

# Birds and Animals Protection (Amendment) Bill, 1928.

## EXPLANATORY NOTE.

**THE** object of the Bill is to remedy certain defects in the Birds and Animals Protection Act, 1918, which have been discovered in the administration of that Act; to prohibit, *inter alia*, traffic in birds and animals without the written permission of the Minister; and to repeal the Birds and Animals Protection (Amendment) Act, 1922.

Clause 2. Amends the definition of protected bird or animal to include the skin or any part, also the feathers and eggs of a bird.

Clause 3. Amends section 7 of the Principal Act so that the requirement of a license for the taking for sale purposes during the period of an open season extends to protected birds only, and provides for a royalty on the skins. The provisions may be applied to animals by proclamation.

Clause 4. Amends section 8 of the Principal Act to provide for the case of birds received in this State from other places, in addition to any State or territory of the Commonwealth of Australia or the Dominion of New Zealand; to provide for licenses being issued for the importation of any bird or animal; and to empower the Governor to exempt by proclamation, under certain conditions, any bird or animal from the provisions of section 8; and to provide for the disposal of confiscated skins, &c.

Clause 5. Repeals section 9 of the Principal Act and substitutes a new section providing—

- (1) that the land described in the Third Schedule should be a district;
- (2) that all land within a radius of one mile from any public school should be a district;
- (3) that the Governor may declare by proclamation any other land as a district;
- (4) that the Governor may declare by proclamation what birds or animals may be taken or killed within a district, and either generally or within certain specified periods;
- (5) conditions under which birds and animals may be taken within a district, and for penalties.

Clause 6. Amends section 10 of the Principal Act by enlarging the power to prosecute persons "found" within a district.

Clause 7. Repeals section 11 of the Principal Act, and substitutes a new section providing that in addition to the police, public school teachers, conditional purchase inspectors, officers and employees of the Forestry Commission on State Forests, stock inspectors, fruit inspectors, inspectors of fisheries, and rangers under the Metropolitan Water, Sewerage, and Drainage Act, 1924, shall, by virtue of their office, be rangers, and for the appointment of honorary rangers.

Clause 8. Repeals section 17 of the Principal Act, as inserted by section 2 of the Birds and Animals Protection (Amendment) Act, 1922, and inserts new section to provide that all protected birds and animals until taken in accordance with the provisions of the Principal Act shall be the property of the Crown; to prohibit the traffic in birds or animals without permission in writing by the Minister; and repeals the Birds and Animals Protection (Amendment) Act, 1922.

Clause 9. Empowers the Minister to insert conditions in licenses granted under sections 18 and 19 of the Act.

Clause 10. Provides for the imposition of a minimum penalty of twenty shillings and for the forfeiture of firearms, &c., of any person convicted of an offence against any of the provisions of the Act or regulations.

Clause 11. Tightens up the law with respect to poisoning protected birds and animals.

Clause 12. Provides for—

- (a) the prohibition of the use of bird lime or similar preparations for taking birds; and
- (b) for the disposal of any protected bird or animal, or part thereof, as the Court may direct in the case of a conviction under sections 21, 24 and 24A of the Principal Act.

Clause 13. Enlarges the power to make regulations.

Clause 14. Corrects certain errors in the description of a district (Sanctuary).

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[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1928.

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## A BILL

To amend the Birds and Animals Protection Act, 1918; to repeal the Birds and Animals Protection (Amendment) Act, 1922; and for purposes connected therewith.

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** This Act may be cited as the "Birds and Animals Short title. Protection (Amendment) Act, 1928," and shall be read with the Birds and Animals Protection Act, 1918, in this Act referred to as the Principal Act.

The Principal Act as amended by this Act may be cited as the "Birds and Animals Protection Act, 1918-1928."

- 2.** Section three of the Principal Act is amended—
- (a) by inserting after the definition of "License" the following new definition :—  
"Prescribed" means prescribed by this Act or by the regulations made thereunder.
- (b) by omitting from the definition of "Protected bird or animal" the words "hereto and the eggs of any such bird" and by inserting in lieu thereof the words "to this Act, and the skin or any part of any such bird or animal, and the feathers and the eggs of any such bird."
- 3.** Section seven of the Principal Act is amended—
- (a) (i) by inserting in subsection one after the words "think proper" the words "including the payment of such royalty as is prescribed";  
(ii) by omitting from the same subsection the words "or animals";
- (b) by omitting from subsection two the words "or animal" wherever occurring;
- (c) by adding the following new subsection :—  
(3) The Governor may, by proclamation, direct that the provisions of this section shall apply to protected animals, and upon the publication of such proclamation such provisions shall apply accordingly.
- 4.** Section eight of the Principal Act is amended—
- (a) (i) by omitting from subsection one of section eight the word "knowingly";  
(ii) by omitting from the same subsection the words "or the skin of such bird or animal or any part of such bird or animal";  
(iii) by omitting from the same subsection the words "or skin or part of a bird or animal";

Amendment of Act No. 21, 1918, s. 3.  
(Interpretation.)

