



AUSTRALIAN CAPITAL TERRITORY

**Nature Conservation (Amendment)
Act 1989**

No. 4 of 1989

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AUSTRALIAN CAPITAL TERRITORY

Nature Conservation (Amendment) Act 1989

No. 4 of 1989

An Act to amend the *Nature Conservation Act 1980*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Nature Conservation (Amendment) Act 1989*.

Principal Act

2. In this Act, “Principal Act” means the *Nature Conservation Act 1980*.¹

Interpretation

3. Section 5 of the Principal Act is amended—

- (a) by omitting paragraph (d) from the definition of “animal” and substituting the following paragraph:

“(d) a protected fish or a protected invertebrate;”;

- (b) by omitting the definitions of “restricted animal wildlife”, “restricted plant wildlife” and “sell” and substituting respectively the following definitions:

“ ‘restricted animal wildlife’ means an animal specified in a declaration under paragraph 17 (1) (d);

‘restricted plant wildlife’ means a plant specified in a declaration under paragraph 17 (1) (c);

‘sell’ includes—

(a) exchange; and

(b) expose for sale or exchange;” and

- (c) by inserting the following definitions:

“ ‘exempt animal’ means an animal specified in a declaration under paragraph 17 (1) (b);

‘protected fish’ means a fish specified in a declaration under paragraph 17 (1) (a);

‘protected invertebrate’ means an invertebrate specified in a declaration under paragraph 17 (1) (a);

‘special protection status’ means the status declared by the Conservator under section 16 in relation to the members of a species of wildlife;”.

Insertion

4. After section 15 of the Principal Act the following sections are inserted:

Declaration of special protection status

“16. (1) The Conservator shall, by instrument, declare the members of a species of wildlife to have special protection status if—

- (a) in the case of the members of a species of migratory animal—the protection of that species is the object, or part of the object, of an Act of the Commonwealth, or of a convention, agreement or treaty entered into by the Commonwealth; or
- (b) the Conservator believes on reasonable grounds that the species is vulnerable to, or threatened with, extinction.

“(2) A declaration shall specify on which of the grounds set out in subsection (1) it is made.

“(3) In this section—

‘migratory animal’ means a migratory animal that periodically or occasionally visits Australia, the Australian coastal sea or the sea over the continental shelf of Australia.”.

Other declarations

“17. (1) The Conservator may, by instrument, declare the members of a species of—

- (a) fish or invertebrate to be protected fish or protected invertebrates;
- (b) animal to be exempt animals;
- (c) plant wildlife to be restricted plant wildlife; or
- (d) animal wildlife to be restricted animal wildlife.

“(2) In making a declaration under subsection (1), the Conservator shall take into consideration the need to protect—

- (a) wildlife generally in the Territory; and
- (b) the significant ecosystems of the Territory, New South Wales and Australia.

Publication, tabling and disallowance of declarations

“18. An instrument made under section 16 or 17 is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Amendment of heading

5. The heading to Part III of the Principal Act is amended by adding at the end “AND FISH”.

Omission of heading

6. The heading to Division 1 of Part III of the Principal Act is omitted.

Insertion

7. Before section 25 of the Principal Act the following section is inserted in Part III:

Nests of wildlife

“24. (1) A person shall not, except in accordance with a permit, interfere with a nest of an animal that is wildlife, or with anything in the immediate environment of such a nest, if the interference—

- (a) places the animal or its progeny in danger of death; or
- (b) places the animal in danger of not being able to breed—
 - (i) if the interference occurs during the animal’s breeding season—during that season; or
 - (ii) in any other case—during the animal’s next breeding season.

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.

“(2) A person shall not, except in accordance with a permit, interfere with a nest of an animal that is wildlife, or with anything in the immediate environment of such a nest.

Penalty:

- (a) if the animal has special protection status—\$2,000;
- (b) in any other case—\$1,000.

“(3) It is a defence to a prosecution for an offence under subsection (1) if it is established that the defendant believed on reasonable grounds that the alleged danger did not exist.

“(4) It is a defence to a prosecution for an offence under subsection (1) or (2) if it is established that the defendant believed on reasonable grounds that the place, structure or object alleged to have been interfered with—

- (a) was not a nest; or
- (b) was not in the immediate environment of a nest;

as the case may be.

