



Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001

No. 82, 2001

***An Act to amend the *Environment Protection and
Biodiversity Conservation Act 1999*, and for other
purposes***

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**An Act to amend the *Environment Protection and
Biodiversity Conservation Act 1999*, and for other
purposes**

[Assented to 11 July 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Environment Protection and
Biodiversity Conservation Amendment (Wildlife Protection) Act
2001*.

2 Commencement

- (1) The following provisions of this Act commence on the day on which this Act receives the Royal Assent:
 - (a) sections 1, 2 and 3; and
 - (b) Part 3 of Schedule 1.
- (2) The remaining provisions of this Act commence on a day to be fixed by Proclamation.
- (3) If the remaining provisions of this Act do not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Environment Protection and Biodiversity Conservation Act 1999

Part 1—Amendments relating to wildlife

1 Subsection 224(2)

After “this Division”, insert “(other than an export/import provision)”.

2 At the end of section 224

Add:

(4) In this section:

export/import provision means:

- (a) section 232A; or
- (b) section 232B; or
- (c) any other provision of this Division, in so far as that provision relates to section 232A or 232B.

3 Subdivision D of Division 3 of Part 13 (heading)

Repeal the heading, substitute:

Subdivision D—Offences relating to exports and imports

4 Before section 233

Insert:

232A Export of cetaceans

- (1) Subject to section 235, a person is guilty of an offence if the person exports:
 - (a) a cetacean; or
 - (b) a part of a cetacean; or
 - (c) a product derived from a cetacean.
 - (2) An offence against this section is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding 1,000 penalty units, or both.
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232B Import of cetaceans

- (1) Subject to section 235, a person is guilty of an offence if the person imports:
- (a) a cetacean; or
 - (b) a part of a cetacean; or
 - (c) a product derived from a cetacean.
- (2) An offence against this section is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding 1,000 penalty units, or both.

5 Paragraph 233(1)(b)

After “cetacean”, insert “, part or product, as the case may be,”.

6 Subsection 233(2)

Omit “2 years”, substitute “5 years”.

7 Subsection 234(2)

Omit “2 years”, substitute “5 years”.

8 Section 235

Omit “233”, substitute “232A, 232B, 233”.

Note: The heading to section 235 is altered by omitting “233” and substituting “232A, 232B, 233”.

9 Subsection 238(2)

After “230,”, insert “232A, 232B,”.

10 At the end of subsection 238(3)

Add:

- ; or (d) all of the following subparagraphs apply:
- (i) the specified action is the export of a part of a cetacean;
 - (ii) the export of the part is an export that, under the regulations, is taken to be an export of a personal item;
 - (iii) the export of the part will not be detrimental to the conservation of cetaceans;
 - (iv) the export of the part is not for commercial purposes; or
 - (e) all of the following subparagraphs apply:
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- (i) the specified action is the import of a part of a cetacean;
- (ii) the import of the part is an import that, under the regulations, is taken to be an import of a personal item;
- (iii) the import of the part will not be detrimental to the conservation of cetaceans;
- (iv) the import of the part is not for commercial purposes.

11 After Part 13

Insert:

Part 13A—International movement of wildlife specimens

Division 1—Introduction

303BA Objects of Part

- (1) The objects of this Part are as follows:
 - (a) to ensure that Australia complies with its obligations under CITES and the Biodiversity Convention;
 - (b) to protect wildlife that may be adversely affected by trade;
 - (c) to promote the conservation of biodiversity in Australia and other countries;
 - (d) to ensure that any commercial utilisation of Australian native wildlife for the purposes of export is managed in an ecologically sustainable way;
 - (e) to promote the humane treatment of wildlife;
 - (f) to ensure ethical conduct during any research associated with the utilisation of wildlife;
 - (h) to ensure that the precautionary principle is taken into account in making decisions relating to the utilisation of wildlife.

Note: CITES means the Convention on International Trade in Endangered Species—see section 528.

- (2) In order to achieve its objects, this Part includes special provisions to conserve the biodiversity of Australian native wildlife.

303BAA Certain indigenous rights not affected

To avoid doubt, nothing in this Part prevents an indigenous person from continuing in accordance with law the traditional use of an area for:

- (a) hunting (except for the purposes of sale); or
- (b) food gathering (except for the purposes of sale); or
- (c) ceremonial or religious purposes.

303BB Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a system for regulating the international movement of wildlife specimens.
- A *CITES specimen* is a specimen of a species included in Appendix I, II or III to the Convention on International Trade in Endangered Species (CITES).
- It is an offence to export or import a *CITES specimen* unless:
 - (a) the exporter or importer holds a permit; or
 - (b) an exemption applies.
- A *regulated native specimen* is a specimen of a native species subject to export control under this Part.
- It is an offence to export a *regulated native specimen* unless:
 - (a) the exporter holds a permit; or
 - (b) an exemption applies.
- A *regulated live specimen* is a live specimen of a species subject to import control under this Part.
- It is an offence to import a *regulated live specimen* unless the importer holds a permit.

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|---|
| <ul style="list-style-type: none">• It is an offence to possess a specimen that was imported in contravention of this Part. |
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303BC Definitions

In this Part, unless the contrary intention appears:

eligible listed threatened species means a listed threatened species other than a species in the conservation dependent category.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

export means:

- (a) export from Australia or from an external Territory; or
- (b) export from the sea;

but does not include:

- (c) export from Australia to an external Territory; or
- (d) export from an external Territory to Australia; or
- (e) export from an external Territory to another external Territory.

export from the sea, in relation to a specimen, means take in a Commonwealth marine area and then take out of that area to another country without bringing into Australia or into an external Territory.

import means:

- (a) import into Australia or into an external Territory; or
- (b) import by way of introduction from the sea;

but does not include:

- (c) import into Australia from an external Territory; or
- (d) import into an external Territory from Australia; or
- (e) import into an external Territory from another external Territory.

import by way of introduction from the sea, in relation to a specimen, means take in the marine environment not under the jurisdiction of any country and then bring into Australia or into an

external Territory without having been imported into any other country.

marine environment means the sea, and includes:

- (a) the air space above the sea; and
- (b) the seabed and subsoil beneath the sea.

recipient means:

- (a) in relation to a specimen that is exported—the person in the country to which the specimen is exported who is to have the care and custody of the specimen after the export; and
- (b) in relation to a specimen that is imported into Australia or into an external Territory—the person in Australia or that Territory, as the case may be, who is to have the care and custody of the specimen after the import.

relevant CITES authority, in relation to a country, means:

- (a) if the country is a party to CITES—a Management Authority of that country; or
- (b) if the country is not a party to CITES—a competent authority of that country within the meaning of Article X of CITES.

sender, in relation to a specimen that is imported into Australia or an external Territory, means the person in the country from which the specimen is imported who exports it from that country to Australia or to that Territory, as the case may be.

take includes:

- (a) in relation to an animal—harvest, catch, capture, trap and kill; and
- (b) in relation to a plant specimen—harvest, pick, gather and cut.

trade means trade within the ordinary meaning of that expression.

Note: See also section 528.

Division 2—CITES species

Subdivision A—CITES species and CITES specimens

303CA Listing of CITES species

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of CITES species for the purposes of this Act.
 - (2) The Minister must ensure that the list is established on the commencement of this section.

Note: See section 4 of the *Acts Interpretation Act 1901*.
 - (3) The list must include all species from time to time included in any of Appendices I, II and III to CITES. The list must not include any other species.
 - (4) For each species included in the list, there is to be a notation:
 - (a) describing the specimens belonging to that species that are included in a particular Appendix to CITES; and
 - (b) identifying the Appendix in which the species is included; and
 - (c) identifying the date on which the provisions of CITES first applied to the specimens.
 - (5) A description mentioned in paragraph (4)(a):
 - (a) may cover all specimens that belong to the species; or
 - (b) may cover specified kinds of specimens that belong to the species; or
 - (c) may state that the inclusion of a specimen in a particular Appendix to CITES is subject to restrictions or conditions.
 - (6) A restriction or condition mentioned in paragraph (5)(c) may:
 - (a) impose a quantitative limit in relation to the export or import of a specimen; or
 - (b) relate to the imposition of a quota in relation to the export or import of specimens; or
 - (c) relate to a particular population of a species; or
 - (d) reflect any other restriction or condition set out in the relevant Appendix to CITES.
 - (7) Subsection (6) does not limit paragraph (5)(c).
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- (8) A notation in the list is to be consistent with CITES.
- (9) The Minister may, by instrument published in the *Gazette*:
 - (a) correct an inaccuracy or update the name of a species; or
 - (b) amend the list, as necessary, so that it includes all species required to be included in the list under subsection (3); or
 - (c) amend the list, as necessary, so that the notations in the list are consistent with CITES.
- (10) A copy of an instrument under subsection (1) or (9) is to be made available for inspection on the Internet.
- (11) For the purposes of this section, it is to be assumed that the definition of *specimen* in CITES includes a reference to a thing that is a specimen for the purposes of this Act.

Note: See also section 303CB.

303CB Stricter domestic measures

- (1) The Minister may, by instrument published in the *Gazette*, declare that the list referred to in section 303CA has effect as if it were modified as set out in the declaration.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The Minister must not make a declaration under subsection (1) unless:
 - (a) the modification has the effect of treating a specified specimen that is included in Appendix II to CITES as if the specimen were included in Appendix I to CITES; or
 - (b) the modification has the effect of broadening the range of specimens included in a specified Appendix to CITES in relation to a specified species; or
 - (c) the modification has the effect of decreasing a quantitative limit in relation to the export or import of a specimen; or
 - (d) the modification has the effect of treating a specified specimen that is not included in Appendix I, II or III to CITES as if the specimen were included in Appendix I to CITES; or
 - (e) the modification has the effect of treating a specified specimen that is not included in Appendix I, II or III to
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CITES as if the specimen were included in Appendix II to CITES.

- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) A copy of an instrument under subsection (1) is to be made available for inspection on the Internet.
- (5) A reference in this Act to the *list referred to in section 303CA* is a reference to that list as modified under this section.

Subdivision B—Offences and permit system

303CC Exports of CITES specimens

- (1) A person is guilty of an offence if:
 - (a) the person exports a specimen; and
 - (b) the specimen is a CITES specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Authorised export—permit

- (2) Subsection (1) does not apply if the specimen is exported in accordance with a permit that was issued under section 303CG, 303GB or 303GC and is in force.

Authorised export—CITES exemptions

- (3) Subsection (1) does not apply if the export of the specimen is an export that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.
 - (4) Subsection (1) does not apply if the Minister issues a certificate under subsection (5) in relation to the specimen.
 - (5) If the Minister is satisfied that a specimen was acquired before the provisions of CITES applied to the specimen, the Minister may issue a certificate to that effect.
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- (6) Subsection (1) does not apply if the export of the specimen is an export that, under the regulations, is taken to be an export of a personal or household effect.

Note 1: See paragraph 3 of Article VII of CITES.

Note 2: The defendant bears an evidential burden in relation to the matters in subsections (2), (3), (4) and (6) (see subsection 13.3(3) of the *Criminal Code*).

303CD Imports of CITES specimens

- (1) A person is guilty of an offence if:
- (a) the person imports a specimen; and
 - (b) the specimen is a CITES specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Authorised import—permit

- (2) Subsection (1) does not apply if the specimen is imported in accordance with a permit that was issued under section 303CG, 303GB or 303GC and is in force.

Authorised import—CITES exemptions

- (3) Subsection (1) does not apply if the import of the specimen is an import that, under the regulations, is taken to be an import of a personal or household effect.

Note: See paragraph 3 of Article VII of CITES.

- (4) Subsection (1) does not apply if:
- (a) the specimen is a CITES II specimen; and
 - (b) the specimen is not a live specimen; and
 - (c) the specimen belongs to a species that is not specified in the regulations; and
 - (d) in a case where a quantitative limit is applicable to the specimen under a notation in the list referred to in section 303CA—the quantity of the specimen does not exceed that limit; and
 - (e) the specimen is within the personal baggage of a person entering Australia or an external Territory; and
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- (f) the specimen is not intended for sale or for any other commercial purpose; and
 - (g) both:
 - (i) the country from which the specimen is proposed to be imported has a relevant CITES authority; and
 - (ii) permission to export the specimen from that country has been given by a relevant CITES authority of that country.
- (5) Subsection (1) does not apply if the import of the specimen is an import that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.
- (6) Subsection (1) does not apply if:
- (a) the country from which the specimen is proposed to be imported has a relevant CITES authority; and
 - (b) a relevant CITES authority of that country has issued a certificate under paragraph 2 of Article VII of CITES in respect of the specimen.

