

NATURE CONSERVATION AMENDMENT BILL 2013

FACT SHEET

- The Bill will amend the *Nature Conservation Act 2002* (the Act) to remove mandatory minimum penalty provisions from the Act. There are four mandatory minimum penalties in the Act; the relevant provisions are all in Section 32.
- All of the penalties are offences relating to restricted animals, and two also apply to offences relating to ferrets. The offences are as follows:
 - the importation of a restricted animal without a permit (s32(2))
 - the possession of a restricted animal, or allowing a restricted animal or a ferret to go at large in the state, without a permit (s32(3))
 - non-compliance with a permit condition relating to a restricted animal or a ferret (s32(7))
 - the removal of, or taking away, a seized restricted animal without a permit (s32(13)).
- Restricted animals include those species listed under Section 32(1) of the Act (i.e. foxes, wolves, dingoes, and mink); species that are prescribed by the Regulations to be restricted animals; and any hybrid of a restricted animal. There are currently 18 animals (birds and turtles) that are listed as restricted animals under Schedule 5 of the *Wildlife (General) Regulations 2010*.
- The species have all been listed as restricted animals because they pose an extreme threat to Tasmania's environmental, economic and social wellbeing.
- The penalty for each of the offences is a fine of not less than 200 penalty units and not more than 500 penalty units, or imprisonment for a term not less than 2 years and not more than 5 years, or both.
- A penalty unit is currently \$130 so the minimum penalty that the courts can impose is a \$26 000 fine or a 2 year jail term. The penalty applies for each animal for which an offence has been committed.
- Such a severe minimum penalty provides the courts with limited power to take into account the particular circumstances of a case and to exercise discretion when sentencing. This means that the relevant provisions of the Act may lead to injustice; a concern that has been expressed by Tasmanian magistrates. There is also little evidence that mandatory minimum penalties are an effective deterrent.

- This amendment will allow the courts to impose fines of less than \$26 000 or a custodial sentence of 2 years (or both) if it is deemed appropriate by the sentencing judge or magistrate. This will ensure that sentencing is discretionary, and vested in the judiciary, who are the body with the skills and expertise to determine fair and just sentences.
- The Government supports the current maximum penalties that apply to offences relating to restricted animals because of the potential impact that these animals could have on Tasmania's environmental, economic and social wellbeing.
- The maximum penalty for each offence is a fine of 500 penalty units (currently \$65 000), or a 5 year jail term, or both. This penalty applies for each animal for which an offence has been committed. These penalties will not be changed by this amendment.
- The Bill will ensure that the *Nature Conservation Act 2002* is consistent with other similar legislation that relates to biosecurity in Tasmania. For example, there are no mandatory minimum penalties for the illegal importation of:
 - plants and plant products under the *Plant Quarantine Act 1997*
 - an animal or restricted material under the *Animal Health Act 1995*
 - a noxious fish under the *Living Marine Resources Management Act 1995*.