

FAUNA AND FLORA RESERVE ACT, 1919-1935.

BEING

FAUNA AND FLORA RESERVE ACT, 1919, No. 1364 OF 1919
[ASSENTED TO 16TH OCTOBER, 1919.]

AS AMENDED BY

STATUTE LAW REVISION ACT, 1935, No. 2246 OF 1935
[ASSENTED TO 19TH DECEMBER, 1935.]

An Act to establish a reserve on Kangaroo Island for the protection, preservation, and propagation of Australasian fauna and flora, and to provide for the control of such reserve, and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title. 1. This Act may be cited as the "Fauna and Flora Reserve Act, 1919-1935."

Interpretation. 2. In this Act—

"by-law" means by-law made by the board under this Act:

"board" means the Fauna and Flora Board of South Australia constituted by this Act:

"chairman" means chairman of the board:

"chase" means Flinders Chase constituted by this Act:

"fauna" includes any beast, bird, non-venomous reptile, fish, or other kind of vertebrate animal life, and, where the context admits, includes also their skins, carcasses, eggs, feathers, and skeletons, and any part thereof:

"flora" includes any tree, shrub, plant or flower, or other kind of vegetable life, and, where the context admits, also includes any part thereof:

"member" means member of the board:

"secretary" means secretary to the board:

Administration: The administration of this Act was by proclamation committed to the Minister of Agriculture: *Gazette* 3rd July, 1924, p. 1.

“take,” when used

(a) with reference to fauna, includes any act of hunting, catching, killing, or injuring, and any act of attempting or assisting to hunt, catch, kill, or injure:

(b) with reference to flora, includes any act of detaching or removing from the place where the flora is growing or is found, or from the flora of which it forms a part, and any act of attempting or assisting so to detach or remove and also any act of damaging or attempting or assisting to damage:

“this Act” includes by-laws and proclamations made under this Act.

3. A board, to be called “The Fauna and Flora Board of South Australia” is hereby constituted. Board constituted.

4. (1) The board shall be a body corporate, and shall have perpetual succession and a common seal. Perpetual succession and common seal.

(2) All courts, judges, and persons acting judicially shall take judicial notice of such seal when affixed to any instrument, and shall, in the absence of proof to the contrary, presume that the same was properly affixed thereto.

5. (1) The board shall consist of six members. Constitution of the board.

(2) The members shall be appointed by the Governor, after being respectively nominated as follows, namely:—

two shall be nominated by the Minister;

two shall be nominated by the council of the University of Adelaide; and

two shall be nominated by the council of the Royal Society of South Australia, Incorporated.

(3) When a vacancy occurs on the board, whether by the expiration of a member's term of office or otherwise, the Governor shall appoint a member to fill the vacancy. If the member whose seat has become vacant was nominated by the Minister, the person to fill the vacancy shall be nominated by the Minister, and if by one of the said councils, he shall be nominated by such council.

(4) Notice of every appointment shall be published in the *Government Gazette*.

Appointment
without nomi-
nation on
failure to
nominate.

6. (1) If in any case the Minister or council which has the right to nominate a person for appointment as a member, whether as an original or other member, fails to give notice in writing to the clerk of the Executive Council of his or its nomination within two months after being requested in writing by the said clerk to make such nomination, the Governor may appoint a member without nomination.

(2) In such case the member so appointed shall be deemed to have been appointed after being nominated by the Minister or council who or which had the right to nominate.

Tenure of
office.

7. (1) Each member shall be appointed for a term of four years: Provided that—

- i. at the expiration of two years from the notification in the *Government Gazette* of the appointment of the original members, one each of the members nominated by the Minister and the said councils respectively shall retire, the members so to retire being decided by lots drawn by the Minister;
- ii. a member appointed to fill a vacancy caused otherwise than by the expiration of the term of office of a member shall hold office only for the unexpired portion of the term of office of the member in whose place he is appointed; and
- iii. any retiring member shall hold office until his successor is appointed.

(2) Any person ceasing to be a member by reason of the expiration of his term of office, shall be eligible for reappointment.