Note 1: Paragraph 2 of Article VII of CITES deals with a specimen that was acquired before the provisions of CITES applied to the specimen.

Note 2: The defendant bears an evidential burden in relation to the matters in subsections (2), (3), (4), (5) and (6) (see subsection 13.3(3) of the *Criminal Code*).

303CE Applications for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303CG.
- (2) The application must be accompanied by the fee (if any) prescribed by the regulations.

303CF Further information

- (1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.

- (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

303CG Minister may issue permits

- (1) The Minister may, on application made by a person under section 303CE, issue a permit to the person. This subsection has effect subject to subsection (3).
- (2) A permit authorises its holder to take the action or actions specified in the permit without breaching section 303CC, 303CD, 303DD or 303EK.
- (3) The Minister must not issue a permit unless the Minister is satisfied that:
- (a) the action or actions specified in the permit will not be detrimental to, or contribute to trade which is detrimental to:
 - (i) the survival of any taxon to which the specimen belongs; or
 - (ii) the recovery in nature of any taxon to which the specimen belongs; or
 - (iii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
 - (b) the specimen was not obtained in contravention of, and the action or actions specified in the permit would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
 - (c) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and
 - (d) if any restriction or condition is applicable to the specimen under a notation in the list referred to in section 303CA—that restriction or condition has been, or is likely to be, complied with; and
 - (e) if the permit authorises the export of a CITES specimen:
 - (i) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
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- (ii) the relevant conditions set out in the table in section 303CH have been met; and
 - (f) if the permit authorises the import of a CITES specimen:
 - (i) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB); or
 - (ii) the relevant conditions set out in the table in section 303CH have been met; and
 - (g) if:
 - (i) the permit authorises the import of a CITES II specimen; and
 - (ii) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB);
the country from which the specimen is proposed to be imported has a relevant CITES authority and permission to export the specimen from that country has been given by a relevant CITES authority of that country; and
 - (h) if the permit authorises the export of a CITES specimen that is a regulated native specimen—the conditions set out in subsection 303DG(4) have been met; and
 - (i) if the permit authorises the import of a CITES specimen that is a regulated live specimen—the conditions set out in subsection 303EN(3) have been met.
- (4) Subsection (3) does not apply in relation to a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be.
- (5) The Minister must not issue a permit to export a specimen (other than a live animal) that has been imported into Australia or an external Territory, unless the Minister is satisfied that:
- (a) the specimen was lawfully imported (section 303GY); and
 - (b) if the specimen is a CITES I specimen:
 - (i) the country to which the specimen is proposed to be exported has a relevant CITES authority; and
 - (ii) permission to import that specimen into that country has been given by a relevant CITES authority of that country.
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Schedule 1 Amendment of the Environment Protection and Biodiversity Conservation Act 1999

Part 1 Amendments relating to wildlife

(6) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

303CH Specific conditions relating to the export or import of CITES specimens for commercial purposes

The following table sets out the conditions mentioned in paragraphs 303CG(3)(e) and (f):

Specific conditions			
Item	Category of specimen	Action	Specific conditions
1	CITES I	Import	(a) the proposed import would be an import from an approved CITES-registered captive breeding program in accordance with section 303FK; or (b) the specimen is, or is derived from, a plant that was artificially propagated (section 527C).
2	CITES I	Export	(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and (b) the country to which the specimen is proposed to be exported has a relevant CITES authority, and permission to import that specimen into that country has been given by a relevant CITES authority of that country; and (c) the proposed export would be an export from: (i) an approved CITES-registered captive breeding program in accordance with section 303FK; or (ii) an approved artificial propagation program in accordance with section 303FL.

Specific conditions			
Item	Category of specimen	Action	Specific conditions
3	CITES II	Import	<p>(a) the country from which the specimen is proposed to be imported has a relevant CITES authority and permission to export the specimen from that country has been given by a relevant CITES authority of that country; and</p> <p>(b) any of the following subparagraphs applies:</p> <ul style="list-style-type: none"> (i) the proposed import of the specimen would be an import from an approved commercial import program in accordance with section 303FU; (ii) the specimen is, or is derived from, an animal that was bred in captivity (section 527B); (iii) the specimen is, or is derived from, a plant that was artificially propagated (section 527C).
4	CITES II	Export	<p>(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and</p> <p>(b) the proposed export of the specimen would be:</p> <ul style="list-style-type: none"> (i) an export from an approved captive breeding program in accordance with section 303FK; or (ii) an export from an approved artificial propagation program in accordance with section 303FL; or (iii) an export in accordance with an approved wildlife trade operation (section 303FN); or (iv) an export in accordance with an approved wildlife trade management plan (section 303FO).
5	CITES III	Import	The country from which the specimen is proposed to be imported has a relevant CITES authority, and permission to export the specimen from that country has been given by a relevant CITES authority of that country.

Schedule 1 Amendment of the Environment Protection and Biodiversity Conservation Act 1999

Part 1 Amendments relating to wildlife

Specific conditions			
Item	Category of specimen	Action	Specific conditions
6	CITES III	Export	(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and (b) the proposed export of the specimen would be: (i) an export from an approved captive breeding program in accordance with section 303FK; or (ii) an export from an approved artificial propagation program in accordance with section 303FL; or (iii) an export in accordance with an approved wildlife trade operation (section 303FN); or (iv) an export in accordance with an approved wildlife trade management plan (section 303FO).

303CI Time limit for making permit decision

If an application for a permit is made under section 303CE, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

- (a) the day on which the application is made;
- (b) if a request for further information in relation to the application is made under section 303CF—the day on which the applicant complies with the request;
- (c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

303CJ Duration of permits

A permit under section 303CG:

- (a) comes into force on the date on which it is issued; and
 - (b) unless it is sooner cancelled, remains in force for:
 - (i) a period of 6 months beginning on the date on which it is issued; or
 - (ii) if a shorter period is specified in the permit—that shorter period.
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303CK Register of applications and decisions

- (1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:
 - (a) prescribed particulars of applications made under section 303CE after the establishment of the register; and
 - (b) prescribed particulars of decisions made by the Minister under section 303CG after the establishment of the register.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the Internet.

Subdivision C—Application of CITES

303CL Application of CITES—Management Authority and Scientific Authority

For the purposes of the application of CITES to Australia:

- (a) the Minister is the Management Authority; and
- (b) the Secretary is the Scientific Authority.

303CM Interpretation of CITES provisions

- (1) Except so far as the contrary intention appears, an expression that:
 - (a) is used in the CITES provisions without definition; and
 - (b) is used in CITES (whether or not it is defined in, or a particular meaning is assigned to it by, CITES);has, in the CITES provisions, the same meaning as it has in CITES.
- (2) For the purposes of subsection (1), the *CITES provisions* consist of:
 - (a) this Division; and
 - (b) any other provision of this Act in so far as that other provision relates to, or to permits under, this Division.

303CN Resolutions of the Conference of the Parties to CITES

- (1) In making a decision under this Part in relation to a CITES specimen, the Minister may have regard to a relevant resolution of the Conference of the Parties under Article XI of CITES.

- (2) Subsection (1) applies to a resolution, whether made before or after the commencement of this section.

Division 3—Exports of regulated native specimens

Subdivision A—Regulated native specimens

303DA Regulated native specimens

For the purposes of this Act, a *regulated native specimen* is a specimen that:

- (a) is, or is derived from, a native animal or a native plant; and
- (b) is not included in the list referred to in section 303DB.

303DB Listing of exempt native specimens

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of exempt native specimens.
 - (2) For each specimen included in the list, there is to be a notation that states whether the inclusion of the specimen in the list is subject to restrictions or conditions and, if so, the nature of those restrictions or conditions.
 - (3) A restriction or condition mentioned in subsection (2) may:
 - (a) consist of a quantitative limit in relation to the export of the specimen; or
 - (b) relate to the circumstances of the export of the specimen; or
 - (c) relate to the source of the specimen; or
 - (d) relate to the circumstances in which the specimen was taken or, if the specimen is derived from another specimen that was taken, the circumstances in which the other specimen was taken; or
 - (e) relate to an expiry date for the inclusion of the specimen on the list.
 - (4) Subsection (3) does not limit subsection (2).
 - (5) The list, as first established, must:
 - (a) contain the specimens referred to in Part I of Schedule 4 to the *Wildlife Protection (Regulation of Exports and Imports)*
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- Act 1982*, as in force immediately before the commencement of this section; and
- (b) reflect the restrictions and conditions that are applicable to the inclusion of those specimens in that Part of that Schedule.
- (6) The list must not include a specimen that belongs to an eligible listed threatened species unless:
- (a) the Minister is satisfied that the export of the specimen will not:
 - (i) adversely affect the conservation status of the species concerned; and
 - (ii) be inconsistent with any recovery plan or wildlife conservation plan for that species; and
 - (b) the inclusion of the specimen on the list is subject to a restriction or condition to the effect that:
 - (i) the specimen must be, or be derived from, a plant that was artificially propagated (section 527C); and
 - (ii) the specimen was propagated in an operation that has derived its stock in a way that did not breach a law of the Commonwealth, a State or a Territory.
- (7) A copy of an instrument under subsection (1) is to be made available for inspection on the Internet.

303DC Minister may amend list

- (1) The Minister may, by instrument published in the *Gazette*, amend the list referred to in section 303DB by:
- (a) including items in the list; or
 - (b) deleting items from the list; or
 - (c) imposing a condition or restriction to which the inclusion of a specimen in the list is subject; or
 - (d) varying or revoking a condition or restriction to which the inclusion of a specimen in the list is subject; or
 - (e) correcting an inaccuracy or updating the name of a species.
- (1A) In deciding whether to amend the list referred to in section 303DB to include a specimen derived from a commercial fishery, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.

- (1B) Subsection (1A) does not apply to an amendment mentioned in paragraph (1)(e).
- (1C) Subsection (1A) does not limit the matters that may be taken into account in deciding whether to amend the list referred to in section 303DB to include a specimen derived from a commercial fishery.
- (1D) In this section:
- fishery* has the same meaning as in section 303FN.
- (2) For the purposes of paragraph (1)(e), *correcting an inaccuracy* includes ensuring that the list complies with subsection 303DB(5).
- (3) Before amending the list referred to in section 303DB as mentioned in paragraph (1)(a), (b), (c) or (d) of this section, the Minister:
- (a) must consult such other Minister or Ministers as the Minister considers appropriate; and
 - (b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and
 - (c) may consult such other persons and organisations as the Minister considers appropriate.
- (4) An instrument under subsection (1) (other than an instrument mentioned in paragraph (1)(e)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) A copy of an instrument under subsection (1) is to be made available for inspection on the Internet.

Subdivision B—Offence and permit system

303DD Exports of regulated native specimens

- (1) A person is guilty of an offence if:
- (a) the person exports a specimen; and
 - (b) the specimen is a regulated native specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Exemption—permit

- (2) Subsection (1) does not apply if the specimen is exported in accordance with a permit that was issued under section 303CG, 303DG, 303GB or 303GC and is in force.

Exemption—accredited wildlife trade management plan

- (3) Subsection (1) does not apply if:
- (a) the export of the specimen would be an export in accordance with an accredited wildlife trade management plan (section 303FP); and
 - (b) the specimen is not a live native mammal, a live native reptile, a live native amphibian or a live native bird; and
 - (ba) either:
 - (i) the specimen is not a live terrestrial invertebrate, or a live freshwater fish, prescribed by the regulations for the purposes of this subparagraph; or
 - (ii) the export is an export from an approved aquaculture program in accordance with section 303FM; and
 - (c) the specimen is not a CITES specimen; and
 - (d) the specimen does not belong to an eligible listed threatened species.

Exemption—exchange of scientific specimens

- (4) Subsection (1) does not apply if the export of the specimen is an export that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.

