

CONCURRENCE COPY

CRIMES (ENDANGERED FAUNA) AMENDMENT BILL, 1983

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the National Parks and Wildlife (Amendment) Bill, 1983.

The object of this Bill is to amend the Crimes Act, 1900, to make, in respect of certain endangered fauna, provision in that Act for offences in terms similar to those provided by sections 99 and 101 of the National Parks and Wildlife Act, 1974, in respect of other fauna.

The endangered fauna the subject of this Bill are fauna whose species are more immediately threatened with extinction than those the subject of the offence provisions of the National Parks and Wildlife Act, 1974, referred to above.

CRIMES (ENDANGERED FAUNA) AMENDMENT BILL, 1983

No. , 1983.

A BILL FOR

An Act to amend the Crimes Act, 1900, to provide for offences in relation to fauna in danger of extinction.

[MR BEDFORD—21 *September*, 1983.]

Crimes (Endangered Fauna) Amendment.

BE it enacted by the Queen'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:—

5 Short title.

1. This Act may be cited as the "Crimes (Endangered Fauna) Amendment Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on the date of assent to this Act or the date of assent to the National Parks and Wildlife (Amendment) Act, 1983, whichever is the later.

Amendment of Act No. 40, 1900.

15 3. The Crimes Act, 1900, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

20 (1) Section 1—

After the matter relating to Part V, insert:—

**PART VI.—OFFENCES RELATING TO FAUNA IN DANGER OF
EXTINCTION.—ss. 299–307.**

Crimes (Endangered Fauna) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) Part VI—

After Part V, insert:—

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PART VI.

OFFENCES RELATING TO FAUNA IN DANGER OF EXTINCTION.

Interpretation: Pt. VI.

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299. (1) Except in so far as a contrary intention appears, words and expressions used in this Part have the meaning (if any) assigned to them in the National Parks and Wildlife Act, 1974.

(2) A reference in this Part to an offence arising under this Part, or arising under a particular provision of this Part, includes a reference to an attempt to commit the offence to which the reference is made.

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Fauna to which this Part applies.

300. This Part applies to fauna of a species named in Part 3 or 4 of Schedule 12 to the National Parks and Wildlife Act, 1974.

Taking or killing of endangered fauna.

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301. (1) Any person who—

(a) takes or kills any fauna to which this Part applies; or

(b) uses any animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of taking or killing any such fauna,

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shall be liable to imprisonment for 5 years or to pay a fine not exceeding \$10,000, or both.

Crimes (Endangered Fauna) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 (2) Where the provisions of any Act or instrument under any Act (other than the National Parks and Wildlife Act, 1974, or any instrument thereunder) authorise or require anything to be done that would constitute an offence arising under subsection (1)—

- (a) the provisions of this section prevail; and
- 10 (b) a person shall not be convicted of an offence against any such Act or instrument by reason of a failure to comply therewith in so far as compliance therewith would constitute an offence arising under subsection (1).

(3) A person shall not be convicted of an offence under subsection (1) if the person proves—

- 15 (a) that the animal concerned was in some person's lawful possession and that the act constituting the offence was, having regard to the circumstances of the case, reasonably necessary for promoting the welfare of the animal; or
- 20 (b) that the animal concerned had strayed or escaped from some person's lawful possession and that the act constituting the offence was, having regard to the circumstances of the case, reasonably necessary for securing the return of the animal.

Buying, selling or possessing endangered fauna.

25 302. (1) Any person who buys, sells or has in the person's possession or control any fauna to which this Part applies shall be liable to imprisonment for 5 years or to pay a fine not exceeding \$10,000, or both.

(2) A person shall not be convicted of an offence arising under subsection (1) in respect of the possession of any fauna, if the person satisfies the court—

- 30 (a) that the person believed, on reasonable grounds, that the person had obtained the fauna lawfully;

Crimes (Endangered Fauna) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 (b) that the fauna is the progeny of any fauna which the person believed, on reasonable grounds, had been lawfully obtained by the person, being progeny born after the lastmentioned fauna was so obtained; or

(c) that—

10 (i) the animal concerned was incapable of fending for itself in its natural habitat;

(ii) the person notified the Director of National Parks and Wildlife, in the manner and within the time prescribed for the purposes of section 101 (5) (c) (ii) of the National Parks and Wildlife Act, 1974, that the animal came into the person's possession; and

15 (iii) the person complied with any direction given to the person with respect to the animal by the Director of National Parks and Wildlife.

