

HOUSE OF REPRESENTATIVES

(As read a first time)

**NATIONAL PARKS AND WILDLIFE CONSERVATION
AMENDMENT BILL 1992**

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1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 25 June 1992

(Parliamentary Secretary to the Minister for Defence)

A BILL

FOR

An Act to amend the *National Parks and Wildlife Conservation Act 1975*

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *National Parks and Wildlife Conservation Amendment Act 1992*.

5 **(2)** In this Act, "**Principal Act**" means the *National Parks and Wildlife Conservation Act 1975*¹.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. Section 3 of the Principal Act is amended:

(a) by inserting after paragraph (c) of the definition of “wildlife” in subsection (1) the following paragraph:

“(ca) animals and plants that are indigenous to the Australian fishing zone;” 5

(b) by inserting in paragraph (d) of the definition of “wildlife” in subsection (1) “, the Australian fishing zone” after “Australian coastal sea”;

(c) by inserting in subsection (1) the following definitions: 10

“**‘Australian aircraft’** means an aircraft that is in Australian control or is registered in accordance with the Air Navigation Regulations as an Australian aircraft;

‘Australian fishing zone’ has the same meaning as in the *Fisheries Management Act 1991*; 15

‘Australian national’ means:

(a) an Australian citizen; or

(b) a body corporate established by or under a law of the Commonwealth, of a State or of a Territory;

‘Australian vessel’ means a vessel that is in Australian control or is an Australian boat within the meaning of the *Fisheries Management Act 1991*; 20

‘foreign national’ means a person other than an Australian national;

‘foreign vessel’ means a vessel other than an Australian vessel; 25

‘in Australian control’ means in the control or possession of one or more of any of the following:

(a) the Commonwealth (including an arm of the Defence Force) or a State or Territory;

(b) a corporation established for a public purpose by or under a law of the Commonwealth or of a State or Territory; 30

(c) a company or other body corporate incorporated under a law of a State or Territory, being a company or other body corporate in which the Commonwealth has a controlling interest; 35

‘seize’ includes secure against interference;

‘wildlife inspector’ means a person appointed as a wildlife inspector under section 38A.”;

(d) by adding at the end the following subsection: 40

“(4) A reference in this Act (other than section 65) to an offence against this Act includes a reference to an offence

against section 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914* that relates to this Act.”.

Heading to Part IV

5 4. The heading to Part IV of the Principal Act is amended by adding at the end “**AND ENFORCEMENT**”.

Insertion of Division heading

5. Before section 33 of the Principal Act the following heading is inserted:

“Division 1—Administration”.

10 **Insertion of new section**

6. After section 38 of the Principal Act the following section is inserted:

Appointment of wildlife inspectors

“38A. The Director may, by instrument in writing, appoint:

- 15 (a) an officer of, or employee in, the Service; or
(b) an officer or employee referred to in section 36;
as a wildlife inspector.

Note: Section 44F confers powers on wildlife inspectors.”.

Identity cards

7. Section 39 of the Principal Act is amended:

- 20 (a) by omitting from subsection (1) “and to each ranger” and substituting “, to each ranger and to each wildlife inspector”;
(b) by omitting from subsection (2) “or a ranger” and substituting “, a ranger or a wildlife inspector”.

Repeal of sections

25 8. Sections 40 to 44 of the Principal Act are repealed.

Insertion of Division

9. After Division 1 of Part IV of the Principal Act the following Division is inserted:

“Division 2—Enforcement

30 **Extent of powers**

“40.(1) The powers conferred by this Division may be exercised anywhere within or outside Australia in relation to:

- (a) Australian nationals; or
(b) Australian aircraft and Australian vessels; or

(c) the members of the crew (including persons in charge) of Australian aircraft and Australian vessels.

“(2) Subject to this section, the powers conferred by this Division may be exercised (other than in relation to a person, aircraft or vessel of a kind mentioned in subsection (1)) anywhere:

- (a) in Australia; or
- (b) on or in the Australian coastal sea; or
- (c) on, or in the waters above, the continental shelf of Australia; or
- (d) on or in the Australian fishing zone.

“(3) On, or in the waters above, the continental shelf of Australia, the powers conferred by this Division may only be exercised, as provided for in subsection (2), in relation to an offence against this Act committed:

- (a) on, or in the waters above, the continental shelf of Australia; or
- (b) in a park, reserve or conservation zone.

“(4) On or in the Australian fishing zone, the powers conferred by this Division may only be exercised, as provided for in subsection (2), in relation to an offence against this Act committed on or in the Australian fishing zone.

“(5) Nothing in subsection (2), (3) or (4) affects the operation of section 44E.