Casual
vacancies.

8. In addition to the retirement of members by the expiration of their terms of office, the seat of a member shall become vacant on—

- (a) his death, lunacy, or insolvency, or his executing a statutory deed of assignment for the benefit of his creditors, or compounding with his creditors for less than twenty shillings in the pound, or his being convicted of an indictable offence; or
- (b) his resignation by notice in writing posted or delivered to the chairman, or, in the case of the chairman, to the Minister; or
- (c) his absence from three consecutive meetings of the board without the leave of the board.

9. (1) No act or proceeding of the board shall be invalid or illegal in consequence only of the number of the members of the board not being complete at the time of such act or proceeding.

Defects in
appointment
not to invali-
date proceed-
ings of board.

(2) All acts and proceedings of the board shall, notwithstanding the discovery of any defect in the appointment of any member thereof, or that any member was disqualified or disentitled to act, be as valid as if such member had been duly appointed and was qualified and entitled to be and to act, and had acted, as a member of the board, and as if the board had been properly and fully constituted.

10. (1) The Governor shall appoint a member of the board to be the chairman thereof.

Chairman.

(2) The chairman when present shall preside at any meeting of the board. In the absence of the chairman from any meeting another member, chosen for the purpose by the majority of those present and voting, shall preside.

(3) The person presiding for the time being shall have a casting as well as a deliberative vote.

11. (1) Any three members shall constitute a quorum at any meeting of the board.

Quorum and
committees of
the board.

(2) The board may, from time to time, appoint a committee or committees of its members, and may delegate to any such committee such of its powers and duties under this Act as it thinks fit, and such committee shall have power to act accordingly.

12. The board is hereby charged with the execution of this Act, subject to the control of the Minister.

The board
charged with
the execution
of the Act.

13. Subject to the provisions of this Act, the board in its corporate name may—

Ancillary
powers of
the board.

- i. purchase, take, receive, accept, hold, acquire, and possess lands, tenements and hereditaments in fee simple, or for any less estate or for any term of years or otherwise, and goods and chattels, and may grant, sell, convey, transfer, demise, assign, or otherwise dispose of the same;
- ii. arbitrate or sue, implead, and answer and be sued, impleaded and answered in all courts and before all judges, magistrates, justices, and arbitrators whomsoever, in all actions, pleas, suits, disputes, causes, and matters whatsoever; and

- iii. do and exercise all such further acts and powers as it is by this Act authorised to do and exercise, or as may be necessary for the doing or exercising of any of such acts or powers.

Board may
accept gifts.

14. It shall be lawful for the board to receive from any persons gifts of articles, donations, and subscriptions to be applied in and towards the purposes of this Act, and the receipt of the secretary, or any person authorised in that behalf by the board, shall be a sufficient discharge for any such gift, donation, or subscription.

Board to
receive fees
and charges.

15. The board shall receive and recover all fees, dues, and charges prescribed by or otherwise payable under, this Act; and the receipt of the secretary, or any person authorised by the board in that behalf, shall be a sufficient discharge for any such fee, due, or charge.

Certain Crown
lands and
fauna and
flora therein
vested in
board.
Amended by
S.L.R. Act,
1935.

16. (1) All the Crown lands described in the plan signed "J. H. McNamara, Surveyor-General" deposited in the Land Office on the twenty-seventh day of August, nineteen hundred and thirty-four and numbered No. 317 are hereby vested in the board to be held by the board in fee simple, upon trust for the purpose of a reserve for the protection, preservation, and propagation of fauna and flora, and as a pleasure and health resort, and for the other purposes of this Act.

(2) The Governor may issue a grant of the said lands to the board.

(3) The said lands shall be called "Flinders Chase."

(4) All the fauna and flora now or hereafter on the said lands are hereby declared to be the property of the board.

Other Crown
lands may be
dedicated.
Amended by
S.L.R. Act,
1935.

17. (1) In addition to the powers conferred by section 5 of the Crown Lands Act, 1929, the Governor may by proclamation dedicate any other Crown lands for the purposes of this Act.