“(5) In this section—

‘interfere with’ includes damage or destroy;

‘nest’, in relation to an animal that is wildlife, includes—

- (a) a particular place, structure or object that is being, or has been within the previous 2 years, used as a nesting place by the animal; or
- (b) a partially constructed nest that has not been used as a nesting place by the animal.”.

Killing animals

8. Section 25 of the Principal Act is amended by omitting from subsection (1) all the words after “permit” and substituting—

“, kill an animal that is wildlife.

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.”.

Taking animals

9. Section 26 of the Principal Act is amended—

- (a) by omitting from subsection (1) all the words after “permit” and substituting—

“or licence, take an animal that is wildlife, whether dead or alive.

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.”; and

- (b) by omitting paragraph (2) (a).

Keeping animals

10. Section 27 of the Principal Act is amended—

- (a) by omitting from subsection (1) all the words after “permit” and substituting—

“or licence, keep an animal other than an exempt animal.

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.”; and
- (b) by omitting subsections (2) and (4).

Selling animals

11. Section 28 of the Principal Act is amended—

- (a) by omitting from subsection (1) all the words after “permit” and substituting—

“or licence, sell an animal other than an exempt animal.

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.”; and
- (b) by omitting subsection (2).

Import and export of animals

12. Section 29 of the Principal Act is amended—

- (a) by omitting from subsection (1) all the words after “permit” and substituting—

“or licence, import into or export from the Territory an animal other than an exempt animal.

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.”; and
- (b) by omitting subsection (2).

Dealing in live fish

13. Section 30 of the Principal Act is amended—

- (a) by omitting from subsection (1) “held by him” and substituting “or licence”;
- (b) by inserting in subsections (1) and (2) “a” before “live” (wherever occurring);
- (c) by omitting the penalty at the foot of subsection (1) and substituting the following penalty:

“Penalty:

- (a) if the fish has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.”;
- (d) by omitting paragraphs (2) (a) and (b); and
- (e) by omitting from paragraph (2) (c) “held by him” and substituting “granted”.

Repeal

14. Division 2 of Part III of the Principal Act is repealed.

Omission of heading

15. The heading to Division 3 of Part III of the Principal Act is omitted.

Repeal

16. Section 35 of the Principal Act is repealed.

Import—inspection

17. Section 36 of the Principal Act is amended—

- (a) by omitting from subsections (1) and (2) “held by him” (wherever occurring);
- (b) by omitting from subsection (1) “he” and substituting “the person”;
- (c) by omitting the penalty at the foot of subsection (1) and substituting the following penalty:
“Penalty: \$2,000.”;
- (d) by inserting in subsections (2) and (3) “or she” after “he” (wherever occurring); and
- (e) by inserting at the end the following subsection:
“(4) In this section, ‘animal’ includes any live fish.”.

Sale after import

18. Section 37 of the Principal Act is amended—

- (a) by omitting “held by him”;
- (b) by omitting “he” (wherever occurring) and substituting “the person”;
- (c) by omitting “that he is the holder of a licence authorising him to do so” and substituting “the provisions of the licence”;
- (d) by omitting the penalty at the foot of the section and substituting the following penalty:
“Penalty: \$2,000.”; and
- (e) by inserting at the end the following subsection:
“(2) In this section, ‘animal’ includes any live fish.”.

Export—inspection

19. Section 38 of the Principal Act is amended—

- (a) by omitting from subsection (1) “him to export from the Territory an animal that is wildlife” and substituting “the export from the Territory of an animal”;
- (b) by omitting from paragraph (1) (a) “he” and substituting “the person.”; and
- (c) by omitting the penalty at the foot of subsection (2) and substituting the following penalty:

“Penalty: \$2,000.”.

Omission of heading

20. The heading to Division 4 of Part III of the Principal Act is omitted.

Release of animals from captivity

21. Section 39 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsections:

“(1) A person shall not, except in accordance with a permit, release an animal that is wildlife from captivity if the release places it in greater danger of injury or death than if it had been kept in captivity.

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.

“(1A) A person shall not, except in accordance with a permit, release an animal that is not wildlife from captivity if the release places an animal that is wildlife in danger of injury or death.

Penalty: \$2,000.

“(1B) A person shall not, except in accordance with a permit, release an animal from captivity.

Penalty: \$1,000.

“(1C) It is a defence to a prosecution for an offence under subsection (1) if it is established that the defendant believed on reasonable grounds that the release of the animal did not place the animal in greater danger of injury or death than if it had been kept in captivity.

