

Crocodile Trade (Protection) Act 1974

Chapter 213.

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Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 213.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Crocodile Trade (Protection) Act 1974,

Being an Act to regulate and protect the crocodile skin trade, and for related purposes.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**acquire**”, in relation to crocodiles, includes purchase or exchange;

“**the Conservator**” means the Conservator of Fauna appointed under Section 4 of the *Fauna (Protection and Control) Act 1966*;

“**Court**” means a District Court;

“**crocodile**” includes any species of crocodile, including the saltwater crocodile (*Crocodylus porosus*) and the New Guinea freshwater crocodile (*Crocodylus novaeguineae*), whether alive or dead, and any part of a crocodile, and a crocodile egg;

“**crocodile farm**” means any premises or place used for the keeping, breeding or rearing of live crocodiles in captivity;

“**dispose**”, in relation to crocodiles, includes sale;

“**proceeding**” includes any civil, criminal or mixed proceedings before a Court;

“**Ranger**” means a Ranger appointed under Section 12;

“**this Act**” includes the regulations.

2. DANGEROUS CROCODILES MAY BE KILLED.

This Act does not make it an offence for any person, having reasonable cause (proof of which is on him) to believe that a crocodile presents or is likely to present a danger to himself or to another person, or is reasonably likely to cause damage to, or to a substantial portion of, his means of livelihood, to kill the crocodile.

3. KILLING OF CROCODILES.

(1) Subject to the regulations and to any notices under Section 10, a citizen has the right to take or kill a crocodile.

(2) Subject to this Act, a person other than a citizen who takes or kills a crocodile is guilty of an offence.

Penalty: A fine not exceeding K100.00 for each crocodile.

(3) In any proceeding under this Act, the onus of proof that a crocodile was taken or killed before this Act came into operation is on the defendant or licensee.

4. RESTRICTION ON ACQUISITION AND DISPOSAL.

(1) The requirements of this section are in addition to and not in derogation of the requirements of Section 17 and the regulations.

(2) A person who acquires crocodiles unless—

- (a) he is the holder of a licence under Section 5(1)(a) or (b); and
- (b) he complies with the conditions applicable to the licence,

is guilty of an offence.

Penalty: A fine not exceeding K400.00.

(3) Subject to Subsection (4), a person who disposes of crocodiles unless—

- (a) he is the holder of a licence under Section 5(1)(a); and
- (b) he complies with the conditions applicable to the licence,

is guilty of an offence.

Penalty: A fine not exceeding K400.00.

(4) Subsection (3) does not apply—

- (a) to a citizen in respect of the disposal of a crocodile taken or killed by him; or
- (b) to a person in the country who enters into contracts or arrangements with persons overseas for the disposal of crocodiles overseas.

(5) A person who exports crocodiles unless—

- (a) he is the holder of a licence under Section 5(1)(c); and
- (b) he complies with the conditions applicable to the licence,

is guilty of an offence.

Penalty: A fine not exceeding K800.00.

(6) Notwithstanding the provisions of—

- (a) the *Licences Act* (T.N.G.) 1923; or
- (b) the *Trading Act 1946*; or
- (c) the *Business Licences Act 1971*,

the holder of a licence under Section 5 is not required to hold a licence under any of those Acts for the purpose of acquiring, disposing of or exporting crocodiles.

5. LICENCES.

(1) Subject to this section and to Section 8, the Minister or his delegate may, on application in the prescribed manner and on payment of the prescribed fees, grant to a person a licence in the prescribed form—

- (a) to acquire and dispose of crocodiles; or
- (b) to acquire crocodiles for export; or
- (c) to export crocodiles.

(2) Subject to this Act a person may hold a licence under Subsection (1)(c) in conjunction with a licence under Subsection (1)(a) or (b).

(3) An application for a licence under Subsection (1)(a) or (b) shall specify the area within which the proposed licensee proposes to acquire crocodiles.

(4) A licence under Subsection (1)(a) or (b) may only be granted or renewed, in respect of a person who, in the opinion of the Minister or his delegate—

- (a) has been a resident of the country for not less than two years immediately preceding the application; and
- (b) is normally resident in or was born within the area referred to in Subsection (3).

(5) In deciding whether to renew a licence the Minister or his delegate may take into consideration the standard of service previously provided by the licensee.