Note: Regulations made under section 71 may confer additional powers on wardens, rangers and wildlife inspectors.

Arrest without warrant

“41.(1) A warden may, without warrant, arrest a person if the warden has reasonable grounds to believe:

- (a) that the person has committed an offence against this Act; and
- (b) that proceedings against the person by summons would not be effective.

“(2) A warden (other than a member of a police force who is in uniform) who arrests a person under subsection (1) must:

- (a) in the case of a member of a police force—produce, for inspection by the person, written evidence of the fact that the warden is a member of a police force; or
- (b) in any other case—produce the warden’s identity card for inspection by the person.

“(3) Nothing in this section prevents the arrest of a person under any other law.

Confiscation and forfeiture

5 “42.(1) If a court convicts a person of an offence against this Act, the court may order the forfeiture to the Commonwealth of any vehicle, aircraft, vessel or article used or otherwise involved in the commission of the offence.

“(2) In considering whether it is appropriate to make such an order in respect of a vehicle, aircraft, vessel or article, the court may have regard to:

- 10 (a) any hardship that may reasonably be expected to be caused to any person by the operation of such an order; and
(b) the use that is ordinarily made, or was intended to be made, of the vehicle, aircraft, vessel or article; and
(c) the gravity of the offence concerned.

“(3) A warden may:

- 15 (a) seize any vehicle, aircraft, vessel or article that the warden reasonably believes to have been used or otherwise involved in the commission of an offence against this Act; and
(b) retain it until:
20 (i) the end of the period of 60 days after the seizure; or
(ii) if a proceedings for an offence against this Act in the commission of which it may have been used or otherwise involved are instituted within that period—until the proceedings (including any appeal to a court in relation to those proceedings) are completed.

25 “(4) The Director may authorise a vehicle, aircraft, vessel or article seized under subsection (3) to be released to its owner, or to the person from whose possession it was seized, either:

- (a) unconditionally; or
30 (b) on such conditions as the Director thinks fit, including conditions as to giving security for payment of its value if it is forfeited.

“(5) A vehicle, aircraft, vessel or article forfeited under this section may be sold or otherwise disposed of as the Director thinks fit.

“(6) A warden may seize:

- 35 (a) any animal or plant that the warden reasonably believes to have been killed or taken in contravention of this Act; or
(b) any animal that the warden reasonably believes to have been used or otherwise involved in the commission of an offence against this Act.

40 “(7) If an animal or plant has been seized under subsection (6), the Director may cause it to be:

- (a) retained; or
- (b) sold or otherwise disposed of.

“(8) If an animal or plant seized under subsection (6) was not killed or taken in contravention of this Act or used or otherwise involved in the commission of an offence against this Act, any person who has suffered loss or damage because of the seizure is entitled to reasonable compensation. 5

Searches of vehicles, aircraft and vessels

“43.(1) This section applies in relation to a vehicle, aircraft or vessel if: 10

- (a) a warden believes on reasonable grounds that there is in or on the vehicle, aircraft or vessel:
 - (i) anything in respect of which an offence against this Act has been committed; or
 - (ii) anything that may afford evidence about the commission of an offence against this Act; or 15
- (b) the vehicle, aircraft or vessel is in a park, reserve or conservation zone and a search of the vehicle, aircraft or vessel is reasonably necessary for the purpose of ascertaining whether there is in that vehicle, aircraft or vessel: 20
 - (i) anything in respect of which an offence against this Act has been committed; or
 - (ii) anything that may afford evidence about the commission of an offence against this Act.

“(2) The warden may: 25

- (a) stop and detain the vehicle or vessel, or detain the aircraft, as the case requires; and
- (b) search the vehicle, aircraft or vessel; and
- (c) break open and search any compartment, container or other receptacle, in or on the vehicle, vessel or aircraft, in which the warden suspects on reasonable grounds there to be anything of a kind referred to in subsection (1); and 30
- (d) examine and seize:
 - (i) anything in respect of which the warden suspects on reasonable grounds an offence against this Act has been committed; or 35
 - (ii) anything that the warden suspects on reasonable grounds may afford evidence about the commission of an offence against this Act.

“(3) A warden (other than a member of a police force who is in uniform) who stops or proposes to search or detain a vehicle, aircraft or vessel must: 40

(a) in the case of a member of a police force—produce, for inspection by the person in charge of the vehicle, aircraft or vessel, written evidence of the fact that the warden is a member of a police force; or

5 (b) in any other case—produce the warden’s identity card for inspection by the person;

and, if the warden fails to do so, he or she is not authorised to search or detain the vehicle, aircraft or vessel.