“(1D) It is a defence to a prosecution for an offence under subsection (1A) if it is established that the defendant believed on reasonable grounds that the release of the animal did not place an animal that is wildlife in danger of injury or death.”; and

- (b) by omitting from subsection (2) “Sub-section (1) does” and substituting “Subsections (1) and (1B) do”.

Repeal

- 22. Section 41 of the Principal Act is repealed.

Picking of plants

- 23. Section 42 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) A person shall not, except in accordance with a permit or licence, pick a plant that—

- (a) has special protection status;
- (b) is restricted plant wildlife; or
- (c) is wildlife growing on unleased land.

Penalty:

- (a) if the plant has special protection status—\$10,000 or imprisonment for 5 years, or both;
 - (b) if the plant does not have special protection status but the court finds that the defendant intended to sell it—\$5,000 or imprisonment for 2 years, or both;
 - (c) in any other case—\$2,500 or imprisonment for 1 year, or both.
- (b) by omitting from paragraph (2) (f) “in the City Area”; and

- (c) by inserting in paragraph (2) (f) “or her” after “his”.

Preservation of timber

24. Section 43 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “to him”;
- (b) by omitting from subsection (2) “Subject to this section, a” and substituting “A”;
- (c) by omitting from paragraph (2) (b) “held by him”;
- (d) by omitting the penalty at the foot of subsection (2) and substituting the following penalty:

“Penalty: \$1,000.”;
- (e) by omitting from subsection (3) “a person who, being the occupier of land” and substituting “an occupier of land who”;
- (f) by omitting from paragraph (4) (a) “or” (second occurring); and
- (g) by omitting paragraph (4) (b) and substituting the following paragraphs:
 - “(b) a person who accidentally damages or destroys timber while acting in accordance with a permit or licence;
 - (c) a conservation officer; or
 - (d) a person who fells or removes timber for conservation purposes who is authorised to do so by the Conservator.”.

Dealing in plants

25. Section 44 of the Principal Act is amended—

- (a) by omitting from subsection (1) “held by him”; and
- (b) by omitting the penalty at the foot of subsection (1) and substituting the following penalty:

“Penalty:

 - (a) if the plant has special protection status—\$10,000 or imprisonment for 5 years, or both;

- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.”.

Plant tags

26. Section 45 of the Principal Act is amended—

- (a) by inserting in subsection (1) “, or that has special protection status,” after “wildlife”; and
- (b) by omitting the penalty at the foot of subsection (1) and substituting the following penalty:

“Penalty:

- (a) if the plant has special protection status—\$5,000; and
- (b) in any other case—\$2,500.”.

Insertion

27. Before section 46 of the Principal Act, the following section is inserted in Part V:

Interpretation

“45A. In this Part—

‘wildlife’ includes any live fish.”.

Conservator’s advice

28. Section 47 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (a) “; and”; and
- (b) by omitting paragraph (2) (b).

Conservator’s directions

29. Section 48 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) the words after “person”;
- (b) by omitting from paragraph (1) (c) “concerning the use of the substance”;
- (c) by omitting from subsection (2) “refuse or” and substituting “, without reasonable excuse,”; and

- (d) by omitting the penalty at the foot of subsection (2) and substituting the following penalty:

“Penalty for contravention of subsection (2):

- (a) if the notice relates to the protection and conservation of wildlife which has special protection status—\$5,000;
- (b) in any other case—\$2,500.”.

Diseased wildlife

30. Section 49 of the Principal Act is amended—

- (a) by omitting subsection (1);
- (b) by omitting from subsection (4) “the Conservator” and substituting “a conservation officer”;
- (c) by omitting from subsection (5) “The Conservator” and substituting “A conservation officer”;
- (d) by omitting from subsection 5 “him” and substituting “the officer”; and
- (e) by inserting in paragraph (5) (a) “or she” after “he”.

Issue of notices—relevant considerations

31. Section 50 of the Principal Act is amended—

- (a) by omitting subsection (1);
- (b) by omitting from subparagraph (2) (c) (i) “and”; and
- (c) by omitting subparagraph (2) (c) (ii) and substituting the following subparagraphs:
 - “(ii) the significant ecosystems of the Territory, New South Wales and Australia; and
 - (iii) in the case of a species of wildlife the members of which have special protection status—the world-wide survival of the wild populations of the species; and”.