(2) Upon the making of such proclamation such lands shall, without any grant, become vested in the board, and shall be deemed to be added to and to form part of the chase and shall be subject to the provisions of this Act with regard to the chase.

(3) The Governor may issue a grant of such lands to the board.

s. 17. At 22nd March, 1937, the following proclamations dedicating certain Crown lands for the purposes of this Act were in force:—*Gazette*—20th. September, 1923, p. 678 (portion of hundred of McDonald); 24th February, 1927, p. 397 (portion of hundred of McDonald).

18. (1) The Governor may by proclamation authorise the board to exercise within and throughout any area specified in the proclamation all or any of the powers for the protection and preservation of fauna conferred on the board by this Act.

Power to
proclaim fur-
ther areas
within which
Act to apply.

(2) For the purpose of giving effect to the provisions of this section, such area shall, from the date of the publication of the proclamation in the *Government Gazette*, be deemed to be part of the chase, and any fauna thereon shall from such date be deemed to be fauna the property of the board.

19. The board may—

Powers of
board for the
development
of the chase.

- I. set aside all or any portion of the chase for the protection, preservation, and propagation of fauna and flora generally, or any kind of fauna and flora;
- II. make on any part of the chase any such roads, ways, paths, bridges, clearings, firebreaks, and dams as it thinks necessary or convenient;
- III. establish breeding grounds and places, and enclosures, reserves, and nurseries, for fauna and flora;
- IV. erect dwelling-houses and provide other necessary accommodation in the chase for its officers and servants, and such accommodation as it deems advisable for persons visiting the chase;
- V. sell and remove, and permit or suffer to be removed, from the chase, stone, gravel, earth, sand, trees, bark, and the produce of trees, and dead and live timber;
- VI. grant leases and licences, for a term of not more than twenty-one years in any case, on such terms and subject to such conditions as the board determine, of or over any portion or portions of the chase, for grazing or agricultural purposes, or for the establishment of sanatoria or biological stations, or for such other purposes as the board determine;
- VII. enclose the chase or any part thereof with a vermin-proof or other fence;
- VIII. obtain by purchase, exchange, gift, or otherwise, any specimen or specimens of fauna and flora, and

s. 18. At 22nd March, 1937, the following proclamation was in force authorising the board to exercise all the powers mentioned in subsection (1) of section 18 in respect of the land referred to in the proclamation:—*Gazette* 5th July, 1923, p. 2 (all the roads within the boundaries of Flinders Chase).

introduce and acclimatize the same in the chase;
and

- ix. sell or exchange specimens of fauna and flora and any other product of the chase.

Officers may
be appointed
and other
persons
employed.

20. (1) The board may appoint and employ a secretary to the board, and such rangers, inspectors, and other officers and servants, and other persons, as it deems necessary for enabling the board to carry into execution the various powers and duties vested in or imposed on it by this Act.

(2) All persons appointed by the board shall hold their offices only during the pleasure of the board, but any appointment to or dismissal from the service of the board, except in the case of a person employed at daily or piecework wages, shall be subject to the approval of the Minister.

Payment of
salaries and
fees.

21. The board may pay to the secretary and other officers and persons appointed or employed by the board such salaries, allowances, wages, or professional fees as it deems reasonable or proper, and may pay the premiums on any fidelity or workmen's compensation insurance policies of its officers and servants.

Travelling
expenses may
be paid.

22. The board may pay the travelling expenses of members and officers and servants of the board when engaged on the business of the board.

Remuneration
for informa-
tion.

23. The board may remunerate any person giving information to the board or any of its officers of the commission of any offence against this Act.

Execution of
deeds and
instruments.

24. Every deed, conveyance, agreement, or instrument which it may be necessary for the board to execute shall have the seal of the board affixed thereto, and be signed by the chairman or any two members and be countersigned by the secretary.

Minute-book
to be kept.

25. (1) The board shall keep a minute-book in which the proceedings of each meeting and the business performed thereat shall be entered.