Further amendment of Act No. 21, 1918, s. 7.  
(Licenses to take for sale.)

Further amendment of Act No. 21, 1918, s. 8.  
(Penalty for having in possession.)

(iv)

(iv) by omitting from the same subsection all the words after the word "committed" and by inserting in lieu thereof the following words:—

"The provisions of this section shall apply, whether such bird or animal was killed, taken, or bought in or received from any State or territory of the Commonwealth, or the Dominion of New Zealand, or elsewhere:

"Provided that the Minister may by license, under conditions therein specified, permit the importation of any such bird or animal:

"Provided, also, that the Governor may by proclamation exempt, under conditions specified in such proclamation, any bird or animal from such provisions";

(b) by omitting from subsection two the words "or in or from any country other than any such State territory or Dominion as aforesaid"; and

(c) by adding the following new subsections:—

(3) Any such bird or animal, shall, upon the conviction of any person under this section for an offence in relation thereto, be liable to forfeiture, and shall be disposed of in such manner as the court may direct.

(4) In this section "possession" includes having any protected bird or animal, as defined in this Act, in any building, lodging, apartment, field, or other place whether belonging to or occupied by the person charged or not, and whether such bird or animal are then had or placed for his own use or the use of another.

(5) This section shall be 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 would but for this subsection have been  
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been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

**5.** Section nine of the Principal Act is repealed and the following new section is substituted therefor :— Amendment of Act No. 21, 1918, s. 9.

9. (1) The land described in the Third Schedule is hereby constituted a district. Birds and animals within districts.

(2) The land within a radius of one mile from any school which is a public school within the meaning of the Public Instruction Act of 1880, or any Act amending the same, is hereby constituted a district.

(3) The Governor may, by proclamation, declare any other land to be a district.

(4) The Governor may, by proclamation, declare what birds or animals may be taken or killed within a district, and either generally or within certain specified periods.

(5) Any person who in any district takes or kills, or attempts to take or kill, any bird or animal which he is not expressly authorised to take or kill by virtue of a proclamation made under the last preceding subsection or under the terms of a license issued under sections eighteen or nineteen shall be liable to a penalty not exceeding *twenty* pounds.

**6.** Section ten of the Principal Act is amended— Further amendment of Act No. 21, 1918, s. 10.

(a) by omitting the words "enters any district" and substituting therefor the words "issued under sections eighteen or nineteen is found in any district"; and (Penalty for trespass.)

(b) by omitting the words "when so trespassing" and substituting therefor the words "when so found."

**7.** Section eleven of the Principal Act is repealed and the following new section is substituted therefor :— Further amendment of Act No. 21, 1918, s. 11.

11. (1) Members of the police force, public school teachers, conditional purchase inspectors, officers and employees of the Forestry Commission of New South Wales on State forests, stock inspectors, fruit inspectors, inspectors of fisheries, and Rangers.

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and rangers appointed under the Metropolitan Water, Sewerage, and Drainage Act, 1924, shall, by virtue of their office, be rangers.

(2) The Minister may, by notice in the Gazette, appoint honorary rangers, who shall have the powers and perform the duties of rangers.

**8.** (1) Section seventeen of the Principal Act as inserted by section two of the Birds and Animals Protection (Amendment) Act, 1922, is omitted and the following section is inserted in lieu thereof:—

Further amendment of Act No. 21, 1918.  
New s. 17.

17. (1) All protected birds and animals until taken or killed in accordance with the provisions of this Act shall be deemed to be the property of the Crown.

Protected birds and animals until taken to be the property of the Crown.

(2) Nothing in this Act shall prevent any person from keeping in confinement or in a domesticated state, otherwise than for the purpose of traffic, any protected bird or animal which has been taken in accordance with the provisions of this Act.