Searches of land or premises

10 “44.(1) This section applies if a warden suspects on reasonable grounds that there is in or on land or premises:

(a) anything in respect of which an offence against this Act has been committed; or

15 (b) anything that may afford evidence about the commission of an offence against this Act.

“(2) The warden may, with the consent of the owner or occupier of the land or premises or under a warrant issued under section 44A:

(a) enter the land or premises; and

(b) search the land or premises; and

20 (c) break open and search a cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which the warden suspects on reasonable grounds there to be anything of a kind referred to in subsection (1); and

(d) examine and seize:

25 (i) anything in respect of which the warden suspects on reasonable grounds an offence against this Act has been committed; or

30 (ii) anything that the warden suspects on reasonable grounds may afford evidence as to the commission of an offence against this Act.

“(3) A warden (other than a member of a police force who is in uniform) who proposes to enter land or premises under subsection (2) must:

35 (a) in the case of a member of a police force—produce, for inspection by the owner or occupier of the land or premises, written evidence of the fact that the warden is a member of a police force; or

(b) in any other case—produce the warden’s identity card for inspection by the owner or occupier;

40 and, if the warden fails to do so, he or she is not authorised to enter the land or premises.

“(4) If the entry is under a warrant issued under section 44A, the warden is taken not to have complied with subsection (3), unless he or she also produces the warrant for inspection by the owner or occupier.

Warrants for searches of land or premises

“44A.(1) If:

- (a) an information on oath is laid before a magistrate alleging that a warden suspects on reasonable grounds that there may be, in or on land or premises:
 - (i) anything in respect of which an offence against this Act has been committed; or
 - (ii) anything that may afford evidence about the commission of an offence against this Act; and
- (b) the information sets out those grounds;

the magistrate may issue a search warrant authorising a warden named in the warrant, with such assistance, and by such force, as is necessary and reasonable, to enter the land or premises and exercise the powers referred to in paragraphs 44(2)(b), (c) and (d) in respect of the thing.

“(2) The magistrate must not issue the warrant unless:

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

“(3) There must be stated in the warrant:

- (a) the purpose for which the warrant is issued, and the nature of the offence in relation to which the entry and search are authorised; and
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) a description of the kind of things to be seized; and
- (d) a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

“(4) If, in the course of searching, under the warrant, for a particular thing in relation to a particular offence, a warden finds a thing that the warden believes on reasonable grounds to be:

- (a) a thing that will afford evidence about the commission of the offence, although not the thing specified in the warrant; or
- (b) a thing that will afford evidence about the commission of another offence against this Act;

5 and the warden believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant is taken to authorise the warden to seize that thing.

Warrants may be granted by telephone or other electronic means

10 “44B.(1) If, because of circumstances of urgency, a warden thinks it necessary to do so, the warden may apply for a warrant under subsection 44A(1) by telephone, telex, fax or other electronic means under this section.

15 “(2) Before applying, the warden must prepare an information of a kind referred to in subsection 44A(1) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.

“(3) If the magistrate to whom an application under subsection (1) is made is satisfied:

- 20 (a) after having considered the terms of the information prepared under subsection (2); and
- (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;

25 that there are reasonable grounds for issuing the warrant, the magistrate must complete and sign such a search warrant as the magistrate would issue under section 44A if the application had been made under that section.

“(4) If the magistrate signs a warrant under subsection (3):

- 30 (a) the magistrate must:
 - (i) inform the warden of the terms of the warrant; and
 - (ii) inform the warden of the day on which and the time at which the warrant was signed; and
 - (iii) inform the warden of the day (not more than 7 days after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
 - 35 (iv) record on the warrant the reasons for granting the warrant; and
- (b) the warden must:
 - 40 (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on it the magistrate’s name and the day on which and the time at which the warrant was signed.

“(5) The warden must, not later than the day after the date of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:

- (a) the form of warrant completed by the warden; and
- (b) the information duly sworn in connection with the warrant. 5

“(6) Upon receiving the documents referred to in subsection (5), the magistrate must:

- (a) attach to them the warrant signed by the magistrate; and
- (b) deal with the documents in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 44A. 10

“(7) A form of warrant duly completed by a warden under subsection (4) is, if it is in accordance with the terms of the warrant signed by the magistrate, authority for any entry, search, seizure or other exercise of a power that the warrant so signed authorises. 15

“(8) If:

- (a) it is material, in any proceedings, for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised in accordance with this section; and
- (b) the warrant signed by a magistrate under this section authorising the entry, search, seizure or other exercise of power is not produced in evidence; 20

the court is to assume, unless the contrary is proved, that the entry, search, seizure or other exercise of power was not authorised by such a warrant. 25

Retention of things seized

“44C.(1) If a warden seizes a thing under paragraph 43(2)(d) or 44(2)(d), the warden may retain it until:

- (a) the end of the period of 60 days after the seizure; or
- (b) if proceedings for an offence against this Act in the commission of which it may have been used or otherwise involved, or in respect of which it may afford evidence, are instituted within that period—until the proceedings (including any appeal to a court in relation to those proceedings) are completed. 30

“(2) The Director may authorise a thing seized under paragraph 43(2)(d) or 44(2)(d) to be released to its owner, or to the person from whose possession it was seized, either: 35

- (a) unconditionally; or
- (b) on such conditions as the Director thinks fit, including conditions as to giving security for payment of its value if it is forfeited. 40

Wardens may require certain information etc.