(2) The minutes of each meeting shall be submitted for confirmation at a subsequent meeting of the board, and, if confirmed, shall be signed by the chairman or other person presiding at such subsequent meeting; and all entries in the minutes so signed shall be received in all courts and tribunals and by all persons as sufficient evidence of the accuracy of the matters therein recorded until the contrary is proved.

26. (1) The board shall, during the month of September in each year, report to the Governor its proceedings during the twelve months ended on the next preceding thirtieth day of June; and a copy of the annual report shall, as soon as practicable in each year, be laid before both Houses of Parliament.

Annual
report and
audit.

(2) The board shall keep a full and correct account of all moneys received and all moneys expended by the board; and the accounts of the board shall be annually audited by the Auditor-General, who may exercise in that behalf the powers conferred upon him, with reference to the auditing of public accounts, by the Audit Act, 1921; and an abstract of the annual accounts, with the Auditor-General's report, shall, as soon as practicable in each year, be laid before both Houses of Parliament.

Amended by
S.L.R. Act,
1935.

27. No rates or taxes of any kind, either general or local, and no assessments therefor, shall be charged, made, or calculated against the board, or upon any land owned by or vested in the board, or any building thereon.

Board not
subject to
rates and
taxes.

28. (1) No person shall, without the permission of the board, or of a member thereof, or of some officer or servant of the board authorised in writing by the board to grant permission under this section,—

No fauna or
flora belong-
ing to the
board to be
taken without
permission.

- (a) take any fauna or flora, the property of the board;
- (b) have in his possession or control any such fauna or flora; or
- (c) enter, or be upon, the chase with any firearm, weapon, or other instrument or device capable of being used for the purpose of taking any fauna.

(2) No person shall—

- (a) refuse to deliver up, on demand, to any member or officer or servant of the board any fauna or flora the property of the board;
- (b) resist, or in any way interfere with or hinder, any member or officer or servant of the board acting under the provisions of this Act; or
- (c) refuse to produce for inspection, on demand, to any member, or to any officer or servant of the board, any licence issued to him under this Act.

29. Any member, or any officer or servant of the board, may demand the name and address of any person trespassing on the chase whom he suspects of any offence against this Act, and may require such trespasser to quit the chase.

Trespasser
may be
ordered to
quit the
chase.

Offences by
trespasser.

30. (1) Every person shall be guilty of an offence against this Act who—

- i. enters, or is upon, the chase for the purpose of taking any of the fauna or flora therein without the permission of the board;
- ii. refuses to give his name and address, or gives a false name or address, when the same is demanded under section 29;
- iii. refuses to quit the chase when lawfully required so to do under section 29; or
- iv. re-enters the chase after having been required under section 29 to quit the same.

(2) In any proceedings for any offence under subdivision i. of subsection (1) of this section, the fact that any person has with him or in his possession any dog, gun, or other instrument capable of being used for the purpose of taking any fauna shall be *prima facie* evidence that such person entered or was upon the chase for the purpose of taking some or one of the fauna therein.

Certain
persons may
enter upon
and cross the
chase.

31. (1) Any officer or employee of the Government of this State or of the Government of the Commonwealth may at any time, notwithstanding that the permission of the board or of some person on behalf of the board has not been obtained, enter and be upon and cross and recross the chase in the course of his official duties as such officer or employee.

(2) Any other person may, at any time, with the permission of the board, or of a member thereof or of some officer or servant of the board, enter and be upon and cross and recross the chase for any lawful purpose in respect of which such permission has been granted.

Power for
enforcing the
Act.

32. Any member of the police force, or any member, officer, or servant of the board, or any other person authorised by the board to act under this section may, at any time, without any warrant other than this Act—

- i. apprehend any person offending against any provision of this Act who refuses on demand to give his name and address, or who in the opinion of such member, officer, or servant gives a false name or address;
- ii. enter and search any premises or place where there is, or he suspects there is, any fauna or flora taken, or which he suspects to have been taken, in contravention of any provision of this Act;

- iii. search any vehicle, and open and search any box, receptacle, or package, containing, or which he suspects to contain, any fauna or flora taken, or which he suspects to have been taken, in contravention of any provision of this Act, and examine any such fauna or flora;
- iv. seize any fauna or flora the property of the board taken, or which he has reason to suspect to have been taken, contrary to this Act;
- v. demand the name and address of any person whom he has reason to suspect of any offence against any provision of this Act; and
- vi. do any other thing prescribed, or which may be necessary for enforcing the provisions of this Act, or for the detection of offences against this Act.