(3) No person shall traffic in birds or animals without the permission in writing of the Minister. Such permission may stipulate the maximum number of live birds or animals of any class or species, whether protected or scheduled, that may be in the possession of the applicant at any one time.

The permission may be revoked or varied by the Minister at any time.

(4) A different maximum number may be prescribed for different classes or species of birds or animals.

(5) Any person who traffics in birds or animals without the permission in writing of the Minister or who fails to observe any stipulation contained in such permission shall be guilty of an offence and shall be liable to a penalty not exceeding *five* pounds for every bird or animal in respect of which there is a contravention of the provisions of this section.

(6)

(6) For the purposes of this section any person who is in possession of any number of live birds or animals of any class or species, and whether protected or scheduled, in excess of the maximum number prescribed by regulations for such class or species shall be deemed to traffic in such birds or animals, and to keep the same for the purpose of traffic.

(7) This section shall be 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 would but for this subsection have been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

(2) The Birds and Animals Protection (Amendment) Act, 1922, is hereby repealed.

**9.** The Principal Act is further amended—

Further amendment of Act No. 21, 1918.

- (a) by inserting at the end of section eighteen the words "The Minister may in such license insert such conditions as he thinks proper"; Sec. 18.
- (b) by inserting at the end of section nineteen the words "The Minister may in such license insert such conditions as he thinks proper." Sec. 19.

**10.** The Principal Act is further amended by inserting after section twenty-two the following new section:—

Further amendment of Act No. 21, 1918. New s. 22A.

22A. If any person is convicted of an offence against any of the provisions of this Act, or of any regulation made thereunder, the court shall impose a penalty of not less than *twenty* shillings, and any firearms, nets, traps, or other instruments, or any dogs found in the possession of such person when such offence was committed shall be liable to forfeiture, and shall be disposed of in such manner as the court may direct.

Forfeiture of firearms, nets, &c.

**11.** Section twenty-four of the Principal Act is amended—

Further amendment of Act No. 21, 1918. Sec. 24.

- (i) by inserting after the word "uses" the words "or has in his possession with intent to use"
- (ii) by adding the following new subsection :—

(2) In any prosecution under this section proof that such poison was in the possession of the person charged shall be prima facie evidence that he had it in his possession in contravention of this section.

**12.** The Principal Act is further amended by inserting after section twenty-four the following new sections :—

Further amendment of Act No. 21, 1918. New ss. 24A and 24B.

24A (1) Any person who uses or has in his possession with intent to use any bird-lime or other similar mixture or preparation of any kind for the taking or killing of any bird whether a protected bird or a scheduled bird shall for every such offence be liable to a penalty not exceeding *twenty* pounds.

Use of bird-lime, &c., prohibited.

(2) In any prosecution under this section proof that such bird-lime or other similar mixture or preparation was in the possession of the person charged shall be prima facie evidence that he had it in his possession in contravention of this section.

24B. Where any person has been convicted of an offence under section twenty-one, twenty-four, or 24A, any protected bird or animal, or any part of such bird or animal, found in the possession or under the control of such person, shall be liable to forfeiture, and shall be disposed of in such manner as the court may direct.

Forfeiture of protected bird or animal in possession of person convicted under ss. 21, 24 or 24A.

**13.** Section twenty-five of the Principal Act is amended—

Further amendment of Act No. 21, 1918. Sec. 25.

- (a) by inserting in subsection one after the word "issued" the words "and the rate of royalties to be paid on skins of protected animals, and the method of branding such skin to indicate the payment of such royalty";

(b)



(b) (i) by inserting in the same subsection after the words "under the provisions of this Act" the following new paragraphs:—

Prescribing the conditions under which any bird or animal, whether such bird or animal is a protected bird or animal or a scheduled bird or scheduled animal, may be consigned or offered for sale, and for the proper caging of such bird or animal.

Prescribing the method of taking or killing protected birds and animals during the period of an open season or under the authority of a license.

Providing for the disposal of birds, animals, or articles forfeited by the court under this Act.

(ii) by inserting at the end of the same subsection the words "and may provide that any protected bird or animal in relation to which an offence against the regulations has been committed shall be liable to forfeiture."

(c) by inserting in paragraph (iii) of subsection two after the word "fourteen" wherever occurring, the word "sitting."

**14.** The Third Schedule of the Principal Act is amended by omitting the words "by the eastern boundary of the parish of St. Luke" and by inserting in lieu thereof the words "by the western boundary of the parish of St. Luke." Further amendment of Act No. 21, 1918. Third Schedule.

