

GAME ACT 1890.

54 VICTORIA,
No. 1095.

An Act to consolidate the Law relating to the Protection of Game.

[10th July, 1890.]

Act No. 311.

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short title and
commencement.

1. This Act may be cited as the *Game Act 1890*, and shall come into operation on the first day of August One thousand eight hundred and ninety.

Repeal.
First Schedule.

2. The Acts mentioned in the First Schedule to this Act to the extent to which the same are thereby expressed to be repealed are hereby repealed. Provided that such repeal shall not affect any proclamation order or complaint made or any certificate given under the said Acts or any of them before the commencement of this Act.

Interpretation.

Id. s. 1.

"Game."

Second

Schedule.

"Native Game."

Third Schedule.

Governor may

name other birds

and other

animals to be

protected.

3. For the purposes of this Act the term "game" shall mean and include all birds and other animals mentioned in the Second Schedule to this Act, and the terms "native game" shall mean and include all birds and other animals mentioned in the Third Schedule to this Act. Provided that it shall be lawful for the Governor in Council at any time after the passing of this Act by proclamation to name any other bird or animal which shall be included in such Second or Third Schedule respectively and after the publication of any such proclamation in the *Government Gazette*, and the expiration of the period mentioned in such proclamation for the time of its coming into operation, the birds or other animals so named shall be deemed and considered as being thenceforward included in such schedule.

Period of
operation of
this Act.
Id. s. 2.

4. The period of the year during which this Act shall be in operation as regards all or any of the birds and other animals mentioned in the Third Schedule shall be the period set opposite the name of each such bird or animal in the said Schedule in each year or such other period as the Governor in Council may by proclamation in the *Government Gazette* from time to time direct.

5. If any person shall wilfully kill or destroy at any time any game or shall use any instrument whatever net or any other means for the purpose of killing or destroying any game, such person shall upon conviction forfeit and pay a penalty not exceeding the sum of Two pounds, in addition to the value of each bird or other animal so destroyed, which value shall be the sum set opposite the name of such bird or animal in the Second Schedule hereto, which value shall be adjudged to the owner if claimed by him.

Act No. 311 s. 3.
Penalty on killing or destroying imported game.

Second
Schedule.

6. If any person shall wilfully kill or destroy any native game within the period hereinbefore in the fourth section mentioned or shall use any instrument whatever net or any other means within the period aforesaid for the purpose of killing or destroying any native game, such person shall upon conviction forfeit and pay any sum not exceeding the sum of Two pounds in addition to the sum of Five shillings for each bird or other animal so destroyed.

Penalty on killing or destroying native game out of season.
Ib. s. 4.

7. If any person shall buy sell or knowingly have in his possession house or control, any game at any time, or any native game within the period hereinbefore mentioned, every person so offending shall forfeit and pay a penalty not exceeding the sum of Five pounds for every head of game in addition to the value of any such game, such value to be assessed by the justice or justices hearing the case, and a sum not exceeding the sum of Two pounds for every head of native game so found in his house possession or control.

Penalty on having in possession game at any time and native game during period of prohibition.
Ib. s. 5.

8. If any person shall wilfully take out of the nest or destroy in the nest the eggs of any bird of game or native game, or shall knowingly have in his possession any such eggs, every such person shall forfeit and pay a penalty not exceeding the sum of Ten shillings for each egg so wilfully taken or destroyed or found in his possession.

Penalty on taking or destroying eggs
Ib. s. 6.

9. Notwithstanding anything in this Act contained any person may during such period in every year as the Governor in Council may by proclamation to be published in the *Government Gazette* from time to time determine and until any such proclamation be made from the first day of February to the fourteenth day of September both inclusive in every year kill or destroy hares, and buy sell and have in his possession house or control hares so killed or destroyed.

Hares may be destroyed from 1st of February to 14th of September or during such period as may be fixed by proclamation.
Act No. 404 s. 2.

10. Notwithstanding anything in this Act contained any owner or occupier of any vineyard orchard garden or nursery or any person authorized in writing by any such owner or occupier in that behalf may take kill or destroy any hare then being in or upon such vineyard orchard garden or nursery, and may have in his possession but shall not offer for sale any hare so killed or destroyed.