Note: The defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

303DE Applications for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303DG.
 - (2) The application must be accompanied by the fee (if any) prescribed by the regulations.
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303DF Further information

- (1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

303DG Minister may issue permits

- (1) The Minister may, on application made by a person under section 303DE, issue a permit to the person. This subsection has effect subject to subsections (3), (3A) and (4).
 - (2) A permit authorises its holder to take the action or actions specified in the permit without breaching section 303DD.
 - (3) The Minister must not issue a permit authorising the export of a live native mammal, a live native reptile, a live native amphibian or a live native bird unless the Minister is satisfied that the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA).
 - (3A) The Minister must not issue a permit authorising the export of a live terrestrial invertebrate, or a live freshwater fish, prescribed by the regulations for the purposes of paragraph 303DD(3)(ba) unless the Minister is satisfied that:
 - (a) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
 - (b) the proposed export would be an export from an approved aquaculture program in accordance with section 303FM.
 - (4) The Minister must not issue a permit unless the Minister is satisfied that:
 - (a) the export of the specimen will not be detrimental to, or contribute to trade which is detrimental to:
 - (i) the survival of any taxon to which the specimen belongs; or
 - (ii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
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- (b) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and
 - (c) the specimen was not obtained in contravention of, and the export would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
 - (d) if the specimen belongs to an eligible listed threatened species—the export of the specimen is covered by subsection (7) or (8), and the export would not be inconsistent with any recovery plan for that species; and
 - (e) if the specimen does not belong to an eligible listed threatened species:
 - (i) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
 - (ii) the proposed export would be an eligible commercial purpose export (within the meaning of section 303FJ).
- (5) Subsection (4) does not apply in relation to a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be.
- (6) The Minister must not issue a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be, unless the Minister is satisfied that the specimen was lawfully imported (section 303GY).

Eligible listed threatened species

- (7) This subsection covers the export of a specimen if:
- (a) the export of the specimen would be an export from an approved captive breeding program in accordance with section 303FK; or
 - (b) the export of the specimen would be an export from an approved artificial propagation program in accordance with section 303FL; or
 - (c) the export of the specimen would be an export from an approved aquaculture program in accordance with section 303FM;
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and the export of the specimen will not adversely affect the conservation status of the species concerned.

Note: See also subsection (3).

- (8) This subsection covers the export of a specimen if:
- (a) the export of the specimen would be an export for the purposes of research in accordance with section 303FC; or
 - (b) the export of the specimen would be an export for the purposes of education in accordance with section 303FD; or
 - (c) the export of the specimen would be an export for the purposes of exhibition in accordance with section 303FE; or
 - (d) the export of the specimen would be an export for the purposes of conservation breeding or propagation in accordance with section 303FF.

Section has effect subject to section 303GA

- (9) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

303DH Time limit for making permit decision

If an application for a permit is made under section 303DE, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

- (a) the day on which the application is made;
- (b) if a request for further information in relation to the application is made under section 303DF—the day on which the applicant complies with the request;
- (c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

303DI Duration of permits

A permit under section 303DG:

- (a) comes into force on the date on which it is issued; and
- (b) unless it is sooner cancelled, remains in force for:
 - (i) a period of 3 years beginning on the date on which it is issued; or

- (ii) if a shorter period is specified in the permit—that shorter period.

303DJ Register of applications and decisions

- (1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:
 - (a) prescribed particulars of applications made under section 303DE after the establishment of the register; and
 - (b) prescribed particulars of decisions made by the Minister under section 303DG after the establishment of the register.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the Internet.

Division 4—Imports of regulated live specimens

Subdivision A—Regulated live specimens

303EA Regulated live specimens

For the purposes of this Act, a *regulated live specimen* is a specimen that:

- (a) is a live animal or a live plant; and
- (b) is not included in Part 1 of the list referred to in section 303EB.

303EB Listing of specimens suitable for live import

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of specimens that are taken to be suitable for live import.
- (2) The list is to be divided into 2 Parts, as follows:
 - (a) Part 1 is to be a list of unregulated specimens;
 - (b) Part 2 is to be a list of allowable regulated specimens.
- (3) The list may only contain specimens that are live animals or live plants.

- (4) Part 1 of the list, as first established, must contain only the specimens referred to in Part I of Schedule 5 or Part I of Schedule 6 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section.
- (5) Part 1 of the list must not contain a CITES specimen.
- (6) Part 1 of the list is taken to include a live plant the introduction of which into Australia is in accordance with the *Quarantine Act 1908*.
- (7) For each specimen included in Part 2 of the list, there is to be a notation that states whether the inclusion of the specimen in that part of the list is subject to restrictions or conditions and, if so, the nature of those restrictions or conditions.
- (8) A restriction or condition referred to in subsection (7) may:
 - (a) consist of a quantitative limit in relation to the import of the specimen; or
 - (b) relate to the circumstances of the import of the specimen; or
 - (c) relate to the source of the specimen; or
 - (d) relate to the circumstances in which the specimen was taken.
- (9) Subsection (8) does not limit subsection (7).
- (10) Part 2 of the list, as first established, must contain only specimens that were, at any time before the commencement of this section, the subject of an import permit granted under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*.
- (11) For the purposes of subsection (10), a specimen is taken to have been the subject of an import permit if, and only if, the specimen was identified in the permit at the species or sub-species level.
- (12) A copy of an instrument under subsection (1) is to be made available for inspection on the Internet.

303EC Minister may amend list

- (1) The Minister may, by instrument published in the *Gazette*, amend the list referred to in section 303EB by:
 - (a) including items in a particular part of the list; or
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- (b) deleting items from a particular part of the list; or
 - (c) correcting an inaccuracy or updating the name of a species;
or
 - (d) imposing a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject; or
 - (e) varying or revoking a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject.
- (2) For the purposes of paragraph (1)(c), ***correcting an inaccuracy*** includes ensuring that the list complies with subsections 303EB(4) and (10).
- (3) Before amending the list referred to in section 303EB as mentioned in paragraph (1)(a), (b), (d) or (e) of this section, the Minister:
- (a) must consult such other Minister or Ministers as the Minister considers appropriate; and
 - (b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and
 - (c) may consult such other persons and organisations as the Minister considers appropriate.
- (4) An instrument under subsection (1) (other than an instrument mentioned in paragraph (1)(c)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) The Minister must not amend the list referred to in section 303EB by including an item in the list, unless:
- (a) the amendment is made following consideration of a relevant report under section 303ED or 303EE; or
 - (b) the amendment is made following consideration of a relevant review under section 303EJ.
- (6) A copy of an instrument under subsection (1) is to be made available for inspection on the Internet.

Subdivision B—Assessments relating to the amendment of the list of specimens suitable for import

303ED Amendment of list on the Minister’s own initiative

- (1) The Minister may formulate a proposal for the list referred to in section 303EB to be amended by including an item.
- (2) The Minister must cause to be conducted an assessment of the potential impacts on the environment of the proposed amendment.
- (3) The Minister must cause to be prepared a report on those impacts. The report must be prepared in accordance with section 303EF.
- (4) A report under subsection (3) is to be given to the Minister.

303EE Application for amendment of list

- (1) A person may, in accordance with the regulations, apply to the Minister for the list referred to in section 303EB to be amended by including an item.
- (2) The Minister must not consider the application unless:
 - (a) an assessment is made of the potential impacts on the environment of the proposed amendment; and
 - (b) a report on those impacts is given to the Minister.The report must be prepared in accordance with section 303EF.

303EF Requirement for assessments

An assessment under subsection 303ED(2) or 303EE(2) must provide for:

- (a) the preparation of draft terms of reference for a report on the relevant impacts; and
 - (b) the publication of the draft terms of reference for public comment for a period of at least 10 business days that is specified by the Minister; and
 - (c) the finalisation of the terms of reference, to the Minister’s satisfaction, taking into account the comments (if any) received on the draft terms of reference; and
 - (d) the preparation of a draft of a report on the relevant impacts; and
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- (e) the publication of the draft report for public comment for a period of at least 20 business days that is specified by the Minister; and
- (f) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and
- (g) any other matter prescribed by the regulations.

303EG Timing of decision about proposed amendment

- (1) If the Minister receives a report under section 303ED or 303EE in relation to a proposed amendment, the Minister must decide whether or not to make the proposed amendment within:
 - (a) 30 business days; or
 - (b) if the Minister, by writing, specifies a longer period—that longer period;after the first business day after the day on which the report was received.

Notice of extension of time

- (2) If the Minister specifies a longer period for the purposes of subsection (1), he or she must:
 - (a) if section 303EE applies—give a copy of the specification to the applicant; and
 - (b) publish the specification in accordance with the regulations.

303EH Requesting further information

- (1) If:
 - (a) section 303EE applies; and
 - (b) the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to make the proposed amendment;the Minister may request the applicant to give the Minister, within the period specified in the request, information relevant to making the decision.
 - (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.
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303EI Notice of refusal of proposed amendment

If section 303EE applies and the Minister refuses to make the proposed amendment, the Minister must give the applicant notice of the refusal.

303EJ Reviews

If, following consideration of a relevant report under section 303ED or 303EE, the Minister has made a decision to include, or refusing to include, an item in the list referred to in section 303EB, the Minister may review that decision at any time during the period of 5 years after the decision was made.

Subdivision C—Offence and permit system

303EK Imports of regulated live specimens

- (1) A person is guilty of an offence if:
 - (a) the person imports a specimen; and
 - (b) the specimen is a regulated live specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Exemption—permit

- (2) Subsection (1) does not apply if:
 - (a) the specimen is included in Part 2 of the list referred to in section 303EB; and
 - (b) the specimen is imported in accordance with a permit that was issued under section 303CG, 303EN, 303GB or 303GC and is in force.

Exemption—testing permit

- (3) Subsection (1) does not apply if the specimen is imported in accordance with a permit that was issued under section 303GD and is in force.

Note: The defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

303EL Applications for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303EN.
- (2) The application must be accompanied by the fee (if any) prescribed by the regulations.

303EM Further information

- (1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

303EN Minister may issue permits

- (1) The Minister may, on application made by a person under section 303EL, issue a permit to the person. This subsection has effect subject to subsection (3).
- (2) A permit authorises its holder to take the action or actions specified in the permit without breaching section 303EK.
- (3) The Minister must not issue a permit unless the Minister is satisfied that:
 - (a) the proposed import would not be:
 - (i) likely to threaten the conservation status of a species or ecological community; or
 - (ii) likely to threaten biodiversity; and
 - (b) the specimen is included in Part 2 of the list referred to in section 303EB; and
 - (c) if any restriction or condition is applicable to the specimen under a notation in Part 2 of the list referred to in section 303EB—that restriction or condition has been, or is likely to be, complied with; and

- (d) the specimen was not obtained in contravention of, and the import would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
 - (e) if the specimen belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with.
- (4) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

303EO Time limit for making permit decision

If an application for a permit is made under section 303EL, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

- (a) the day on which the application is made;
- (b) if a request for further information in relation to the application is made under section 303EM—the day on which the applicant complies with the request;
- (c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

303EP Duration of permits

A permit under section 303EN:

- (a) comes into force on the date on which it is issued; and
- (b) unless it is sooner cancelled, remains in force for:
 - (i) a period of 3 years beginning on the date on which it is issued; or
 - (ii) if a shorter period is specified in the permit—that shorter period.

303EQ Register of applications and decisions

- (1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:
 - (a) prescribed particulars of applications made under section 303EL after the establishment of the register; and
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- (b) prescribed particulars of decisions made by the Minister under section 303EN after the establishment of the register.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the Internet.

Subdivision D—Marking of certain specimens for the purposes of identification

303ER Object

The object of this Subdivision is:

- (a) to comply with Australia's obligations under:
 - (i) the Biodiversity Convention; and
 - (ii) CITES; and
 - (b) otherwise to further the protection and conservation of the wild fauna and flora of Australia and of other countries;
- by requiring the marking of certain live specimens for the purposes of identification.

Note: See Article 8 of the Biodiversity Convention.

303ES Specimens to which Subdivision applies

This Subdivision applies to a regulated live specimen if:

- (a) the specimen has been imported in accordance with:
 - (i) a permit under this Division; or
 - (ii) a permit or authority under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; or
- (b) the specimen is the progeny of a specimen referred to in paragraph (a).

303ET Extended meaning of *marking*

A reference in this Subdivision to the *marking* of a specimen includes a reference to the following:

- (a) in the case of a live plant:
 - (i) the marking or labelling of a container in which the plant is kept or in which the plant is growing; and
 - (ii) the placement of a label or tag on the plant;
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- (b) in the case of a live animal:
 - (i) the implantation of a scannable device in the animal; and
 - (ii) the placement of a band on any part of the animal; and
 - (iii) the placement (whether by piercing or otherwise) of a tag or ring on any part of the animal; and
 - (iv) the marking or labelling of a container within which the animal is kept.