“44D.(1) A warden who:

(a) detains or searches a vehicle, aircraft or vessel under section 43; or

5 (b) enters or searches land or premises under section 44;
may require a person found in or on the vehicle, aircraft or vessel, or
on the land or premises, to state the person’s full name and address.

10 “(2) A warden who detains or searches a vessel under section 43
may require the person in charge of the vessel to give the warden such
information concerning:

(a) the vessel and its crew; and

(b) any person on board the vessel;

as the warden requests.

15 “(3) A warden or ranger may, in a park, reserve or conservation
zone:

(a) require any person whom the warden or ranger finds committing,
or suspects on reasonable grounds to be committing or to have
committed, an offence against this Act to state the person’s full
name and address; and

20 (b) require any person whom the warden or ranger finds committing,
or suspects on reasonable grounds to be committing or to have
committed, an offence against this Act to leave the park, reserve
or conservation zone; and

25 (c) require any person whom the warden or ranger suspects on
reasonable grounds of doing or having done an act in respect
of which the person is required to hold a licence, permit or
other authority under this Act to produce such a licence or
permit, or evidence of such an authority.

30 “(4) If a warden (other than a member of a police force who is in
uniform) or a ranger makes a requirement of a person under this
section, the warden or ranger must:

(a) in the case of a member of the police force—produce, for
inspection by that person, written evidence of the fact that the
warden is a member of a police force; or

35 (b) in any other case—produce the warden’s or ranger’s identity
card for inspection by that person;

and, if the warden or ranger fails to do so, that person is not obliged
to comply with the requirement.

Power to pursue persons and vessels

40 “44E.(1) A warden may exercise, in relation to foreign vessels and
foreign nationals in any place, but not within the territorial sea of
another country, a power conferred on the warden under section 41 or
43 if:

- (a) one or more wardens (whether or not including the warden exercising the power) have pursued the person or vessel from a place within one of the areas referred to in subsection 40(2) to such a place; and
- (b) the pursuit was not terminated or interrupted at any time before the warden concerned arrived at such a place with a view to exercising that power. 5

“(2) For the purposes of paragraph (1)(b), a pursuit of a person or vessel is not taken to be terminated or substantially interrupted only because the warden or wardens concerned lose sight of the person or vessel. 10

“(3) A reference in subsection (2) to losing sight of a person or vessel includes a reference to losing output from a radar or other sensing device.

Powers of wildlife inspectors 15

“44F.(1) A wildlife inspector has, in relation to the offences specified in his or her instrument of appointment, the same powers as a warden has under this Division.

“(2) In this section:

‘offence’ means an offence against the regulations. 20

Offences against Part III excluded

“44G. A reference in this Division to an offence against this Act is taken not to include a reference to an offence against:

- (a) a provision of Part III; or
- (b) a regulation made for the purposes of such a provision. 25

Obstruction of wardens etc.

“44H.(1) A person must not:

- (a) without reasonable excuse, refuse or fail to comply with a requirement made by an officer in the exercise of powers under section 44D (including the exercise of those powers by virtue of section 44F); or 30
- (b) state a false name and address, or give false information, to an officer when lawfully required by the officer, in the exercise of powers under section 44D (including the exercise of those powers by virtue of section 44F), to state the person’s full name and address, or to give information, to the officer. 35

Penalty: Imprisonment for 6 months.

“(2) In this section:

‘officer’ means a warden, ranger or wildlife inspector.”.

Regulations

10. Section 71 of the Principal Act is amended by omitting from paragraph (2)(a) “and rangers” and substituting “, rangers and wildlife inspectors”.

NOTE

1. No. 12, 1975, as amended. For previous amendments, see Nos. 29 and 36, 1978; Nos. 42 and 155, 1979; No. 70, 1980; No. 111, 1982; Nos. 10, 63 and 72, 1984; No. 94, 1985; No. 76, 1986; Nos. 15 and 16, 1987; No. 38, 1988; No. 21, 1989; No. 88, 1990; Nos. 33 and 179, 1991; and No. 21, 1992.



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