Access to reserved areas

32. Section 53 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or she” after “he”;

- (b) by omitting the penalty at the foot of subsection (3) and substituting the following penalty:

“Penalty: \$2,000.”; and

- (c) by omitting from paragraph (4) (b) “his”.

Signs in reserved areas

33. Section 54 of the Principal Act is amended—

- (a) by omitting from subsection (2) “or fail to comply with”; and
- (b) by omitting the penalty at the foot of subsection (2) and substituting the following penalty:

“Penalty: \$500.”.

Rubbish and fires in reserved areas

34. Section 55 of the Principal Act is amended—

- (a) by omitting the penalty at the foot of subsection (1) and substituting the following penalty:
- (b) by omitting the penalty at the foot of subsection (2) and substituting the following penalty:

“Penalty: \$500.”;

“Penalty: \$1,000.”; and

- (c) by omitting from paragraph (3) (b) “he” and substituting “the fire”.

Activities prohibited in reserved areas without the Conservator’s consent

35. Section 56 of the Principal Act is amended—

- (a) by omitting the penalty at the foot of subsection (1) and substituting the following penalty:
- (b) by omitting from subsection (2) “have in his possession” and substituting “possess”;

- (c) by omitting the penalty at the foot of subsection (2) and substituting the following penalty:

“Penalty: \$500.”;

- (d) by omitting from paragraph (3) (a) “man-made” and substituting “constructed”;

- (e) by omitting the penalty at the foot of subsection (3) and substituting the following penalty;

“Penalty: \$1,000.”;

- (f) by omitting from subsection (4) “his”; and

- (g) by inserting in subsection (5) “or her” after “his”.

Taking animals and plants into reserved areas

36. Section 57 of the Principal Act is amended—

- (a) by omitting the penalty at the foot of subsection (1) and substituting the following penalty:

“Penalty: \$500.”;

- (b) by inserting in subsection (2) “or her” after “his”; and

- (c) by omitting from subsection (3) “his”.

Powers of conservation officers in reserved areas

37. Section 58 of the Principal Act is amended—

- (a) by inserting in paragraphs (1) (a) and (b) and subsection (2) “or she” after “he” (wherever occurring);

- (b) by inserting in subsections (2) and (3) “or her” after “him”;

- (c) by omitting from subsection (3) “refuse or fail to comply with” and substituting “contravene”;

- (d) by omitting the penalty at the foot of subsection (3) and substituting the following penalty:

“Penalty: \$500.”; and

- (e) by omitting from subsection (4) “refusing or failing to comply with” and substituting “contravening”.

Offences in wilderness zones

38. Section 59 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty: \$1,000.”.

Applications for permits and licences

39. Section 61 of the Principal Act is amended—

(a) by omitting from paragraph (1) (k) “and”; and

(b) by inserting after paragraph (1) (k) the following paragraphs:

“(ka) in the case of an application relating to wildlife which has special protection status—

(i) shall state that the wildlife to which the application relates has special protection status; and

(ii) shall specify on which of the grounds set out in subsection 63A (1) the permit is being sought;

(kb) where an application relating to wildlife which has special protection status is being sought on the ground set out in paragraph 63A (1) (a)—

(i) shall state the applicant’s place of employment and relevant qualifications;

(ii) shall describe any relevant studies that have been or are being undertaken by the applicant; and

(iii) shall supply any other relevant information about the purpose for which the application is made; and”.

Insertion

40. After section 63 of the Principal Act, the following section is inserted:

Grant of permits and licences—wildlife having special protection status

“63A. (1) The Conservator shall not grant a permit or licence authorising a person to do any act in relation to wildlife which has special protection status except on one of the following grounds:

(a) that the act is required to be done for a scientific, educational, propagative or any other similar purpose;

- (b) that the act is required to be done for the purpose of protecting persons or property;
- (c) where the act relates to the killing or taking of animals—that the act will form part of the hunting of such animals during an established hunting season when such animals are traditionally killed or taken;
- (d) where the act relates to the hunting or gathering of a species of wildlife or the seeds of such a species—that the inhabitants of a specified region have traditionally carried out such hunting or gathering activities for the purpose of providing food or clothing for the hunter or gatherer and his or her family, or for cultural purposes, and that the applicant is such an inhabitant who intends to carry out the relevant act for such purposes.

“(2) In deciding whether to grant a permit or licence on the ground specified in paragraph (1) (c), the Conservator shall have regard to the need to maintain such annual reproduction of the relevant species of wildlife as is required for the long-term survival of the species.