303EU Secretary may make determinations about marking of specimens

Determinations

- (1) The Secretary may make a written determination about the marking of specified kinds of specimens for the purposes of identification.

Matters that may be covered by determination

- (2) Without limiting subsection (1), a determination by the Secretary under that subsection may:
 - (a) require specimens to be marked; and
 - (b) deal with the manner in which specimens are to be marked; and
 - (c) deal with the times at which marking is to occur; and
 - (d) deal with the removal or destruction of marks; and
 - (e) deal with the replacement or modification of marks; and
 - (f) require that marking be carried out by persons approved in writing by the Secretary under that determination; and
 - (g) deal with the circumstances in which marks may be, or are required to be, rendered useless; and
 - (h) in the case of a mark that consists of a label, tag, band or device:
 - (i) set out specifications relating to the label, tag, band or device; and
 - (ii) require that any destruction or removal of the label, tag, band or device be carried out by a person approved in writing by the Secretary under that determination.

Marking of animals not to involve undue pain etc.

- (3) In the case of a live animal, a determination under subsection (1) must not require marking that involves:
- (a) undue pain or distress to the animal; or
 - (b) undue risk of the death of the animal.

Marking of plants not to involve undue risk of death

- (4) In the case of a live plant, a determination under subsection (1) must not require marking that involves undue risk of the death of the plant.

Disallowable instrument

- (5) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

303EV Offences

Owner to ensure specimens marked etc.

- (1) If a determination under section 303EU applies to a specimen, the owner of the specimen must comply with the determination.

Person not to remove or interfere with mark etc.

- (2) A person contravenes this subsection if:
- (a) a specimen is marked in accordance with a determination under section 303EU; and
 - (b) the person engages in conduct; and
 - (c) the conduct causes the removal of the mark or interference with the mark, or renders the mark unusable.

Offence

- (3) A person who contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding 120 penalty units.
- (4) Subsection (2) does not apply if the person engages in the conduct in accordance with a determination under section 303EU.
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Note: The defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) In subsections (1) and (2), strict liability applies to the circumstance that a determination was made under section 303EU.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

303EW This Subdivision does not limit conditions of permits

This Subdivision does not limit section 303GE (which deals with conditions of permits).

Division 5—Concepts relating to permit criteria

Subdivision A—Non-commercial purpose exports and imports

303FA Eligible non-commercial purpose exports

For the purposes of this Part, the export of a specimen is an *eligible non-commercial purpose export* if, and only if:

- (a) the export of the specimen would be an export for the purposes of research in accordance with section 303FC; or
- (b) the export of the specimen would be an export for the purposes of education in accordance with section 303FD; or
- (c) the export of the specimen would be an export for the purposes of exhibition in accordance with section 303FE; or
- (d) the export of the specimen would be an export for the purposes of conservation breeding or propagation in accordance with section 303FF; or
- (e) the export of the specimen would be an export of a household pet in accordance with section 303FG; or
- (f) the export of the specimen would be an export of a personal item in accordance with section 303FH; or
- (g) the export of a specimen would be an export for the purposes of a travelling exhibition in accordance with section 303FI.

303FB Eligible non-commercial purpose imports

For the purposes of this Part, the import of a specimen is an *eligible non-commercial purpose import* if, and only if:

- (a) the import of the specimen would be an import for the purposes of research in accordance with section 303FC; or
- (b) the import of the specimen would be an import for the purposes of education in accordance with section 303FD; or
- (c) the import of the specimen would be an import for the purposes of exhibition in accordance with section 303FE; or
- (d) the import of the specimen would be an import for the purposes of conservation breeding or propagation in accordance with section 303FF; or
- (e) the import of the specimen would be an import of a household pet in accordance with section 303FG; or
- (f) the import of the specimen would be an import of a personal item in accordance with section 303FH; or
- (g) the import of a specimen would be an import for the purposes of a travelling exhibition in accordance with section 303FI.

303FC Export or import for the purposes of research

- (1) The export of a specimen is an export for the purposes of research in accordance with this section if:
 - (a) the specimen will be used for the purpose of scientific research; and
 - (b) the objects of the research are covered by any or all of the following subparagraphs:
 - (i) the acquisition of a better understanding, and/or increased knowledge, of a taxon to which the specimen belongs;
 - (ii) the conservation of biodiversity;
 - (iii) the maintenance and/or improvement of human health; and
 - (c) the export is not primarily for commercial purposes; and
 - (d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
 - (2) The import of a specimen is an import for the purposes of research in accordance with this section if:
 - (a) the specimen will be used for the purpose of scientific research; and
 - (b) the objects of the research are covered by any or all of the following subparagraphs:
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- (i) the acquisition of a better understanding, and/or increased knowledge, of a taxon to which the specimen belongs;
- (ii) the conservation of biodiversity;
- (iii) the maintenance and/or improvement of human health; and
- (c) the import is not primarily for commercial purposes; and
- (d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

303FD Export or import for the purposes of education

- (1) The export of a specimen is an export for the purposes of education in accordance with this section if:
 - (a) the specimen will be used for the purpose of education or training; and
 - (b) the export is not primarily for commercial purposes; and
 - (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of education in accordance with this section if:
 - (a) the specimen will be used for the purpose of education or training; and
 - (b) the import is not primarily for commercial purposes; and
 - (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

303FE Export or import for the purposes of exhibition

- (1) The export of a specimen is an export for the purposes of exhibition in accordance with this section if:
 - (a) the specimen will be used for the purpose of an exhibition; and
 - (b) the export is not primarily for commercial purposes; and
 - (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
 - (2) The import of a specimen is an import for the purposes of exhibition in accordance with this section if:
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- (a) the specimen will be used for the purpose of an exhibition; and
 - (b) the import is not primarily for commercial purposes; and
 - (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (3) In this section:

exhibition includes a zoo or menagerie.

303FF Export or import for conservation breeding or propagation

- (1) The export of a specimen is an export for the purposes of conservation breeding or propagation in accordance with this section if:
- (a) the specimen is a live animal or a live plant; and
 - (b) the specimen is for use in a program the object of which is the establishment and/or maintenance of a breeding population; and
 - (c) the program is a program that, under the regulations, is taken to be an approved co-operative conservation program; and
 - (d) the export is not primarily for commercial purposes; and
 - (e) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of conservation breeding or propagation in accordance with this section if:
- (a) the specimen is a live animal or a live plant; and
 - (b) the specimen is for use in a program the object of which is the establishment and/or maintenance of a breeding population; and
 - (c) the program is a program that, under the regulations, is taken to be an approved co-operative conservation program; and
 - (d) the import is not primarily for commercial purposes; and
 - (e) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

303FG Export or import of household pets

Export of live native animals

- (1) The export of a live native animal (other than a CITES specimen) is an export of a household pet in accordance with this section if:
- (a) the animal is included in the list referred to in subsection (4); and
 - (b) the export is not primarily for commercial purposes; and
 - (c) such other conditions as are specified in the regulations have been, or are likely to be, satisfied.

Export of live CITES specimens

- (2) The export of a CITES specimen is an export of a household pet in accordance with this section if:
- (a) the specimen is a live animal; and
 - (b) if the animal is a native animal—the animal is included in the list referred to in subsection (4); and
 - (c) the export is not primarily for commercial purposes; and
 - (d) such other conditions as are specified in the regulations have been, or are likely to be, satisfied.

Import of live animals

- (3) The import of a live animal is an import of a household pet in accordance with this section if:
- (a) the conditions specified in the regulations have been, or are likely to be, satisfied; and
 - (b) the import is not primarily for commercial purposes; and
 - (c) the animal is included in Part 2 of the list referred to in section 303EB.

Listing of native household pet animals

- (4) The Minister must, by instrument published in the *Gazette*, establish a list of native household pet animals.
- (5) The list, as first established, must contain the animals referred to in Schedule 7 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section.
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- (6) The Minister may, by instrument in the *Gazette*, amend the list referred to in subsection (4) by:
 - (a) including items in the list; or
 - (b) deleting items from the list; or
 - (c) correcting an inaccuracy or updating the name of a species.
- (7) An instrument under subsection (6) (other than an instrument mentioned in paragraph (6)(c)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

303FH Export or import of personal items

- (1) The export of a specimen is an export of a personal item in accordance with this section if:
 - (a) the specimen is not a live specimen; and
 - (b) the export is not primarily for commercial purposes; and
 - (c) the conditions specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import of a personal item in accordance with this section if:
 - (a) the specimen is not a live specimen; and
 - (b) the import is not primarily for commercial purposes; and
 - (c) the conditions specified in the regulations have been, or are likely to be, satisfied.

303FI Export or import for the purposes of a travelling exhibition

- (1) The export of a specimen is an export for the purposes of a travelling exhibition in accordance with this section if:
 - (a) the export is not primarily for commercial purposes; and
 - (b) the conditions specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of a travelling exhibition in accordance with this section if:
 - (a) the import is not primarily for commercial purposes; and
 - (b) the conditions specified in the regulations have been, or are likely to be, satisfied.

Subdivision B—Commercial purpose exports and imports

303FJ Eligible commercial purpose exports

For the purposes of this Part, the export of a specimen is an *eligible commercial purpose export* if, and only if:

- (a) the export of the specimen would be an export from an approved captive breeding program in accordance with section 303FK; or
- (b) the export of the specimen would be an export from an approved artificial propagation program in accordance with section 303FL; or
- (c) the export of the specimen would be an export from an approved aquaculture program in accordance with section 303FM; or
- (d) the export of the specimen would be an export in accordance with an approved wildlife trade operation (section 303FN); or
- (e) the export of the specimen would be an export in accordance with an approved wildlife trade management plan (section 303FO).

Note: See also subsection 303DD(3), which deals with accredited wildlife trade management plans.

303FK Export or import from an approved captive breeding program

- (1) The export of a specimen is an export from an approved captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved captive breeding program.
 - (2) The export of a specimen is an export from an approved CITES-registered captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved CITES-registered captive breeding program.
 - (3) The import of a specimen is an import from an approved CITES-registered captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved CITES-registered captive breeding program.
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303FL Export from an approved artificial propagation program

The export of a specimen is an export from an approved artificial propagation program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved artificial propagation program.

303FM Export from an approved aquaculture program

The export of a specimen is an export from an approved aquaculture program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved aquaculture program.

303FN Approved wildlife trade operation

- (1) The export of a specimen is an export in accordance with an approved wildlife trade operation if the specimen is, or is derived from, a specimen that was taken in accordance with a wildlife trade operation declared by a declaration in force under subsection (2) to be an approved wildlife trade operation.
 - (2) The Minister may, by instrument published in the *Gazette*, declare that a specified wildlife trade operation is an ***approved wildlife trade operation*** for the purposes of this section.
 - (3) The Minister must not declare an operation under subsection (2) unless the Minister is satisfied that:
 - (a) the operation is consistent with the objects of this Part; and
 - (b) the operation will not be detrimental to:
 - (i) the survival of a taxon to which the operation relates; or
 - (ii) the conservation status of a taxon to which the operation relates; and
 - (ba) the operation will not be likely to threaten any relevant ecosystem including (but not limited to) any habitat or biodiversity; and
 - (c) if the operation relates to the taking of live specimens that belong to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimens are likely to be complied with; and
 - (d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
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- (4) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:
 - (a) the significance of the impact of the operation on an ecosystem (for example, an impact on habitat or biodiversity); and
 - (b) the effectiveness of the management arrangements for the operation (including monitoring procedures).
 - (5) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:
 - (a) whether legislation relating to the protection, conservation or management of the specimens to which the operation relates is in force in the State or Territory concerned; and
 - (b) whether the legislation applies throughout the State or Territory concerned; and
 - (c) whether, in the opinion of the Minister, the legislation is effective.
 - (6) A declaration under subsection (2) ceases to be in force at the beginning of the third anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 3 years is specified in the declaration in accordance with subsection 303FT(4).
 - (7) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).
 - (8) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
 - (9) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.
 - (10) For the purposes of this section, an operation is a **wildlife trade operation** if, and only if, the operation is an operation for the taking of specimens and:
 - (a) the operation is an operation that, under the regulations, is taken to be a market-testing operation; or
 - (b) the operation is an operation that, under the regulations, is taken to be a small-scale operation; or
 - (c) the operation is an operation that, under the regulations, is taken to be a developmental operation; or
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- (d) the operation is a commercial fishery; or
 - (e) the operation is an operation that, under the regulations, is taken to be a provisional operation; or
 - (f) the operation is an operation of a kind specified in the regulations.
- (10A) In deciding whether to declare that a commercial fishery is an approved wildlife trade operation for the purposes of this section, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.
- (10B) Subsection (10A) does not limit the matters that may be taken into account in deciding whether to declare that a fishery is an approved wildlife trade operation for the purposes of this section.
- (11) In this section:
- fish** includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.
- fishery** means a class of activities by way of fishing, including activities identified by reference to all or any of the following:
- (a) a species or type of fish;
 - (b) a description of fish by reference to sex or any other characteristic;
 - (c) an area of waters or of seabed;
 - (d) a method of fishing;
 - (e) a class of vessels;
 - (f) a class of persons;
 - (g) a purpose of activities.

