



## Protection of Native Animals and their Habitat in SA

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This factsheet explains some of the basic features of State and Commonwealth legislation dealing with the protection of native animals and their habitat. It outlines certain prohibitions within the relevant legislation and some of the penalties imposed for breaches of these prohibitions. This factsheet also offers some resources for reporting breaches.

### What are native animals?

Broadly speaking, native animals are all animals which are indigenous to Australia. There are a number of international agreements and conventions directed at the conservation of animals and their habitat, including:

- International Agreement for the Creation at Paris of an International Office Dealing with Contagious Diseases of Animals and Annex 1924;
- International Plant Protection Convention 1951;
- Convention on Wetlands of International Importance especially as waterfowl Habitat 1971 (**Ramsar**);
- Convention for the Protection of the World Cultural and Natural Heritage 1972;
- Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973;
- Convention on the Conservation of Migratory Species of Wild Animals 1979;
- Convention on Biological Diversity 1992;
- United Nations Convention to combat Desertification in those Countries experiencing Serious Drought and/or Desertification 1994;
- Agreement for the Protection of Migratory Birds and their Environment 1986 (**CAMBA**); and

- Agreement for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (**JAMBA**).

## Protection of Native Animals under SA law

Prohibitions on the taking of native animals the [National Parks and Wildlife Act 1972 \(SA\)](#) (**NPW Act**) protects native animals by classifying most native animals as protected animals, and then by placing prohibitions on the taking and killing of protected species. If the survival of a species is under a particular threat, it may be further classified as endangered, vulnerable or rare.

The animals to which the [NPW Act](#) applies include birds, reptiles, insects and fish. Under Section 51 of the Act, a person must not take a protected animal, and maximum penalties range from \$30,000 or imprisonment for two years, to \$2,500 or imprisonment for six months (in the case of a protected species which is not a marine mammal, endangered, vulnerable or rare. However, the Minister of Environment may issue a permit to allow the hunting,<sup>1</sup> the farming,<sup>2</sup> and the taking possession of protected species for scientific research.<sup>3</sup> Aboriginal people are allowed to hunt native animals without a permit if used for food or cultural purposes.<sup>4</sup>

Under the [Fisheries Management Act 2007 \(SA\)](#), a person must not take or injure an aquatic mammal of a protected species. The maximum penalty for such an offence for an individual is \$100,000- or two-years imprisonment.<sup>5</sup> A maximum first-time offence penalty of \$10,000 applies for the taking of any protected fish.<sup>6</sup>

Visit: SA Department of Primary Industries and Regions page on [Report Illegal Fishing Activities](#) to report illegal fishing activities (alternatively, call their 24-hour hotline on **1800 065 522**).

## Prevention of Cruelty to Animals

Under the [Animal Welfare Act 1985 \(SA\)](#),<sup>7</sup> a person who ill-treats an animal is guilty of an offence. The maximum penalty for such an offence is a \$10,000 fine or imprisonment for 12 months. While this act also applies to animals which are not native to Australia, it also helps protect native animals.

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<sup>1</sup> [National Parks and Wildlife Act 1972 \(SA\)](#) s 68A.

<sup>2</sup> *Ibid*, s 60C.

<sup>3</sup> *Ibid*, s 53.

<sup>4</sup> *Ibid*, s 68E.

<sup>5</sup> [Fisheries Management Act 2007 \(SA\)](#) s 71.

<sup>6</sup> *Ibid*, s 70(a)(i).

<sup>7</sup> [Animal Welfare Act 1985 \(SA\)](#) s 13(1).

The Act gives examples of behaviour which is considered to constitute ill treatment of animals.<sup>8</sup> Some of these are:

- deliberately or unreasonably causing an animal unnecessary pain;
- having injured an animal, failing to take reasonable steps to alleviate any pain suffered by animal; or
- Killing an animal in a manner that causes the animal to suffer unnecessary pain.

## Protection of Habitat in SA

Destruction of habitat is one of the major contributing factors to Australia's high rate of species extinction. Some of the following statutes help protect native animals in South Australia simply by preserving their natural habitat.