20 (3) A reference in this section to a person's having fauna in the person's possession includes a reference to the person's having fauna in a vehicle, building, lodging, apartment, field or other place whether belonging to or occupied by the person, and whether the fauna is then had or placed for the person's own use or the use of another.

Defence of authority conferred by licence, etc.

25 303. A person shall not be convicted of an offence arising under this Part if the person satisfies the court that the person believed, on reasonable grounds, that the act or the state of affairs constituting the offence was done or existed under and in accordance with or by
30 virtue of the authority conferred by any licence or certificate issued under Division 2 of Part IX of the National Parks and Wildlife Act, 1974.

Crimes (Endangered Fauna) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Fines imposed by the District Court.**

5 304. Where a person is convicted, in the District Court, of an offence arising under this Part—

(a) the Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence; and

(b) any fine so imposed—

10 (i) is payable to the registrar for such proclaimed place, within the meaning of the District Court Act, 1973, as the Court directs;

15 (ii) if unpaid may, if the Court so orders, be enforced, subject to rules of Court, as if (for the purposes of that Act) the amount of the fine were a judgment debt, the person upon whom the fine was imposed were a judgment debtor and the Director of National Parks and Wildlife were a judgment creditor.

Appropriation of fines.

20 305. The amount of any fine imposed and recovered in respect of an offence arising under this Part shall be paid into the Fund referred to in section 137 of the National Parks and Wildlife Act, 1974.

Compensation.

25 306. (1) The provisions of section 177 (1) of the National Parks and Wildlife Act, 1974, apply to and in respect of an offence arising under this Part in the same way as those provisions apply to and in respect of an offence against that Act.

Crimes (Endangered Fauna) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 (2) An order for compensation made, by virtue of sub-section (1), in respect of an offence arising under this Part may be enforced, and the amount payable under the order may be recovered, as if it were a fine imposed for the offence by the court making the order.

Proceedings and evidence.

10 307. The provisions of sections 179 and 181 of the National Parks and Wildlife Act, 1974, apply to and in respect of proceedings for an offence arising under this Part in the same way as those provisions apply to and in respect of proceedings for an offence against that Act.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

(40c)



**CRIMES (ENDANGERED FAUNA) AMENDMENT ACT,
1983, No. 184**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 184, 1983.

An Act to amend the Crimes Act, 1900, to provide for offences in relation to fauna in danger of extinction. [Assented to, 31st December, 1983.]

Crimes (Endangered Fauna) Amendment.

BE it enacted by the Queen'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:—

Short title.

1. This Act may be cited as the "Crimes (Endangered Fauna) Amendment Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on the date of assent to this Act or the date of assent to the National Parks and Wildlife (Amendment) Act, 1983, whichever is the later.

Amendment of Act No. 40, 1900.

3. The Crimes Act, 1900, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

(1) Section 1—

After the matter relating to Part V, insert:—

PART VI.—OFFENCES RELATING TO FAUNA IN DANGER OF
EXTINCTION.—ss. 299–307.

Crimes (Endangered Fauna) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) Part VI—

After Part V, insert:—

PART VI.

OFFENCES RELATING TO FAUNA IN DANGER OF EXTINCTION.

Interpretation: Pt. VI.

299. (1) Except in so far as a contrary intention appears, words and expressions used in this Part have the meaning (if any) assigned to them in the National Parks and Wildlife Act, 1974.

(2) A reference in this Part to an offence arising under this Part, or arising under a particular provision of this Part, includes a reference to an attempt to commit the offence to which the reference is made.

Fauna to which this Part applies.

300. This Part applies to fauna of a species named in Part 3 or 4 of Schedule 12 to the National Parks and Wildlife Act, 1974.

Taking or killing of endangered fauna.

301. (1) Any person who—

- (a) takes or kills any fauna to which this Part applies; or
- (b) uses any animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of taking or killing any such fauna,

shall be liable to imprisonment for 5 years or to pay a fine not exceeding \$10,000, or both.