303FO Approved wildlife trade management plan

- (1) The export of a specimen is an export in accordance with an approved wildlife trade management plan if the specimen is, or is derived from, a specimen that was taken in accordance with a plan declared by a declaration in force under subsection (2) to be an approved wildlife trade management plan.

- (2) The Minister may, by instrument published in the *Gazette*, declare that a specified plan is an ***approved wildlife trade management plan*** for the purposes of this section.
- (3) The Minister must not declare a plan under subsection (2) unless the Minister is satisfied that:
- (a) the plan is consistent with the objects of this Part; and
 - (b) there has been an assessment of the environmental impact of the activities covered by the plan, including (but not limited to) an assessment of:
 - (i) the status of the species to which the plan relates in the wild; and
 - (ii) the extent of the habitat of the species to which the plan relates; and
 - (iii) the threats to the species to which the plan relates; and
 - (iv) the impacts of the activities covered by the plan on the habitat or relevant ecosystems; and
 - (c) the plan includes management controls directed towards ensuring that the impacts of the activities covered by the plan on:
 - (i) a taxon to which the plan relates; and
 - (ii) any taxa that may be affected by activities covered by the plan; and
 - (iii) any relevant ecosystem (for example, impacts on habitat or biodiversity);are ecologically sustainable; and
 - (d) the activities covered by the plan will not be detrimental to:
 - (i) the survival of a taxon to which the plan relates; or
 - (ii) the conservation status of a taxon to which the plan relates; or
 - (iii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
 - (e) the plan includes measures:
 - (i) to mitigate and/or minimise the environmental impact of the activities covered by the plan; and
 - (ii) to monitor the environmental impact of the activities covered by the plan; and
 - (iii) to respond to changes in the environmental impact of the activities covered by the plan; and
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- (f) if the plan relates to the taking of live specimens that belong to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimens are likely to be complied with; and
 - (g) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (4) In deciding whether to declare a plan under subsection (2), the Minister must have regard to:
- (a) whether legislation relating to the protection, conservation or management of the specimens to which the plan relates is in force in the State or Territory concerned; and
 - (b) whether the legislation applies throughout the State or Territory concerned; and
 - (c) whether, in the opinion of the Minister, the legislation is effective.
- (5) A declaration under subsection (2) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection 303FT(4).
- (6) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).
- (7) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (8) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.

303FP Accredited wildlife trade management plan

- (1) The export of a specimen is an export in accordance with an accredited wildlife trade management plan if the specimen is, or is derived from, a specimen that was taken in accordance with a plan declared by a declaration in force under subsection (2) to be an accredited wildlife trade management plan.
 - (2) The Minister may, by instrument published in the *Gazette*, declare that a specified plan is an ***accredited wildlife trade management plan*** for the purposes of this section.
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- (3) The Minister must not declare a plan under subsection (2) unless the Minister is satisfied that:
- (a) the plan is in force under a law of the Commonwealth or of a State or Territory; and
 - (b) the conditions set out in subsection 303FO(3) have been met in relation to the plan; and
 - (c) the plan imposes limits in relation to the taking of specimens; and
 - (d) the compliance and enforcement measures relating to the plan are likely to be effective in preventing specimens taken in breach of the plan from being traded or exported; and
 - (e) the plan provides for the monitoring of:
 - (i) the taking of specimens under the plan; and
 - (ii) the export of specimens taken under the plan; and
 - (iii) the status of the species to which the plan relates in the wild; and
 - (iv) the impacts of the activities under the plan on the habitat of the species to which the plan relates; and
 - (f) the plan provides for statistical reports about specimens taken under the plan to be given to the Minister on a regular basis; and
 - (g) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (4) A declaration under subsection (2) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection 303FT(4).
- (5) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).
- (6) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (7) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.
- (8) The Minister must publish on the Internet copies of reports given as mentioned in paragraph (3)(f).
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- (9) The Minister is not required to comply with subsection (8) to the extent to which compliance could reasonably be expected to:
- (a) prejudice substantially the commercial interests of a person; or
 - (b) be detrimental to:
 - (i) the survival of a taxon to which the plan relates; or
 - (ii) the conservation status of a taxon to which the plan relates.

303FQ Consultation with State and Territory agencies

Before making a declaration under section 303FO or 303FP, the Minister must consult a relevant agency of each State and self-governing Territory affected by the declaration.

303FR Public consultation

- (1) Before making a declaration under section 303FN, 303FO or 303FP, the Minister must cause to be published on the Internet a notice:
- (a) setting out the proposal to make the declaration; and
 - (b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and
 - (c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.
- (2) A period specified in a notice under subsection (1) must not be shorter than 20 business days after the date on which the notice was published on the Internet.
- (3) In making a decision about whether to make a declaration under section 303FN, 303FO or 303FP, the Minister must consider any comments about the proposal to make the declaration that were given in response to an invitation under subsection (1).

303FRA Assessments

- (1) The regulations may prescribe an assessment process that is to be used for the purposes of sections 303FN, 303FO and 303FP to assess the potential impacts on the environment of:
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- (a) a wildlife trade operation; or
 - (b) the activities covered by a plan;
- where the operation is, or the activities are, likely to have a significant impact on the environment.
- (2) If regulations made for the purposes of subsection (1) apply to a wildlife trade operation or to a plan, the Minister must not declare:
- (a) the operation under subsection 303FN(2); or
 - (b) the plan under subsection 303FO(2) or 303FP(2);
- unless the assessment process prescribed by those regulations has been followed in relation to the assessment of the operation or plan, as the case may be.
- (3) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision for:
- (a) the application of Part 8 (except sections 82, 83 and 84) and the other provisions of this Act (so far as they relate to that Part) in relation to the assessment process, subject to such modifications as are specified in the regulations; and
 - (b) exemptions from the assessment process.
- (4) In this section:

modifications includes additions, omissions and substitutions.

wildlife trade operation has the same meaning as in subsection 303FN(10), but does not include an operation mentioned in paragraph 303FN(10)(d).

303FS Register of declarations

- (1) The Minister must cause to be maintained a register that sets out declarations made under section 303FN, 303FO or 303FP.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the Internet.

303FT Additional provisions relating to declarations

- (1) This section applies to a declaration under section 303FN, 303FO or 303FP.
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- (2) A declaration may be made:
- (a) on the Minister's own initiative; or
 - (b) on written application being made to the Minister.
- (3) The Minister may make a declaration about a plan or operation even though he or she considers that the plan or operation should be the subject of the declaration only to the extent that the plan or operation relates to a particular class of specimens. In such a case:
- (a) the instrument of declaration is to specify that class of specimens; and
 - (b) the plan or operation is covered by the declaration only to the extent that the plan or operation relates to that class of specimens.
- (4) The Minister may make a declaration about a plan or operation even though he or she considers that the plan or operation should be the subject of the declaration only:
- (a) during a particular period; or
 - (b) while certain circumstances exist; or
 - (c) while a certain condition is complied with.
- In such a case, the instrument of declaration is to specify the period, circumstances or condition.
- (5) If a declaration specifies a particular period as mentioned in subsection (4), the declaration ceases to be in force at the end of that period.
- (6) If a declaration specifies circumstances as mentioned in subsection (4), the Minister must, by instrument published in the *Gazette*, revoke the declaration if he or she is satisfied that those circumstances have ceased to exist.
- (7) The Minister may, by instrument published in the *Gazette*, vary a declaration by:
- (a) specifying one or more conditions (or further conditions) to which the declaration is subject; or
 - (b) revoking or varying a condition:
 - (i) specified in the instrument of declaration; or
 - (ii) specified under paragraph (a).
- (8) A condition may relate to reporting or monitoring.
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- (9) The Minister must, by instrument published in the *Gazette*, revoke a declaration if he or she is satisfied that a condition of the declaration has been contravened.
- (10) The Minister may, by instrument published in the *Gazette*, revoke a declaration at any time.
- (11) A copy of an instrument under section 303FN, 303FO or 303FP or this section is to be made available for inspection on the Internet.

303FU Approved commercial import program

The import of a specimen is an import from an approved commercial import program in accordance with this section if the specimen is sourced from a program that, under the regulations, is taken to be an approved commercial import program.

Division 6—Miscellaneous

303GA Permit decision—controlled action, and action for which a non-Part 13A permit is required

- (1) This section applies if:
 - (a) an application is made under section 303CE, 303DE or 303EL for a permit (the *first permit*) to authorise the taking of an action (the *proposed action*); and
 - (b) the Minister considers that:
 - (i) the proposed action may be or is a controlled action; or
 - (ii) the proposed action is related to an action (the *related action*) that may be or is a controlled action; or
 - (iii) the proposed action is an action for which a non-Part 13A permit is required; or
 - (iv) the proposed action is related to an action (the *related action*) that is an action for which a non-Part 13A permit is required.

Deferral of decision

- (2) The Minister must neither issue, nor refuse to issue, the first permit before whichever is the latest of the following days:
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- (a) if subparagraph (1)(b)(i) applies—the day on which the Minister makes a decision under section 75 about whether the proposed action is a controlled action;
- (b) if subparagraph (1)(b)(i) applies and the Minister makes a decision under section 75 that the proposed action is a controlled action—the day on which the Minister makes a decision under section 133 approving, or refusing to approve, the taking of the controlled action;
- (c) if subparagraph (1)(b)(ii) applies—the day on which the Minister makes a decision under section 75 about whether the related action is a controlled action;
- (d) if subparagraph (1)(b)(ii) applies and the Minister makes a decision under section 75 that the related action is a controlled action—the day on which the Minister makes a decision under section 133 approving, or refusing to approve, the taking of the controlled action;
- (e) if subparagraph (1)(b)(iii) applies—the day on which a decision is made to issue, or to refuse to issue, the non-Part 13A permit referred to in that subparagraph;
- (f) if subparagraph (1)(b)(iv) applies—the day on which a decision is made to issue, or to refuse to issue, the non-Part 13A permit referred to in that subparagraph.

Refusal of permit

- (3) The Minister must not issue the first permit if:
 - (a) subparagraph (1)(b)(i) applies; and
 - (b) the Minister makes a decision under section 75 that the proposed action is a controlled action; and
 - (c) the Minister makes a decision under section 133 refusing to approve the taking of the controlled action.
 - (4) The Minister must not issue the first permit if:
 - (a) subparagraph (1)(b)(ii) applies; and
 - (b) the Minister makes a decision under section 75 that the related action is a controlled action; and
 - (c) the Minister makes a decision under section 133 refusing to approve the taking of the controlled action.
 - (5) The Minister must not issue the first permit if:
 - (a) subparagraph (1)(b)(iii) applies; and
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- (b) a decision is made to refuse to issue the non-Part 13A permit referred to in that subparagraph.
- (6) The Minister must not issue the first permit if:
 - (a) subparagraph (1)(b)(iv) applies; and
 - (b) a decision is made to refuse to issue the non-Part 13A permit referred to in that subparagraph.

Action for which a non-Part 13A permit is required

- (7) For the purposes of this section, an action that a person proposes to take is ***an action for which a non-Part 13A permit is required*** if the taking of the action by the person without a non-Part 13A permit would be prohibited by this Act or the regulations if it were assumed that this Part had not been enacted.
- (8) For the purposes of this section, a ***non-Part 13A permit*** is a permit issued under this Act (other than this Part) or the regulations.