“(3) In deciding whether to grant a permit or licence on the ground specified in paragraph (1) (d), the Conservator shall have regard to the need to preserve the relevant species of wildlife, and to maintain optimum numbers of that species for its long-term survival.”.

Grant of permits and licences—relevant considerations

41. Section 65 of the Principal Act is amended—

- (a) by omitting from subparagraph (a) (i) “and”;
- (b) by omitting from subparagraph (a) (ii) “major” and substituting “significant”;
- (c) by inserting after subparagraph (a) (ii) the following word and subparagraph:
 - “; and (iii) in the case of a permit or licence relating to a species of wildlife the members of which have special protection status—the world-wide survival of the wild populations of the species;”;
- (d) by omitting from paragraph (m) “and”; and

(e) by adding at the end the following word and paragraph:

“; and (o) in the case of an application for a permit or licence relating to wildlife having special protection status—each ground on which the Conservator declared the wildlife to have special protection status.”.

Contents of permits and licences

42. Section 66 of the Principal Act is amended—

(a) by omitting from paragraph (m) “and”; and

(b) by adding at the end the following word and paragraph:

“; and (o) in the case of a permit or licence relating to a species of wildlife the members of which have special protection status—the ground specified in subsection 63A (1) on which the permit or licence is granted.”.

Production of permits and licences

43. Section 70 of the Principal Act is amended—

(a) by omitting “his” and substituting “the”; and

(b) by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty:

(a) if the permit or licence relates to an animal with special protection status—\$1,000;

(b) in any other case—\$500.”.

Records to be kept by permit holders

44. Section 71 of the Principal Act is amended—

(a) by omitting all the words from and including “A person” to and including “a permit,” and substituting “The holder of a permit who”;

(b) by omitting paragraph (a) and substituting the following paragraph:

“(a) more than 5 animals, not including exempt animals;”;

- (c) by omitting from paragraph (b) “wildlife,” and substituting “wildlife; or”;
- (d) by inserting after paragraph (b) the following paragraph:
 - “(c) an animal which has special protection status;”;
- (e) by omitting the penalty at the foot of the section and substituting the following penalty:
 - “Penalty:
 - (a) if an animal which has special protection status is kept—\$1,000;
 - (b) in any other case—\$500.”.

Records to be kept by licence holders

45. Section 72 of the Principal Act is amended—

- (a) by omitting from subsection (1) the words from and including “A person” to and including “5 or 6,” and substituting “A holder of a licence relating to animals who keeps an animal, not being an exempt animal”;
- (b) by omitting from subsection (2) the words from and including “A person” to and including “live fish,” (first occurring) and substituting “A holder of a licence relating to live fish who”;
- (c) by omitting subsection (3) and substituting the following subsection:
 - “(3) A holder of a licence relating to plants that are wildlife who sells or exports from the Territory such plants shall keep such records as are prescribed.”;
- (d) by omitting the penalty at the foot of the section and substituting the following penalty:
 - “Penalty:
 - (a) if the animal or fish kept, or plant sold or exported, as the case requires, has special protection status—\$1,000;
 - (b) in any other case—\$500.”.

Production of records

46. Section 73 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty:

- (a) if the records relate to an animal with special protection status—\$1,000;
- (b) in any other case—\$500.”.

Insertion

47. After section 74 of the Principal Act the following section is inserted in Part VIII:

Notification of decisions

“74A. (1) Where the Conservator or a conservation officer makes a decision referred to in subsection 74 (1) or (2), as the case requires, that person shall, within 28 days after the date of the decision, cause notice in writing of the decision to be given to the person whose interests are affected by the decision.

“(2) A notice shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Australian Capital Territory Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

“(3) The validity of a decision referred to in subsection (1) shall not be taken to have been affected by a failure to comply with subsection (2).”.

Exemptions for conservation officers

48. Section 76 of the Principal Act is amended—

- (a) by inserting “24,” after “section”; and
- (b) by inserting “or her” after “his”.

Powers of entry and search

49. Section 77 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of the definition of “animal” in subsection (1) all the words from and including “, whether” to and including “Schedule 5 or 6” and substituting “other than an exempt animal”;
- (b) by inserting in paragraph (b) of the definition of “animal” in subsection (1) “a” before “live”;
- (c) by inserting in paragraphs (3) (a) and (b) “or she” after “he”;
- (d) by inserting in subsection (4) “or her” after “him”;
- (e) by inserting in subsection (4) “or she” after “he” (wherever occurring); and
- (f) by omitting subsection (5) and substituting the following subsection:

“(5) A person shall not, without reasonable excuse—

- (a) obstruct or hinder a conservation officer in the exercise of his or her powers under this section; or
- (b) except where paragraph (4) (c) applies—contravene a requirement made by a conservation officer under this section.