Crimes (Endangered Fauna) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) Where the provisions of any Act or instrument under any Act (other than the National Parks and Wildlife Act, 1974, or any instrument thereunder) authorise or require anything to be done that would constitute an offence arising under subsection (1)—

- (a) the provisions of this section prevail; and
- (b) a person shall not be convicted of an offence against any such Act or instrument by reason of a failure to comply therewith in so far as compliance therewith would constitute an offence arising under subsection (1).

(3) A person shall not be convicted of an offence under subsection (1) if the person proves—

- (a) that the animal concerned was in some person's lawful possession and that the act constituting the offence was, having regard to the circumstances of the case, reasonably necessary for promoting the welfare of the animal; or
- (b) that the animal concerned had strayed or escaped from some person's lawful possession and that the act constituting the offence was, having regard to the circumstances of the case, reasonably necessary for securing the return of the animal.

Buying, selling or possessing endangered fauna.

302. (1) Any person who buys, sells or has in the person's possession or control any fauna to which this Part applies shall be liable to imprisonment for 5 years or to pay a fine not exceeding \$10,000, or both.

(2) A person shall not be convicted of an offence arising under subsection (1) in respect of the possession of any fauna, if the person satisfies the court—

- (a) that the person believed, on reasonable grounds, that the person had obtained the fauna lawfully;

Crimes (Endangered Fauna) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

- (b) that the fauna is the progeny of any fauna which the person believed, on reasonable grounds, had been lawfully obtained by the person, being progeny born after the lastmentioned fauna was so obtained; or
- (c) that—
- (i) the animal concerned was incapable of fending for itself in its natural habitat;
 - (ii) the person notified the Director of National Parks and Wildlife, in the manner and within the time prescribed for the purposes of section 101 (5) (c) (ii) of the National Parks and Wildlife Act, 1974, that the animal came into the person's possession; and
 - (iii) the person complied with any direction given to the person with respect to the animal by the Director of National Parks and Wildlife.

(3) A reference in this section to a person's having fauna in the person's possession includes a reference to the person's having fauna in a vehicle, building, lodging, apartment, field or other place whether belonging to or occupied by the person, and whether the fauna is then had or placed for the person's own use or the use of another.

Defence of authority conferred by licence, etc.

303. A person shall not be convicted of an offence arising under this Part if the person satisfies the court that the person believed, on reasonable grounds, that the act or the state of affairs constituting the offence was done or existed under and in accordance with or by virtue of the authority conferred by any licence or certificate issued under Division 2 of Part IX of the National Parks and Wildlife Act, 1974.

Crimes (Endangered Fauna) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Fines imposed by the District Court.**

304. Where a person is convicted, in the District Court, of an offence arising under this Part—

- (a) the Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence; and
- (b) any fine so imposed—
 - (i) is payable to the registrar for such proclaimed place, within the meaning of the District Court Act, 1973, as the Court directs;
 - (ii) if unpaid may, if the Court so orders, be enforced, subject to rules of Court, as if (for the purposes of that Act) the amount of the fine were a judgment debt, the person upon whom the fine was imposed were a judgment debtor and the Director of National Parks and Wildlife were a judgment creditor.

Appropriation of fines.

305. The amount of any fine imposed and recovered in respect of an offence arising under this Part shall be paid into the Fund referred to in section 137 of the National Parks and Wildlife Act, 1974.

Compensation.

306. (1) The provisions of section 177 (1) of the National Parks and Wildlife Act, 1974, apply to and in respect of an offence arising under this Part in the same way as those provisions apply to and in respect of an offence against that Act.

Crimes (Endangered Fauna) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) An order for compensation made, by virtue of subsection (1), in respect of an offence arising under this Part may be enforced, and the amount payable under the order may be recovered, as if it were a fine imposed for the offence by the court making the order.

Proceedings and evidence.

307. The provisions of sections 179 and 181 of the National Parks and Wildlife Act, 1974, apply to and in respect of proceedings for an offence arising under this Part in the same way as those provisions apply to and in respect of proceedings for an offence against that Act.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
*By Deputation from
His Excellency the Governor.*

*Government House,
Sydney, 31st December, 1983.*