(6) Where an application specifies an area which is within or partly within the area of—

- (a) a Local-level Government Council; or
- (b) a Local-level Government Special Purposes Authority; or
- (c) a Local-level Government Council and a Local-level Government Special Purposes Authority,

the Minister or his delegate shall, before dealing with the application, consult with the Council or the Authority or, where he considers it appropriate, with both.

(7) In Subsection (6), Local-level Government Special Purposes Authority has the same meaning that it has in the *Local-level Governments Administration Act 1997*.

(8) A licence remains in force for a period of 12 months from the date of the grant of the licence, and, subject to Subsection (4), may be renewed by the Minister or his delegate for periods of one year on payment of the prescribed fee.

(9) The Minister or his delegate may, on the application of a licensee, vary a licence.

(10) A person is not eligible to apply for a licence within two years of his conviction of an offence under this Act.

6. CONDITIONS OF LICENCE.

(1) Subject to this section, a licence is subject to the prescribed conditions including conditions relating to minimum standards of service to be provided by the licensee.

(2) A licence under Section 5(1)(a) and (b) is subject to a condition limiting, to an area specified in the licence, the area within which the licensee may offer or solicit offers or otherwise negotiate for the acquisition of crocodiles.

(3) A person who, on behalf of a licensee, offers or solicits offers or otherwise negotiates for the acquisition of crocodiles outside the area specified in Subsection (2), is guilty of an offence.

Penalty: A fine not exceeding K400.00.

(4) A licence may contain a condition limiting the licence to a specified number of crocodiles.

(5) Subject to this Act, a licence is subject to the additional condition or conditions which may be required by the Minister or his delegate in a particular case.

(6) In any proceeding under this Act, the onus of proving that a crocodile was acquired or disposed of in accordance with the conditions of a licence is on the defendant.

7. CANCELLATION.

The Minister or his delegate may cancel a licence where the licensee—

(a) has been convicted of an offence against this Act; or

(b) has contravened or failed to comply with a condition of the licence.

8. PROVISIONS APPLYING TO COMPANIES.

(1) A licence under Section 5(1)(a) or (b) shall not be granted to a company.

(2) A company which holds a licence under Section 5(1)(c) may only export crocodiles acquired by an employee of the company who holds a licence under Section 5(1)(b).

Penalty: A fine not exceeding K800.00.

(3) Before a person commences to acquire crocodiles on behalf of a company, the company must apply for a licence under Section 5(1)(b) on behalf of that person.

Penalty: A fine not exceeding K200.00.

(4) Where the company makes an application under Section 5(1)(b), the licence, if granted, shall be issued in the name of a person on behalf of the company and that person may acquire crocodiles accordingly.

(5) A person in respect of whom a licence is issued under Subsection (4) shall, for the purposes of this Act, be deemed to be an employee of the company and to continue to be an employee of the company until the Conservator is notified by written notice that the person has ceased to be an employee.

(6) Where a notice is given under Subsection (5)—

- (a) the employee ceases to be an employee on the day that the Conservator is notified; and
- (b) the licence issued in respect of the employee terminates on that day; and
- (c) the company shall advise the employee of the notice.

(7) Notwithstanding Section 24 of the *Criminal Code*, where an employee contravenes a provision of this Act, the company which employs him and each officer of that company shall, without affecting the liability of the employee, be deemed to have contravened that provision.

(8) In Subsection (7), “officer” means—

- (a) in the case of a company which is incorporated under the *Companies Act 1997*—a director or secretary; and
- (b) in the case of a company which is registered under Division XII.3 of that Act—the agent appointed under that Division.

9. PROHIBITION OR RESTRICTION ON SIZE, ETC.

(1) The regulations may prohibit or restrict the taking, killing, possession, acquiring, disposal or exporting of crocodiles.

(2) Without limiting the generality of Subsection (1), the regulations may prohibit or restrict the taking, killing, possession, acquiring, disposal or exporting of crocodiles in any one or more of the following ways:—

- (a) according to species; or
- (b) below a minimum size or above a maximum size.

(3) A person who takes, kills, has in his possession or under his control, acquires, disposes of or exports a crocodile in contravention of the regulations is guilty of an offence.

Penalty: A fine not exceeding K400.00 for each crocodile.

