations may provide for all or any of the following matters:—

- (i.) The grant of licenses and registrations of premises to fauna dealers, skin dealers, and retail skin dealers in respect of themselves and their premises, and of permits to trappers and opossum trappers and permits in other prescribed cases; the terms, provisions, conditions, and limitations upon and subject to which licenses, registrations, and permits

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under this Act or any class thereof may be granted, suspended, or revoked, and the application for, duration, and renewal thereof; the person by whom the same or any class of same may be granted, suspended, or revoked; defining the holdings or localities in which opossum trappers may carry on operations; facilitating the carrying on of such operations by conferring powers of entry and the like, including the right of entry with or the prohibiting of entry with horses and/or dogs, or any species of dog, or more than a prescribed number of horses and/or dogs or any species of dog, having due regard to the necessary operations of owners lessees, and managers of holdings, and the necessity or otherwise for the exemption of certain portions from the operations of opossum trappers; authorising the Minister to appoint officers in charge of opossum districts charged with the power and duty of granting permits to opossum trappers within such district.

- (ii.) The protection, preservation, and propagation of native fauna; prescribing the jurisdiction and control of local authorities delegated by Order in Council with powers under this Act.
- (iii.) The issue of permits for the removal of fauna or untanned skins of fauna from one portion of the State to another, and from this State to other States or Territories of the Commonwealth, and from other States or Territories of the Commonwealth to this State.
- (iv.) Preventing interference with and/or injury to any fauna on a sanctuary and/or contamination and/or pollution of any sanctuary.
- (v.) Defining the duties of collectors, protectors, and officers under this Act.
- (vi.) Defining the duties, powers, and privileges of approved societies or of local authorities under this Act.

- (vii.) Prescribing records to be kept by fauna dealers, skin dealers, and retail skin dealers, and the inspection of such records by protectors, collectors, or officers.
 - (viii.) Prohibiting the use of electric or other artificial lights when taking or killing opossums.
 - (ix.) The inspection of the shops and other premises of fauna dealers, skin dealers, and retail skin dealers; inspection and registration of aviaries, regulating the cleansing and sanitary conditions of premises, shops, cages, and aviaries; ensuring a proper food and water supply for and generally safeguarding fauna, either in premises, shops, cages, or aviaries, or when being transported within the State.
 - (x.) Regulating the use of and/or providing for the extinction of fires by trappers and/or opossum trappers.
 - (xi.) The fees to be paid for licenses, registrations, and permits granted under this Act or the renewal thereof; prescribing royalties payable under this Act; providing means for preventing the evasion of the payment thereof, and for the mode of enforcing payment thereof.
 - (xii.) All matters required or permitted by this Act to be prescribed.
 - (xiii.) Penalties not exceeding in any case fifty pounds for any breach of the regulations or, where no specific penalty is provided, for any breach of an Order in Council made under this Act.
- (2.) Regulations may be made on the passing of this Act.
- (3.) Where any regulation relates to a provision of this Act the administration of which within its area has been delegated to a local authority by Order in Council made under this Act, then, and in every such case, such regulation may by further or other regulations be amended or varied so as to give effect to such delegation.

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32. (1.) All Proclamations, Orders in Council, delegations by the Governor in Council, and regulations made or purporting to be made under this Act shall be published in the *Gazette* and shall upon such publication be of the same effect as if they were enacted in this Act and shall be judicially noticed, and shall not be questioned in any proceedings whatsoever.

Effect of publication in the *Gazette* of Proclamations, &c.

The publication in the *Gazette* of any such Proclamation, Order in Council, delegation, or regulation shall be conclusive evidence of the power and authority to make same and of all matters contained therein.

(2.) All such Proclamations, Orders in Council, delegations, and regulations shall be laid before Parliament forthwith, if then sitting; and, if not then sitting, within fourteen days after the commencement of the next ensuing session.

Regulations to be laid before Parliament.

If the Legislative Assembly, within the next fourteen sitting days after any Proclamation, Order in Council, delegation, or regulation has been so laid before such House, resolves that the same ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime thereunder or to the making of any new Proclamation, Order in Council, delegation, or regulation, as the case may be.

For the purpose of this section the term "sitting days" shall mean days on which the House actually sits for the despatch of business.

33. This Act and every Proclamation, Order in Council, and regulation made thereunder shall be read and construed subject to the **Commonwealth of Australia Constitution Act*, and so as not to exceed the legislative power of the State, to the intent that where any enactment thereof or provision contained in any such Proclamation, Order in Council, or regulation would but for this section have been construed as being in excess of that power it shall nevertheless be a valid enactment or provision to the extent to which it is not in excess of that power.

Construction.

* Imperial Statute, 63 & 64 Vic., cap 12.