Owners and occupiers of vineyards gardens &c. may destroy hares.
Ib. s. 4.

11. If any person at any time or place kill destroy or injure any game by poison or lay poison at any time or place with intent to kill destroy or injure any game such person shall for every such offence forfeit and pay a penalty not exceeding the sum of Ten pounds, and in addition if any game be so killed destroyed or injured for each head of game so killed destroyed or injured the sum set opposite the name of the species to which the same belongs in the Second Schedule hereto.

Laying poison for or poisoning game prohibited.
Ib. s. 3.

12. No person shall at any time kill or attempt to kill or destroy any game or native game with any device or instrument known as a swivel or punt gun or with any gun other than such guns as

Punt guns &c. not to be used.
Act No. 820 s. 2.

Act No. 820. are habitually raised at arm's length and fired from the shoulder ; and any person offending against the provisions of this section shall be liable to a penalty not exceeding Twenty pounds.

Penalty.

Penalty for having swivel gun in boat &c. "The Swivel Gun Act 1887" s. 2.

13. If any person be found in any boat punt raft or navigable vessel of any kind having therein or attached thereto a device or instrument known as a swivel or punt gun or any gun of a kind other than such as are habitually raised at arm's length and fired from the shoulder he shall be liable on conviction thereof to a penalty not exceeding Twenty pounds.

Swivel guns may be forfeited. *Ib.* s. 3.

14. It shall be unlawful for any one to have in his custody or possession any device or instrument known as a swivel or punt gun or any gun apparently used or kept for the purpose of being used to kill or destroy game or native game otherwise than by being raised at arm's length and fired from the shoulder, and any such gun wheresoever found may be at any time seized and detained by any member of the police force without warrant; and if it be made to appear to any two justices that any such gun is so used or kept for the purpose of being so used or is kept for or can be only used for an unlawful purpose, they may make an order forfeiting the same.

Persons trespassing on private lands liable to a penalty. *Act No. 464 s. 5.*

15. If any person shall wilfully trespass on any land not being Crown land in search or pursuit of game, on complaint of the owner or occupier of such land and on conviction he shall forfeit and pay a sum not exceeding Ten pounds, and having in his possession implements for shooting or being accompanied by dogs shall be *prima facie* evidence of the purpose of such trespass.^(a)

Persons driving dogs on or through certain lands liable to a penalty. *Ib.* s. 6.

16. If any person shall wilfully drive or set on dogs on or through any plantation vineyard orchard garden nursery or other similar enclosure or land on which is any growing crop in search or pursuit of game, on complaint of the owner or occupier thereof, and on conviction he shall forfeit and pay a sum not exceeding Ten pounds.

Persons offending against this Act must give name and address and deliver up game guns &c. otherwise may be apprehended. *Act No. 311 s. 8.*

17. If any person shall be found offending against the provisions of this Act and shall not give his name and address and shall not deliver up any game native game or any instrument net or other means used to kill or destroy any game or native game to any person who may demand the same, it shall be lawful for such last-mentioned person with any assistance he may require, and for any constable, to take such person into custody and take him before the nearest justice of the peace to be dealt with according to law, and any person who shall assault or resist any such person so demanding such game native game instrument net or other means of destruction shall forfeit and pay a penalty not exceeding Five pounds besides any other penalty he may have incurred under this Act.

This Act to be administered by summary jurisdiction and appeal allowed. *Ib.* s. 9.

18. All offences under this Act may be heard and determined in a summary way before any justice of the peace, and if any person shall feel himself aggrieved at any decision given under this Act he may appeal to the next general sessions holden nearest to the place where such decision shall take place.

(a) The defendant was convicted under this section of having trespassed upon lands held by the prosecutor under a goldfields licence under section 49 of "The Land Act 1869." Held, that

the conviction was bad, inasmuch as such land was Crown land and was excepted by the provisions of this section.—*Reg. v. Dickenson, ex parte Franklin*, 14 V.L.R., 732.

19. One-half of all penalties recovered under this Act shall go to and for the sole use of any person who may sue for the same.

Act No. 311 s. 10
Disposal of
penalties.