10. CLOSED SEASONS.

(1) The Minister may, by notice in the National Gazette, prohibit or restrict the taking or killing of crocodiles of a particular species or of a specified size in an area and during a period specified in the notice.

(2) A person who takes or kills a crocodile contrary to a notice under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K100.00 for each crocodile.

11. CROCODILE FARMS.

(1) The Conservator shall maintain a register of crocodile farms in which shall be recorded such information concerning the operation of crocodile farms in the country as is prescribed or as the Conservator thinks necessary or desirable.

(2) The Conservator may require a person to provide information either orally or in writing in relation to all or any of such matters in connection with a crocodile farm as are prescribed.

(3) A person who, without lawful excuse (proof of which is on him) refuses or fails to comply with a requirement made or given under Subsection (2), is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

12. APPOINTMENT AND POWERS, ETC., OF RANGERS.

(1) A person appointed as a Ranger under the *Fauna (Protection and Control) Act 1966* is a Ranger for the purposes of this Act and, subject to any directions of the Conservator, is responsible for the enforcement of this Act and has such other powers and functions as are prescribed.

(2) An information in respect of an offence under this Act may be brought by any person.

13. POWER OF EXAMINATION, ETC.

(1) Subject to this section, for the purposes of this Act a Ranger may, at any reasonable time and with or without assistants—

(a) enter on and search any land, building, aircraft, vessel or vehicle, or open any crate, package, box, or carton on or in which there is reasonable cause to believe that a crocodile, taken, killed, acquired, possessed, disposed of, exported or intended for export in contravention of this Act, is or may be; and

(b) require a person to furnish information concerning, or to produce for inspection, any crocodile in his possession or under his control; and

(c) seize any crocodile which has been, or there is reasonable cause to believe has been, taken, killed, acquired, possessed, disposed of, exported or intended for export in contravention of this Act.

(2) Where a Ranger opens any crate, package, box or carton, he shall, where there is no contravention of this Act, repack the crate, package, box or carton in such a manner that damage to the contents is not occasioned by the repacking.

(3) A person who—

(a) hinders or obstructs a Ranger or a person lawfully assisting a Ranger in the exercise of his powers under Subsection (1); or

(b) refuses or fails, without reasonable excuse (proof of which is on him) to furnish information or to produce a crocodile in his possession or under his control when required to do so under that subsection,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(4) The powers conferred by Subsection (1)(a) shall not be exercised in relation to a private dwelling except under a warrant in the prescribed form, issued by a District Court Magistrate on being satisfied as to the matter specified in that subsection.

14. CONSERVATOR TO HAVE ALL THE POWERS ETC., OF A RANGER.

The Conservator has and may exercise all the powers and functions of a Ranger for the purposes of this Act.

15. FORFEITURE OF CROCODILES.

(1) Any crocodile which, in the opinion of the Conservator, is or has been taken, killed, acquired, possessed or disposed of contrary to any provision of this Act is, by virtue of this section, forfeited to and is the property of the State, and may, subject to Section 18, be retained, sold or disposed of in such manner as the Conservator may direct.

(2) Where a crocodile forfeited under Subsection (1) is sold, the proceeds shall be paid into the Consolidated Revenue Fund.

(3) The Department shall maintain a register in which shall be recorded the origin, date of disposal and method of disposal of any crocodile forfeited under this Act.

16. FORFEITURE UNDER COURT ORDER.

(1) In addition to any sentence which a Court may impose on the conviction of a person of an offence under this Act, the Court may order that the whole or any part of the proceeds of sale of any crocodile taken, killed, acquired, possessed, disposed of, exported or intended for export by him, or any person concerned, be forfeited.

(2) Where a Court orders the forfeiture of the whole or part of the proceeds of sale of a crocodile under Subsection (1)–

(a) payment of any sum ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of a fine; and

(b) all moneys forfeited shall be paid into the Consolidated Revenue Fund; and

(c) for the purposes of an appeal against a sentence imposed by a Court for an offence under this Act, an order made under this section against the convicted person shall be deemed to form part of the sentence of the Court.

17. EXPORT OF CROCODILES.

(1) A person shall not export crocodiles without the prior written permission of the Minister or his delegate.

(2) Subject to this Act, a crocodile taken, killed, acquired, possessed, disposed of or exported in contravention of this Act is a prohibited export under the *Customs Act 1951*.