Related action

- (9) For the purposes of this section, if a specimen was taken, the action of exporting or importing the specimen is related to:
 - (a) that taking; and
 - (b) any action that affected the specimen after that taking and before that export or import.
- (10) For the purposes of this section, if a specimen is derived from a specimen that was taken, the action of exporting or importing the first-mentioned specimen is related to:
 - (a) that taking; and
 - (b) any action that affected the first-mentioned specimen, or either of those specimens, after that taking and before that export or import.

303GB Exceptional circumstances permit

- (1) If:
 - (a) the Minister is considering an application by a person for a permit to be issued under section 303CG, 303DG or 303EN in relation to a specimen; and
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- (b) under this Part, the Minister is precluded from issuing that permit unless the Minister is satisfied in relation to a matter; and
 - (c) even though the Minister is not satisfied in relation to that matter, the Minister is satisfied that:
 - (i) the export or import of the specimen, as the case may be, would not be contrary to the objects of this Part; and
 - (ii) exceptional circumstances exist that justify the proposed export or import of the specimen; and
 - (iii) the export or import of the specimen, as the case may be, would not adversely affect biodiversity;the Minister may issue a permit to the person.
- (1A) The Minister must not issue a permit under this section unless the grant of that permit would not be contrary to CITES.
- (2) A permit under this section authorises the holder of the permit to take the action or actions specified in the permit without breaching section 303CC, 303CD, 303DD or 303EK.

Duration of permit

- (3) A permit under this section that relates to a CITES specimen:
- (a) comes into force on the date on which it is issued; and
 - (b) unless it is sooner cancelled, remains in force for:
 - (i) a period of 6 months beginning on the date on which it is issued; or
 - (ii) if a shorter period is specified in the permit—that shorter period.
- (4) A permit under this section that relates to a specimen other than a CITES specimen:
- (a) comes into force on the date on which it is issued; and
 - (b) unless it is sooner cancelled, remains in force for:
 - (i) a period of 12 months beginning on the date on which it is issued; or
 - (ii) if a shorter period is specified in the permit—that shorter period.

Further information

- (5) The Minister may, within 40 business days after an application is made as mentioned in subsection (1), request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (6) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

Public consultation

- (7) Before issuing a permit under this section, the Minister must cause to be published on the Internet a notice:
 - (a) setting out the proposal to issue the permit; and
 - (b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and
 - (c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.
- (8) A period specified in a notice under subsection (7) must not be shorter than 5 business days after the date on which the notice was published on the Internet.
- (9) In making a decision under subsection (1) about whether to issue a permit, the Minister must consider any comments about the proposal to issue the permit that were given in response to an invitation under subsection (7).

303GC Permit authorising the Secretary to export or import specimens

- (1) The Secretary may apply to the Minister for a permit to be issued under subsection (2).
- (2) The Minister may, on application made by the Secretary under subsection (1), issue a permit to the Secretary. This subsection has effect subject to subsections (4) and (5).

- (3) A permit under subsection (2) authorises the Secretary to take the action or actions specified in the permit without breaching section 303CC, 303CD, 303DD or 303EK.
- (4) The Minister must not issue a permit under this section to export a specimen unless the Minister is satisfied that:
- (a) both:
 - (i) the recipient of the specimen will be a relevant CITES authority of a country; and
 - (ii) the specimen will be used by that relevant CITES authority for the purpose of the identification of a specimen and/or for the purpose of education or training; or
 - (b) both:
 - (i) the specimen has been seized under this Act; and
 - (ii) the specimen will be used to facilitate investigations in or outside Australia in relation to trade relating to wildlife.
- (5) The Minister must not issue a permit under this section to import a specimen unless the Minister is satisfied that:
- (a) the specimen will be used by the Secretary for the purposes of the identification of a specimen; or
 - (b) both:
 - (i) the sender of the specimen will be a relevant CITES authority of a country; and
 - (ii) the specimen will be used for the purpose of the identification of a specimen and/or for the purpose of education or training; or
 - (c) the specimen was exported from Australia in contravention of:
 - (i) this Part; or
 - (ii) the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; or
 - (d) the specimen will be used to facilitate investigations in or outside Australia in relation to trade relating to wildlife.
- (6) A permit under this section:
- (a) comes into force on the date on which it is issued; and
 - (b) unless it is sooner cancelled, remains in force for:
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- (i) a period of 12 months beginning on the date on which it is issued; or
- (ii) if a shorter period is specified in the permit—that shorter period.

303GD Testing permit—section 303EE assessments

Applications for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under subsection (5).
- (2) The application must be accompanied by the fee (if any) prescribed by the regulations.

Further information

- (3) The Minister may, within 40 business days after the application is made, request the person to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (4) The Minister may refuse to consider the application until the person gives the Minister the information in accordance with the request.

Minister may issue permits

- (5) The Minister may, on application made by a person under subsection (1), issue a permit to the person. This subsection has effect subject to subsections (7) and (8).
 - (6) A permit authorises its holder to take the action or actions specified in the permit without breaching section 303EK.
 - (7) The Minister must not issue a permit to a person unless the Minister is satisfied that:
 - (a) the person has made an application to the Minister under section 303EE for the list referred to in section 303EB to be amended by including an item; and
 - (b) if the proposed amendment were made, the specimen would be covered by the item; and
 - (c) the specimen is not a CITES specimen; and
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- (d) an assessment is to be made under section 303EE of the potential impacts on the environment of the proposed amendment, and the terms of reference for a report on the assessment have been finalised; and
 - (e) the person proposes to conduct tests on the specimen in Australia in order to obtain information for the assessment; and
 - (f) the information is required for the assessment; and
 - (g) it is not reasonably practicable for the person to obtain the information without conducting the tests in Australia; and
 - (h) the tests will be conducted in a controlled environment.
- (8) The Minister must not issue a permit under this section unless the permit is subject to one or more conditions about holding the specimen in quarantine.

Duration of permit

- (9) A permit under this section:
- (a) comes into force on the date on which it is issued; and
 - (b) unless it is sooner cancelled, remains in force for:
 - (i) a period of 6 months beginning on the date on which it is issued; or
 - (ii) if a shorter period is specified in the permit—that shorter period.

Investigations

- (10) A reference in this section to **tests on the specimen** includes a reference to investigations relating to the specimen.

303GE Conditions of permits

- (1) This section applies to a permit issued under this Part.
 - (2) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (3).
 - (3) The Minister may, in accordance with the regulations:
 - (a) vary or revoke a condition of a permit; or
 - (b) impose further conditions of a permit.
-

- (4) The Minister's powers under subsection (3) may be exercised:
 - (a) on the Minister's own initiative; or
 - (b) on the application of the holder of the permit concerned.
- (5) If a permit authorises its holder to take a particular action, a condition of the permit may require the holder to do, or not do, an act or thing before, at or after the time when the action takes place.
- (6) If a person is given an authority under section 303GG by the holder of a permit, subsection (5) applies to the person in a corresponding way to the way in which it applies to the holder of the permit.
- (7) Subsections (4), (5) and (6) are to be disregarded in determining the meaning of a provision of this Act (other than a provision of this Part) that relates to conditions of permits issued otherwise than under this Part.

303GF Contravening conditions of a permit

- (1) This section applies to a permit issued under this Part.
- (2) A person is guilty of an offence if:
 - (a) the person is:
 - (i) the holder of a permit; or
 - (ii) a person to whom an authority under section 303GG has been given by the holder of a permit; and
 - (b) the person engages in conduct; and
 - (c) the conduct results in a contravention of a condition of the permit.

Penalty: 300 penalty units.

- (3) The holder of a permit is guilty of an offence if:
 - (a) the person is:
 - (i) the holder of a permit; or
 - (ii) a person to whom an authority under section 303GG has been given by the holder of a permit; and
 - (b) the person engages in conduct; and
 - (c) the conduct results in a contravention of a condition of the permit; and
 - (d) the condition relates to:

- (i) the sale or other disposal of a live animal or a live plant;
or
- (ii) the sale or other disposal of the progeny of a live animal
or a live plant; or
- (iii) the release from captivity of a live animal; or
- (iv) the release from captivity of the progeny of a live
animal; or
- (v) the escape of a live plant.

Penalty: 600 penalty units.

- (4) For the purposes of subsection (3), a person is taken to have released an animal from captivity if:
 - (a) that animal has escaped from captivity; and
 - (b) either:
 - (i) the person allowed the animal to escape; or
 - (ii) the person failed to take all reasonable measures to prevent the animal from escaping.
- (4A) For the purposes of subsection (3), a person is taken to have allowed a plant to escape if:
 - (a) the plant has grown or propagated in the wild; and
 - (b) either:
 - (i) the person allowed the plant to escape; or
 - (ii) the person failed to take all reasonable measures to prevent the plant from growing or propagating in the wild.
- (5) In subsections (2) and (3), strict liability applies to the circumstance that the person was given an authority under section 303GG.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

303GG Authorities under permits

- (1) This section applies to a permit issued under this Part.
- (2) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

- (3) Subject to subsection (4), the holder of a permit may give a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (4) The holder of a permit must not give an authority unless:
 - (a) the permit contains a condition permitting the holder to do so; and
 - (b) the authority is given in accordance with any requirements set out in the condition.
- (5) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (6) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (7) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

303GH Transfer of permits

- (1) This section applies to a permit issued under this Part.
- (2) On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.
- (3) In deciding whether to transfer the permit to another person, the Minister must consider whether the transferee is a suitable person to hold the permit, having regard to the matters set out in the regulations.

303GI Suspension or cancellation of permits

- (1) This section applies to a permit issued under this Part.
 - (2) The Minister may, in accordance with the regulations:
 - (a) suspend a permit for a specified period; or
 - (b) cancel a permit.
-

303GJ Review of decisions

- (1) An application may be made to the Tribunal for review of a decision:
- (a) to issue or refuse a permit; or
 - (b) to specify, vary or revoke a condition of a permit; or
 - (c) to impose a further condition of a permit; or
 - (d) to transfer or refuse to transfer a permit; or
 - (e) to suspend or cancel a permit; or
 - (f) to issue or refuse a certificate under subsection 303CC(5); or
 - (g) of the Secretary under a determination in force under section 303EU; or
 - (h) to make or refuse a declaration under section 303FN, 303FO or 303FP; or
 - (i) to vary or revoke a declaration under section 303FN, 303FO or 303FP.
- (2) In giving a direction as to the persons who are to constitute the Tribunal for the purposes of a review of a decision of the Minister to issue or refuse a permit, where any of the following provisions are relevant for the purposes of the review:
- (a) paragraph 303CG(3)(a);
 - (b) paragraph 303CG(3)(c);
 - (c) paragraph 303DG(4)(a);
 - (d) paragraph 303DG(4)(b);
 - (e) paragraph 303EN(3)(e);

the President of the Tribunal must ensure that, for the purposes of the review, the Tribunal is constituted by, or includes, a member of the Tribunal who, in the opinion of the President, has special knowledge or skill in relation to environmental matters.

- (3) In this section:

permit means a permit under this Part.

Tribunal means:

- (a) before the commencement of Parts 4 to 10 of the *Administrative Review Tribunal Act 2001*—the Administrative Appeals Tribunal; and

- (b) after the commencement of Parts 4 to 10 of the *Administrative Review Tribunal Act 2001*—the Administrative Review Tribunal.

303GK Permit to be produced

Export permit

- (1) For the purposes of this Part, if the holder of a permit to export a specimen exports that specimen, he or she is not to be taken to have exported that specimen in accordance with that permit unless, before exporting the specimen, he or she:
- (a) produced the permit, or caused the permit to be produced, to an authorised officer doing duty in relation to the export of the specimen; or
 - (b) received written notice from the Secretary authorising the export of the specimen without the production of the permit.
- (2) The Secretary must not give the notice referred to in paragraph (1)(b) unless he or she:
- (a) is satisfied that the production of the permit is impracticable; and
 - (b) endorses a copy of the permit to show that the notice is being given; and
 - (c) makes that copy available to an authorised officer doing duty in relation to the export of the specimen.

Import permit

- (3) For the purposes of this Part, if the holder of a permit to import a specimen imports that specimen, he or she is not to be taken to have imported that specimen in accordance with that permit unless, before or within a reasonable time after importing the specimen, he or she produced the permit, or caused the permit to be produced, to an authorised officer doing duty in relation to the import of the specimen.