Penalty for contravention of subsection (5): \$2,000 or imprisonment for 12 months, or both.”.

Further powers of conservation officers

50. Section 78 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) and subsection (2) “or she” after “he” (wherever occurring);
- (b) by omitting from paragraph (1) (a) “his” and substituting “the person’s”;
- (c) by inserting in subsection (2) “or her” after “him”; and

- (d) by omitting subsection (3) and substituting the following subsection:

“(3) Subject to subsection (2), a person shall not, without reasonable excuse, contravene a requirement made by a conservation officer under subsection (1).

Penalty for contravention of subsection (3): \$500.”.

Insertion

51. After section 78 of the Principal Act the following section is inserted:

Seizure and release of bird wildlife

“78A. (1) Where—

- (a) a person is found by a conservation officer to be in possession of a bird that is wildlife, not being—
 - (i) a bird that is on premises occupied by the person; or
 - (ii) an exempt animal;
- (b) the conservation officer suspects on reasonable grounds that the bird is in the possession of the person in contravention of this Act;
- (c) the person does not, upon being requested to do so by the conservation officer, produce for inspection by the conservation officer a permit or licence indicating that the person is entitled to have the bird in his or her possession; and
- (d) the conservation officer believes on reasonable grounds that—
 - (i) the bird is suffering pain or is in a state of distress; or
 - (ii) the keeping of the bird in captivity, or in captivity of the kind in which it is being kept by the person, is likely to endanger the life of, or cause distress or otherwise be harmful to, the bird;

the conservation officer may, subject to subsection (2), seize the bird and, if the conservation officer believes on reasonable grounds that the welfare of the bird can be best provided for by releasing the bird from captivity, he or she may release it.

“(2) A conservation officer is not entitled to seize a bird under subsection (1) if, on the request of the person in whose possession the bird is found, the conservation officer fails to produce, for inspection by that person, the identity card issued to the conservation officer under subsection 11 (2).”.

Seizure and forfeiture of animals and plants

52. Section 79 of the Principal Act is amended—

- (a) by omitting from subsection (1) the definition of “animal” and substituting the following definition:

“ ‘animal’ includes a live fish;”; and

- (b) by inserting in subsection (2) “or she” after “he”.

Release of animals—court orders

53. Section 80 of the Principal Act is amended—

- (a) by inserting before subsection (1) the following subsection:

“(1A) In this section, ‘animal’ includes a live fish.”; and

- (b) by omitting from subsection (6) “him” and substituting “the person”.

Insertion

54. After section 80 of the Principal Act, the following sections are inserted:

Conduct of directors, servants and agents

“80A. (1) Where, in proceedings for an offence, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had that state of mind.

“(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

“(3) Where, in proceedings for an offence, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had that state of mind.

“(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

“(5) Where—

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

“(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

“(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, another Territory or a State.

“(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

“(9) In this section, ‘offence’ means an offence against this Act or the regulations.

Corporations—penalties

“80B. Where a body corporate is convicted of an offence against this Act or the regulations, the penalty that the Court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the Court could impose as a pecuniary penalty for that offence.”.

Regulations

55. Section 84 of the Principal Act is amended by omitting from paragraph (1) (b) “\$200” and substituting “\$500”.

Repeal

56. Part X of the Principal Act is repealed.

Repeal

57. Schedules 2 to 6, inclusive, of the Principal Act are repealed.

Transitional

58. Upon application in accordance with subsection 61 (1) of the Principal Act by a person who has or had lawful possession of an animal other than an exempt animal, the Conservator shall, notwithstanding Part VII of the Principal Act, grant to the person a permit to keep any progeny of the animal born before the commencement of this Act.

NOTE

1. Ordinance No. 20, 1980 as amended by Nos. 22 and 62, 1982; No. 43, 1983; No. 72, 1984; No. 67, 1985; No. 65, 1986; No. 1, 1987; No. 31, 1988; Nos. 21 and 38, 1989; Commonwealth Act No. 74, 1981.

[Minister’s presentation speech made in Assembly on 31 May 1989.]

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