33. (1) The board may make all such by-laws as may be necessary or convenient for carrying into effect all or any of the objects expressed in or implied by this Act, or as may be incidental to or in anywise connected with such objects; and without limiting or derogating from the foregoing general power, it is hereby declared that the board may make by-laws—

By-laws.

- (a) for the conduct of its business;
- (b) prescribing the duties and powers of its officers and servants;
- (c) for the management and control, and the protection, preservation, development, and improvement, of the chase, and of the fauna and flora therein;
- (d) for ensuring the good conduct of visitors to the chase;
- (e) for grazing cattle and sheep in the chase, and impounding stray cattle and sheep found therein;
- (f) for the destruction of goats, pigs, dogs, and such other animals as they deem noxious, trespassing therein;
- (g) for regulating, restricting, or preventing the exhibiting of advertisements in the chase, or such parts thereof as are specified in the by-laws;
- (h) for enabling the board or any officer thereof, at its or his absolute discretion, to grant, and to amend or revoke, licences for the taking of any kind of fauna or flora within the chase, and prescribing the matters to be specified in such licences and the

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terms and conditions thereof, and the fees to be paid therefor: Provided that nothing in contravention of the Animals and Birds Protection Act, 1919, shall be so prescribed;

- (i) generally for the more regular and efficient government of the chase; and
- (j) fixing penalties for offences against by-laws, not exceeding in any case the sum of ten pounds for the first offence or the sum of fifty pounds for any subsequent offence.

(2) No by-law shall have the force of law until confirmed by the Governor.

By-laws to be exhibited.
528, 1891,
s. 8.

34. Copies of all by-laws inflicting any penalty shall be conspicuously exhibited in the chase.

Penalties.

35. Every person who is guilty of an offence against this Act shall, except where otherwise prescribed, be liable—

- (a) for a first offence, to a penalty of not less than one pound nor more than ten pounds; and
- (b) for any subsequent offence, to a penalty of not less than two pounds nor more than fifty pounds.

Damages may be recovered in addition to penalties.

36. When any person is convicted of any offence against this Act the special magistrate or justices by whom such person is convicted may, in addition to imposing any penalty, order such person to pay the amount of any damage done or the value, as estimated by the board, of any fauna or flora taken or destroyed, by such person contrary to this Act, and such amount shall be recoverable as if it were part of the penalty so imposed, notwithstanding that the total amount of the penalty and damages exceeds the maximum penalty which may be imposed.

Evidence of by-laws and appointments.

37. A copy of the *Government Gazette*, purporting to contain a copy of any by-law, or of the notice of appointment of any member, officer, or servant of the board, shall be conclusive evidence of the making of such by-law or appointment, and of the contents thereof.

Proof of knowledge.

38. Whenever in any proceedings in respect of any offence against this Act it is necessary to show knowledge on the part of the defendant, such knowledge shall be presumed until the contrary is proved.

39. Any penalty imposed and the amount of any damages ordered to be paid under this Act shall, when recovered, be paid to the board.

Penalties to be paid to board.

40. All proceedings in respect of offences against this Act shall be disposed of summarily.

Summary proceedings for offences.

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Ss. 41 and 42 repealed by S.L.R. Act, 1935.

43. The moneys required by the board for the purposes of this Act shall be paid out of the revenue of the board and, to the extent that such revenue is insufficient, out of moneys provided by Parliament for such purposes.

Financial provision.

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Schedule repealed by S.L.R. Act, 1935.

By-laws.

The following by-laws were in force under this Act on 22nd March, 1937:—

Gazette—11th January, 1923, p. 39.