Authorities under section 303GG

- (4) If a person is given an authority under section 303GG by the holder of a permit, this section applies to the person in a corresponding way to the way in which it applies to the holder of the permit.
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303GL Pre-CITES certificate to be produced

Export certificate

- (1) If a person exports a specimen and wishes to rely on a certificate issued under subsection 303CC(5), he or she is not entitled to rely on that certificate unless, before exporting the specimen, he or she:
 - (a) produced the certificate, or caused the certificate to be produced, to an authorised officer doing duty in relation to the export of the specimen; or
 - (b) received written notice from the Secretary authorising the export of the specimen without the production of the certificate.
- (2) The Secretary must not give the notice referred to in paragraph (1)(b) unless he or she:
 - (a) is satisfied that the production of the certificate is impracticable; and
 - (b) endorses a copy of the certificate to show that the notice is being given; and
 - (c) makes that copy available to an authorised officer doing duty in relation to the export of the specimen.

Import certificate

- (3) If a person imports a specimen and wishes to rely on a certificate referred to in paragraph 303CD(6)(b), he or she is not entitled to rely on the certificate unless, before or within a reasonable time after importing the specimen, he or she produced the certificate, or caused the certificate to be produced, to an authorised officer doing duty in relation to the import of the specimen.

303GM Fees

- (1) This section applies to a permit under this Part.
- (2) Such fees (if any) as are prescribed are payable in respect of the following:
 - (a) the issue or the transfer of a permit;
 - (b) the variation or revocation of a condition of a permit;
 - (c) the imposition of a further condition of a permit.

303GN Possession of illegally imported specimens

Object

- (1) The object of this section is:
- (a) to comply with Australia's obligations under:
 - (i) the Biodiversity Convention; and
 - (ii) CITES; and
 - (b) to otherwise further the objects of this Part;
- by prohibiting the possession of illegally imported specimens and the progeny of such specimens.

Note: See Article 8 of the Biodiversity Convention.

Possession of CITES specimens and unlisted regulated live specimens

- (2) A person is guilty of an offence if:
- (a) the person has in the person's possession, in the Australian jurisdiction, a specimen; and
 - (b) the specimen is:
 - (i) a CITES specimen; or
 - (ii) a regulated live specimen that is not included in the list referred to in section 303EB;
- and the person is reckless as to that fact; and
- (c) the specimen does not belong to a native species.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

- (3) Subsection (2) does not apply if:
- (a) the specimen was lawfully imported; or
 - (b) the specimen was not imported, but all of the specimens of which it is the progeny were lawfully imported.

Note 1: For *lawfully imported*, see section 303GY.

Note 2: The defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (2) does not apply if the specimen was neither imported, nor the progeny of any other specimen that was imported.

Note: The defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (2) does not apply if the defendant has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Possession of listed regulated live specimens

- (6) A person is guilty of an offence if:
- (a) the person has in the person's possession, in the Australian jurisdiction, a specimen; and
 - (b) the specimen is a regulated live specimen that is included in Part 2 of the list referred to in section 303EB, and the person is reckless as to that fact; and
 - (c) the specimen does not belong to a native species; and
 - (d) either:
 - (i) the specimen was unlawfully imported; or
 - (ii) the specimen was not imported, but any of the specimens of which it is the progeny was unlawfully imported.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

- (7) Subsection (6) does not apply if the defendant has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Unlawfully imported

- (8) For the purposes of this section, a specimen is ***unlawfully imported*** if, and only if, it was imported, but was not lawfully imported (section 303GY).

303GO Regulations relating to welfare

- (1) This section applies to regulations made for the purposes of paragraph 303CG(3)(c), 303DG(4)(b), 303EN(3)(e), 303FN(3)(c) or 303FO(3)(f).
 - (2) The conditions specified in those regulations in relation to a live animal may:
 - (a) deal with the welfare of the animal:
-

- (i) when the animal is taken; or
 - (ii) when the animal is being held after it has been taken; or
 - (iii) when the animal is being prepared or shipped; or
 - (iv) when the animal is under the control of the proposed recipient; and
 - (b) may deal with eliminating or minimising the risk of:
 - (i) injury to the animal; or
 - (ii) adverse effects on the health of the animal; or
 - (iii) cruel treatment of the animal.
- (3) The conditions specified in those regulations in relation to a live plant may:
- (a) deal with the welfare of the plant:
 - (i) when the plant is taken; or
 - (ii) when the plant is being held after it has been taken; or
 - (iii) when the plant is being prepared or shipped; or
 - (iv) when the plant is under the control of the proposed recipient; and
 - (b) may deal with eliminating or minimising the risk of:
 - (i) injury to the plant; or
 - (ii) adverse effects on the health of the plant.
- (4) Subsections (2) and (3) do not limit paragraph 303CG(3)(c), 303DG(4)(b), 303EN(3)(e), 303FN(3)(c) or 303FO(3)(f).

303GP Cruelty—export or import of animals

- (1) A person is guilty of an offence if:
- (a) the person exports or imports a live animal in a manner that subjects the animal to cruel treatment; and
 - (b) the person knows that, or is reckless as to whether, the export or import subjects the animal to cruel treatment; and
 - (c) the animal is a CITES specimen; and
 - (d) the person contravenes section 303CC or 303CD in relation to the export or import of the animal.

Penalty: Imprisonment for 2 years.

- (2) A person is guilty of an offence if:
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- (a) the person exports a live animal in a manner that subjects the animal to cruel treatment; and
- (b) the person knows that, or is reckless as to whether, the export subjects the animal to cruel treatment; and
- (c) the animal is a regulated native specimen; and
- (d) the person contravenes section 303DD in relation to the export of the animal.

Penalty: Imprisonment for 2 years.

- (3) A person is guilty of an offence if:
- (a) the person imports a live animal in a manner that subjects the animal to cruel treatment; and
 - (b) the person knows that, or is reckless as to whether, the import subjects the animal to cruel treatment; and
 - (c) the animal is a regulated live specimen; and
 - (d) the person contravenes section 303EK in relation to the import of the animal.

Penalty: Imprisonment for 2 years.

- (4) This section does not limit section 303GE.

303GQ Imports of specimens contrary to the laws of a foreign country

- (1) A person must not intentionally import a specimen if the person knows that:
- (a) the specimen was exported from a foreign country; and
 - (b) at the time the specimen was exported, the export of the specimen was prohibited by a law of the foreign country that corresponds to this Part.

Penalty: Imprisonment for 5 years.

- (2) A prosecution must not be instituted for an offence against this section unless a relevant CITES authority of the foreign country has requested:
- (a) the investigation of the offence; or
 - (b) assistance in relation to a class of offences in which the offence is included.

303GR Evidence

- (1) In any proceedings for an offence against this Part:
 - (a) any record kept in accordance with the regulations or another law of the Commonwealth or a law of a State or Territory is admissible as prima facie evidence of the facts stated in the record; and
 - (b) a copy of an entry in such a record, being a copy certified by the person by whom the record is kept to be a true copy of the entry, is admissible as prima facie evidence of the facts stated in the entry; and
 - (c) a document purporting to be a record kept in accordance with the regulations or another law of the Commonwealth, or a law of a State or Territory, or purporting to be such a certified copy as is referred to in paragraph (b), is taken, unless the contrary is established, to be such a record or certified copy, as the case may be.
- (2) If, in any proceedings for an offence against this Part, a record referred to in paragraph (1)(a) is tendered as prima facie evidence of a fact stated in the record, the person alleged to have committed the offence may require the person who kept that record to be called as a witness for the prosecution in the proceedings.

303GS Evidence of examiner

- (1) The Minister may, by writing, appoint appropriately qualified persons to be examiners for the purposes of this Part.
- (2) Subject to subsection (4), a certificate signed by an examiner appointed under subsection (1) setting out, in relation to a substance, matter, specimen or thing, one or more of the following:
 - (a) that he or she is appointed as the examiner under subsection (1);
 - (b) when and from whom the substance, matter, specimen or thing was received;
 - (c) what labels or other means of identification accompanied the substance, matter, specimen or thing when it was received;
 - (d) what container held the substance, matter, specimen or thing when it was received;

- (e) a description, including the weight, of the substance, matter, specimen or thing when it was received;
 - (f) the name of any method used to analyse the substance, matter, specimen or thing or any portion of it;
 - (g) the results of any such analysis;
 - (h) how the substance, matter, specimen or thing was dealt with after handling by the examiner, including details of:
 - (i) the quantity of the substance, matter, specimen or thing retained after analysis; and
 - (ii) names of any persons to whom any of the substance, matter, specimen or thing was given after analysis; and
 - (iii) measures taken to secure any retained quantity of the substance, matter, specimen or thing after analysis;is admissible in any proceeding for an offence against this Part as prima facie evidence of the matters in the certificate and the correctness of the results of the analysis.
- (3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) is taken to be such a certificate unless the contrary is established.
- (4) A certificate is not to be admitted in evidence in accordance with subsection (2) in proceedings for an offence against this Part unless:
 - (a) the person charged with the offence; or
 - (b) a solicitor who has appeared for the person in those proceedings;has, at least 14 days before the certificate is sought to be admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.
- (5) Subject to subsection (6), if, under subsection (2), a certificate is admitted in evidence in proceedings for an offence against this Part, the person charged with the offence may require the person giving the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.
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- (6) Subsection (5) does not entitle the person charged to require the person giving a certificate to be called as a witness for the prosecution unless:
 - (a) the prosecutor has been given at least 4 days notice of the person's intention to require the examiner to be so called; or
 - (b) the court, by order, allows the person charged to require the person giving the certificate to be so called.
- (7) Any evidence given in support, or in rebuttal, of a matter stated in a certificate given under subsection (2) must be considered on its merits and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

303GT Protection of witness

- (1) A witness for the prosecution in any proceedings for an offence against this Part is not to be compelled to disclose:
 - (a) the fact that the witness received any information; or
 - (b) the nature of any information received by the witness; or
 - (c) the name of the person who gave the witness any information.
- (2) An authorised officer who is a witness in any proceedings for an offence against this Part is not to be compelled to produce any report:
 - (a) that was made or received by the authorised officer in confidence in his or her capacity as an authorised officer; or
 - (b) that contains information received by the authorised officer in confidence.
- (3) Subsections (1) and (2) are to be disregarded in determining the compellability of witnesses in proceedings for an offence against a provision of this Act other than this Part.

303GU Forms and declarations—persons arriving in Australia or an external Territory

The regulations may provide for forms to be completed, or declarations to be made, in relation to specimens by persons arriving in Australia or an external Territory.

303GV Saving of other laws

- (1) This Part is in addition to the following laws:
 - (a) the *Customs Act 1901*;
 - (b) the *Quarantine Act 1908*;
 - (c) any other law of the Commonwealth or of an external Territory, whether passed or made before or after the commencement of this Part.
- (2) The holder of a permit under this Part authorising the export or import of a specimen is not, by reason only of being the holder of the permit, exempt from compliance with any law referred to in paragraph (1)(a), (b) or (c) that applies in relation to that specimen.
- (3) Without limiting subsection (1), this Part, and regulations made for the purposes of this Part, do not authorise or permit the doing of any act in contravention of the *Quarantine Act 1908* or of a law of an external Territory relating to quarantine.

303GW Part not to apply to certain specimens

Transshipment

- (1) For the purposes of this Part, if a specimen is brought into Australia from a country:
 - (a) for the purpose of transshipment to another country; or
 - (b) as part of an aircraft's stores or ship's stores;that specimen:
 - (c) is taken not to have been imported into Australia; and
 - (d) when it leaves Australia, is taken not to be exported from Australia.
- (2) For the purposes of this Part, if a specimen is brought into an external Territory:
 - (a) for the purpose of transshipment to another country; or
 - (b) as part of an aircraft's stores or ship's stores;that specimen:
 - (c) is taken not to have been imported into that Territory; and
 - (d) when it leaves that Territory, is taken not to be exported from that Territory.