### Preservation of wilderness and native vegetation

Under the [Wilderness Protection Act 1992 \(SA\)](#), the Governor may establish wilderness protection areas and zones on reserves or any other crown land, or on private land with the consent of the owner.<sup>9</sup> Certain activities are prohibited in these areas, such as mining and the construction of roads, tracks and buildings.<sup>10</sup> It is an offence to intentionally cause damage to any part of a wilderness protection area or zone.<sup>11</sup> Wardens can be appointed to enforce these provisions and they are given wide ranging powers of entry and search.<sup>12</sup>

The [Native Vegetation Act 1991 \(SA\)](#) also helps to protect the natural habitat of native animals. The objects of the Act include:

- the provision of incentives and assistance to landowners in relation to the preservation and management of native vegetation;
- the conservation of the native vegetation of the state; and
- the encouragement of the re-establishment of native vegetation in cleared areas.

The Act establishes the Native Vegetation Council which issues permits to allow native vegetation clearance.<sup>13</sup> Subject to some exceptions, native vegetation clearance in rural areas cannot be undertaken without a permit.

Visit: SA Department for Environment and Water's [Report A Suspected Illegal Clearance](#) page if you suspect that illegal clearing is occurring.

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<sup>8</sup> [Animal Welfare Act 1985 \(SA\)](#) s 13(2).

<sup>9</sup> [Wilderness Protection Act 1992 \(SA\)](#) s 22.

<sup>10</sup> Ibid ss 25-26.

<sup>11</sup> [Wilderness Protection Act 1992 \(SA\)](#) s 27.

<sup>12</sup> Ibid ss 13, 15.

<sup>13</sup> [Native Vegetation Act 1991 \(SA\)](#) s 7.

## Protection of aquatic habitat

Both the [Fisheries Management Act 2007 \(SA\)](#) and the [Marine Parks Act 2007 \(SA\)](#) (**MP Act**) empower the Governor to declare an area an aquatic reserve (on the recommendation of the Minister).<sup>14</sup>

The MP Act governs these reserves and allows for conservation of marine habitats through zoning. Some of these zones protect habitats and biodiversity by limiting recreational and commercial use, whilst other zones promote general use as well as sustainable development.<sup>15</sup> The object is to achieve economic, social and environmental balance.

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## How does Commonwealth legislation help to protect native animals and their habitat?

Like the South Australian Government, the Commonwealth Government has identified the destruction of habitat as a major factor contributing to Australia's high rate of species extinction, and has enacted legislation which addresses this issue. It has also attempted to curb the impact of trade in native animals and animal products on the survival of animal species.

### Protection of habitat

The Commonwealth has addressed this issue by enacting the [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#). Part 13 of the Act deals predominantly with identifying the types of ecological systems and the animal and plant species to which controls apply. Anyone is able to nominate a species or "ecological community" which they think should be added to these lists, but the Minister ultimately decides what to include in the lists. "Recovery Plans" may then be implemented for each species and community included on the list.

These plans are intended to provide a strategy for encouraging the long-term survival of the species. "Threat Abatement Plans" may be implemented to counteract the processes or activities which are threatening the communities and the listed species. The public are consulted on draft plans.

Read: EDO factsheet on [EPBC Act, Referrals and Opportunities to Comment](#) to read more about the EPBC Act's provisions.

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<sup>14</sup> [Fisheries Management Act 2007 \(SA\)](#) s 4; [Marine Parks Act 2007 \(SA\)](#) s 10(1).

<sup>15</sup> [Marine Parks Act 2007 \(SA\)](#) s 4.

## Trade in native animals

The Commonwealth Government is able to control trade in wildlife and wildlife products to some extent by controlling imports and exports under the [Customs Act 1901 \(Cth\)](#).

However, further steps have been taken to address this problem with the enactment of the *Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001* (Part 13A). An object of this Act is to control the export of all native plants and animals, and to make special provision for the protection of species which are endangered or threatened with extinction. Under this Act, the Minister may declare approved “trade management plan” for the purpose of consenting to imports and exports of native wildlife. Individuals and organisations may register to be sent notice of proposals to declare approved trade management plans and may also lodge comments on such proposals.

The Minister is also responsible for the granting of permits to import and export specimens, but this cannot be done where it would have a negative effect on the continued survival of the species. The Act includes a detailed statement of purposes for which exports can be approved. The fact that commercial purposes are not mentioned implies that this is not a good enough reason for which to obtain a permit to import and export wildlife and wildlife products.

Police officers, customs officers and inspectors appointed under the Act have the power to enforce the provisions of the Act by questioning and arresting suspects, searching baggage and premises and seizing goods.

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