18. APPEALS.

A person aggrieved by a decision or act of the Conservator or a Ranger under this Act may, within 21 days of the doing of the act or the making of the decision coming to his knowledge, appeal to the Minister, whose decision is final.

19. DELEGATION.

The Conservator may, by instrument under his hand, delegate to an officer or Ranger all or any of his powers and functions under this Act (except this power of delegation).

20. IMMUNITY.

The Conservator, a Ranger, or a person acting on behalf of the Conservator or a Ranger is not liable for any act done in good faith by the Conservator, Ranger or person for the purpose of this Act.

21. EXEMPTIONS.

(1) Where in the opinion of the Minister it is, in the national interest, expedient to do so, he may by notice in the National Gazette exempt a person or class of persons from all or any of the provisions of this Act.

(2) An exemption under Subsection (1) may be absolute or subject to conditions.

22. CONSERVATOR EMPOWERED TO TAKE ETC., CROCODILES.

(1) Notwithstanding anything in this Act, the Conservator, or a person authorized in writing by the Conservator and acting in accordance with that authorization, may take, kill, acquire, possess or export crocodiles for any purpose directly or indirectly connected with the care, protection, promotion, propagation or management of crocodiles.

(2) Crocodiles taken, killed, acquired or possessed under Subsection (1) shall be disposed of as the Conservator directs.

23. PERMIT TO TAKE ETC., CROCODILES.

(1) The Conservator may, on the application of a *bona fide* representative of a scientific or zoological organization approved by him, issue to that representative a permit authorizing the taking, killing, acquiring, possession, disposal or export of crocodiles in accordance with the permit.

(2) A permit under Subsection (1) may specify—

(a) the number, size and species of crocodiles that may be taken, killed, acquired, possessed, disposed of or exported; and

(b) the area within which the crocodiles may be so taken, killed, acquired or possessed; and

(c) such further or other conditions as may seem necessary or desirable to the Conservator.

(3) A person who takes, kills, acquires, possesses, disposes of or exports crocodiles in contravention of a condition of a permit under this section is guilty of an offence.

Penalty: A fine not exceeding K100.00 for each crocodile.

(4) In any proceeding under this Act, the onus of proving that a crocodile was obtained by virtue of a permit under this section is on the defendant.

24. LEVY.

(1) The holder of a licence to export crocodiles under this Act shall pay to the State a levy on crocodiles exported by him at the rate fixed by the Minister, from time to time, by notice in the National Gazette.

(2) A levy payable under this section shall be collected and paid in the prescribed manner.

25. EVIDENCE.

(1) In any proceeding under this Act, evidence that at the time of the offence a person was in possession of, or had recently been in possession of, crocodiles, and—

(a) had in his possession or charge, or under his control, any vessel, boat, canoe, net trap, gun or other equipment used or adapted for taking, killing, acquiring, keeping or disposing of crocodiles, or any vessel, boat or canoe used for trade; or

(b) was the owner, occupier or manager of a store or other premises used for acquiring or disposing of crocodiles, or was the servant or agent of such owner, occupier or manager; or

(c) was the holder of a licence under—

(i) the *Licences Act* (T.N.G.) 1923; or

(ii) the *Trading Act 1946*; or

(iii) the *Business Licences Act 1971*,

is prima facie evidence that the person was acquiring or disposing of crocodiles.

(2) In any proceeding under Section 4 or 9, evidence that a crocodile was found packaged with an overseas address is *prima facie* evidence that the person who affixed the address or caused the address to be affixed attempted to export that crocodile.

26. REGULATIONS.

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing—

(a) the returns to be made by licensees; and

(b) the fees to be paid to the Conservator in respect of a licence or permit; and

(c) restrictions or prohibitions on methods and devices used in the taking, killing or keeping of crocodiles; and

(d) the returns to be made by the owner, occupier or manager of a crocodile farm; and

(e) conditions to be observed by the owner, occupier or manager of a crocodile farm; and

(f) penalties of fines not exceeding K200.00 and default penalties of fines not exceeding K20.00 for offences against the regulations.

(2) The regulations may apply to or have operation in the whole or any part of the country, may be of general or specially limited application according to time, place or circumstances, and may be general or restricted to a specified class or subject matter.

Office of Legislative Counsel, PNG

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