20. Any justice hearing any complaint under this Act may dismiss the same with such costs as to such justice may seem fit, not exceeding Five pounds, and a certificate of such dismissal shall be a bar to any other proceedings for the same act in any court.

Justice may dis-
miss complaint
with costs.
Id. s. 11.

21. None of the provisions of this Act relating to native game shall extend or apply or be construed to extend or apply to any aboriginal native of Australia.

This Act not
to extend to
aboriginals.
Id. s. 12.

22. Nothing in this Act shall extend or be construed to extend to any person being the owner of any game or native game having in his possession any such game or native game in confinement or in a domesticated state, provided such game shall not have been found wild or such native game shall not have been caught or taken within the period hereinbefore mentioned, nor to the owner of any eggs taken from the mew or breeding place, nor to the possession of such eggs.

Application of
this Act.
Id. s. 7.

SCHEDULES.

FIRST SCHEDULE.

Section 2.

Date of Act.	Title of Act.	Extent of Repeal.
31 Vict. No. 311...	"An Act to protect Game"	So much as is no already repealed.
35 Vict. No. 408...	"An Act to amend an Act intituled 'An Act 'to protect Game'"	The whole.
37 Vict. No. 464...	"An Act to further amend an Act intituled 'An Act to protect Game,' and to repeal 'the Act No. 438'"	The whole.
48 Vict. No. 820...	"An Act to amend 'An Act to protect 'Game'"	The whole.
51 Vict. No. 950...	"The Swivel Gun Act 1887"	The whole.

SECOND SCHEDULE.

Sections 3, 5,
and 11.

All birds (except sparrows and minas) not indigenous to Aus- tralia and their produce, £1	Deer, £15
Antelope, £15	Grouse, £5
Californian Quail, £1	Partridges, £5
	Pheasants, £5
	White Swans, £5.

THIRD SCHEDULE.

Sections 3 and 4.

Bee Eaters	} The whole year.
Ephthianuras	
Fantails... ..	
Fly Catchers	
Great Kingfisher or Laughing Jackass	
Ibis	

THIRD SCHEDULE—continued.

Lyre Birds	...	...	...	...	The whole year.
Magpies	...	...	...	...
Magpie Larks	...	...	...	...
Owls	...	...	...	...
Platypus	...	...	...	...
Podargus or Mopokes	...	...	...	...
Robins	...	...	...	...
Southern Stone Plover or Curlew	...	...	...	...
Swallows	...	...	...	...
Warblers	...	...	...	...
Wrens	...	...	...	...
Black Swan	...	...	...	...	From the fourteenth day of June to the twentieth day of December next following in each year.
Emu	...	...	...	...
Wild Geese of all kinds	...	...	...	...
Quail	...	...	...	...	From the first day of August to the last day of February next following.
All Birds known as Cranes, such as Herons, Egrets, &c.					
All Honey-eaters (except Wattle-birds and Leather-heads)					
All Kingfishers other than the Laughing Jackass					
All members of the Graculus family					
Avocet	...	...	...	...
Bittern	...	...	...	...
Black Cockatoos	...	...	...	...
Bronzed-winged or other Wild Pigeons	...	...	...	...
Bustard or Wild Turkey	...	...	...	...
Coach-whip Bird	...	...	...	...
Cuckoos	...	...	...	...
Gang Gang Cockatoos	...	...	...	...
Land-rail	...	...	...	...
All other members of the Rail family, Porphyrio, Coots, &c.					
Larks, and those known as Pipit and Cincloramphus					
Malleo Hen	...	...	...	...
Night-jars	...	...	...	...
Plover or Peewit	...	...	...	...
All other kinds of Plover (except the Southern Stone Plover or Curlew)					
Shrike-tit	...	...	...	...
Sittellas	...	...	...	...
Stilts	...	...	...	...
Swamp or Ground Parrakeet	...	...	...	...
Teal	...	...	...	...
Thick-heads	...	...	...	...
Thrushes	...	...	...	...
Tree-creepers	...	...	...	...
Wedge-bill	...	...	...	...
Wild Ducks of any species	...	...	...	...
Wood Swallows	...	...	...	...

GAMING.

[See Police Offences Act 1890.]