- (3) For the purposes of subsection (1), a specimen is to be taken to be brought into Australia for the purpose of transshipment to another country if, and only if:
- (a) the specimen is brought into Australia in the course of being transported to an identified person in the other country; and
 - (b) any delay in its leaving Australia will be due solely to the arrangements for its transport; and
 - (c) it will be under the control of the Customs all the time that it is in Australia.
- (4) For the purposes of subsection (2), a specimen is taken to be brought into an external Territory for the purpose of transshipment to another country if, and only if:
- (a) the specimen is brought into that Territory in the course of being transported to an identified person in the other country; and
 - (b) any delay in its leaving that Territory will be due solely to the arrangements for its transport; and
 - (c) it will be under the control of an authorised officer all the time that it is in that Territory.

Emergency

- (5) For the purposes of this Part, if:
- (a) the Minister, the Director of Animal and Plant Quarantine, a prescribed person or a prescribed organisation is satisfied that, in order to meet an emergency involving danger to the life or health of a human or an animal, it is necessary or desirable that a specimen that could be used in treating that person or animal should be sent out of, or brought into, Australia or an external Territory; and
 - (b) that specimen is sent out of, or brought into, Australia or that Territory, as the case requires, to meet that emergency;
- that specimen is taken not to have been exported or imported, as the case may be.

Quarantine

- (6) Subject to subsections (1), (2) and (5), if, in accordance with the *Quarantine Act 1908* or a law of an external Territory relating to quarantine, a person exercising powers under that Act or law
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imports a specimen that is subject to quarantine, then, for the purposes of this Part, that specimen is taken to have been imported by:

- (a) if a person holds a permit to import that specimen—the holder of that permit; or
 - (b) in any other case—a person whose identity is not known;
- but this subsection does not affect the commission of any offence committed before the importation of that specimen.

Definitions

- (7) In this section:

aircraft's stores and *ship's stores* have the same meanings respectively as they have in Part VII of the *Customs Act 1901*.

303GX Part not to apply to certain specimens used by traditional inhabitants

- (1) In this section:

area in the vicinity of the Protected Zone means an area in respect of which a notice is in force under subsection (2).

Australian place means a place in Australia that is in the Protected Zone or in an area in the vicinity of the Protected Zone.

Papua New Guinea place means a place in Papua New Guinea that is in the Protected Zone or in an area in the vicinity of the Protected Zone.

prescribed specimen means a specimen of a kind specified in a notice in force under subsection (3).

Protected Zone means the zone established under Article 10 of the Torres Strait Treaty, being the area bounded by the line described in Annex 9 to that treaty.

Torres Strait Treaty means the Treaty between Australia and the Independent State of Papua New Guinea that was signed at Sydney on 18 December 1978.

traditional activities has the same meaning as in the Torres Strait Treaty.

traditional inhabitants has the same meaning as in the *Torres Strait Fisheries Act 1984*.

- (2) The Minister may, by notice published in the *Gazette*, declare an area adjacent to the Protected Zone to be an area in the vicinity of the Protected Zone for the purposes of this section.
- (3) The Minister may, by notice published in the *Gazette*, declare that a specimen of a kind specified in the notice is a prescribed specimen for the purposes of this section.
- (4) For the purposes of this Part, if a prescribed specimen that is owned by, or is under the control of, a traditional inhabitant and that has been used, is being used or is intended to be used by him or her in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone, is:
 - (a) brought to an Australian place from a Papua New Guinea place; or
 - (b) taken from an Australian place to a Papua New Guinea place;then, subject to subsection (5), that specimen:
 - (c) in the case where the specimen is brought into Australia as mentioned in paragraph (a)—is taken not to have been imported into Australia; and
 - (d) in the case where the specimen is taken from Australia as mentioned in paragraph (b)—is taken not to have been exported from Australia.
- (5) If:
 - (a) a prescribed specimen that has been brought into Australia is, under subsection (4), taken not to have been imported into Australia; and
 - (b) that prescribed specimen is brought to a place in Australia that is not in the Protected Zone or in an area in the vicinity of the Protected Zone;the prescribed specimen is taken to have been imported into Australia upon being brought to the place referred to in paragraph (b).

303GY When a specimen is lawfully imported

For the purposes of this Part, a specimen is *lawfully imported* if, and only if, it was imported and:

- (a) in a case where the specimen was imported after the commencement of this Part—it was not imported in contravention of this Part; or
- (b) in a case where the specimen was imported when the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* was in force—it was not imported in contravention of that Act; or
- (c) in a case where the specimen was imported before the commencement of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*—it was not imported in contravention of:
 - (i) the Customs (Endangered Species) Regulations; or
 - (ii) the Customs (Prohibited Imports) Regulations.

12 Subsection 391(3) (after table item 10)

Insert:

10A	303CG	whether or not to grant a permit
10AA	303DC	whether or not to amend the list of exempt native specimens
10B	303DG	whether or not to grant a permit
10C	303EC	about including an item in the list referred to section 303EB
10D	303EN	whether or not to grant a permit
10E	303FN	about declaring an operation to be an approved wildlife trade operation
10F	303FO	about declaring a plan to be an approved wildlife trade management plan
10G	303FP	about declaring a plan to be an accredited wildlife trade management plan
10H	303GB	whether or not to grant an exceptional circumstances permit

13 At the end of section 397

Add:

- (2) Paragraph (1)(b) does not apply for the purposes of the application of this Act to an offence against, or a matter relating to, Part 13A.
- (3) By force of this section, for the purposes of the application of this Act to an offence against, or a matter relating to, Part 13A, each of the following is an inspector:
- (a) each officer of Customs;
 - (b) each member of the police force of an external Territory;
 - (c) each quarantine officer (animals) (within the meaning of the *Quarantine Act 1908*);
 - (d) each quarantine officer (plants) (within the meaning of the *Quarantine Act 1908*).

Note: Part 13A deals with international movement of wildlife specimens.

14 Subsection 399(1)

After “police force”, insert “or an officer of Customs”.

15 Subsection 404(1)

After “other than a member of a police force”, insert “, or an officer of Customs,”.

16 After paragraph 404(1)(a)

Insert:

- (aa) in the case of an officer of Customs—produce, for inspection by the person in charge of that vehicle, vessel, aircraft or platform, written evidence of the fact that he or she is an officer of Customs; or

17 Subsection 404(3)

After “other than a member of a police force”, insert “, or an officer of Customs,”.

18 After paragraph 404(3)(a)

Insert:

- (aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or

19 Subsection 408(4)

After “section”, insert “444A or”.

20 After paragraph 408(7)(c)

Insert:

- (ca) if the authorised officer is an officer of Customs—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is an officer of Customs; or

21 Subsection 409(5)

After “section”, insert “444A or”.

22 Subsection 430(2)

After “other than a member of a police force”, insert “, or an officer of Customs,”.

23 After paragraph 430(2)(a)

Insert:

- (aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; and

24 Subsection 442(5)

After “other than a member of a police force”, insert “, or an officer of Customs,”.

25 After paragraph 442(5)(a)

Insert:

- (aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or

26 After Division 8 of Part 17

Insert:

Division 8A—Power to ask questions about specimens

443A Authorised officer may ask questions about the nature or origin of specimens

When section applies

- (1) This section applies if an authorised officer has reasonable grounds to suspect that:
 - (a) a specimen has been exported, or is proposed to be exported, in contravention of section 303CC or 303DD; or
 - (b) a specimen has been imported, or is proposed to be imported, in contravention of section 303CD or 303EK; or
 - (c) a person has in the person's possession a specimen, and that possession contravenes section 303GN.

Note: Sections 303CC, 303CD, 303DD, 303EK and 303GN are included in Part 13A, which deals with international movement of wildlife specimens.

Questions

- (2) If the authorised officer has reasonable grounds to suspect that a person has information about the nature or origin of the specimen, the authorised officer may ask the person one or more questions about the nature or origin of the specimen.

Answers to questions

- (3) Subject to subsections (6) and (7), if a person is asked a question under subsection (2), the person must not intentionally refuse or intentionally fail to answer the question to the extent that the person is capable of doing so.
- (4) A person who contravenes subsection (3) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.
- (5) In subsection (3), strict liability applies to the circumstance that the person was asked a question under subsection (2).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

No requirement to give incriminating answers

- (6) If a person is asked a question under subsection (2), the person is not required to answer the question if the answer might tend to incriminate the person or expose the person to a penalty.

Identity cards etc.

- (7) If a person is asked a question under subsection (2) by an authorised officer, the person is not required to answer the question unless:
- (a) if the authorised officer is a member of a police force—the authorised officer produces, for inspection by the person, written evidence of the fact that the authorised officer is a member of that police force; or
 - (b) if the authorised officer is an officer of Customs—the authorised officer produces, for inspection by the person, written evidence of the fact that the authorised officer is an officer of Customs; or
 - (c) if the authorised officer is neither a member of a police force nor an officer of Customs—the authorised officer produces the authorised officer's identity card for inspection by the person.

27 After paragraph 444(4)(a)

Insert:

- (aa) if the authorised officer is an officer of Customs—he or she produces, for inspection by the person, written evidence of the fact that he or she is an officer of Customs; or

28 Before Subdivision A of Division 10 of Part 17

Insert:

Subdivision AA—Seizure of specimens involved in a contravention of Part 13A

444A Seizure of specimens involved in a contravention of Part 13A

An authorised officer may seize a specimen if he or she has reasonable grounds to suspect that the specimen has been used or

otherwise involved in the commission of an offence against Part 13A.

Note: Part 13A deals with international movement of wildlife specimens.

444B Notice about seizure

- (1) Subject to subsection (2), if a specimen is seized by an authorised officer under section 444A, the authorised officer must give:
 - (a) the owner of the specimen; or
 - (b) the person who had possession, custody or control of the specimen immediately before it was seized;a written notice:
 - (c) identifying the specimen; and
 - (d) stating that it has been seized under section 444A and giving the reason for the seizure; and
 - (e) setting out the terms of sections 444C and 444D.The notice must be given as soon as practicable after the seizure.
- (2) An authorised officer is not required to give a notice under subsection (1) about a specimen if, after making such inquiries as the authorised officer thinks appropriate, the authorised officer does not, within 30 days after the seizure, have sufficient information to enable the authorised officer to give the notice. In that event, the authorised officer must keep a written record of the seizure.

444C Applications for return of specimen

- (1) If a specimen is seized under section 444A, the owner of the specimen may apply in writing to the Secretary for the delivery to the owner of the specimen.
 - (2) The application must be made:
 - (a) within 30 days after the seizure; or
 - (b) if a notice is given under subsection 444B(1) in relation to the specimen—within 30 days after the giving of the notice.
 - (3) The application must be made on the ground that the specimen was not used or otherwise involved in the commission of an offence against Part 13A.
-

- (4) If the applicant satisfies the Secretary that the ground has been established, the Secretary must grant the application.

Note: Under section 444G, the Secretary may retain the specimen for up to 30 days after making a decision on the application.

444D Court action for return of specimen

- (1) If a specimen is seized under section 444A, the owner of the specimen may bring an action against the Commonwealth in a court of competent jurisdiction for the delivery of the specimen to the owner on the ground that the specimen was not used or otherwise involved in the commission of an offence against Part 13A.
- (2) An action under subsection (1) must be brought:
- (a) within 30 days after the seizure; or
 - (b) if a notice is given under subsection 444B(1) in relation to the specimen—within 30 days after the giving of the notice.
- (3) If:
- (a) an action is brought under subsection (1); and
 - (b) the court finds that the specimen was used or otherwise involved in the commission of the offence concerned;
- the court must order the specimen to be forfeited to the Commonwealth.
- (4) If:
- (a) an action is brought under subsection (1); and
 - (b) the action is discontinued by the owner otherwise than because of:
 - (i) the delivery of the specimen to the owner; or
 - (ii) the forfeiture of the specimen to the Commonwealth; or
 - (iii) the disposal of the specimen under section 449;
- the specimen is forfeited to the Commonwealth.

444E Consignment of specimen with consent of owner

- (1) If:
- (a) a specimen is seized under section 444A; and
 - (b) the specimen was imported from a particular foreign country;
- and
-

- (c) the export of the specimen from the foreign country was not in contravention of a law of the foreign country that corresponds to Part 13A; and
 - (d) if the importer had applied for a permit authorising the import of the specimen, there is no reasonable likelihood that the permit would have been granted; and
 - (e) the importer produces written evidence from the relevant CITES authority of the foreign country that the specimen may be returned to the foreign country without contravening such a law;
- the Secretary may, with the consent of the owner of the specimen, consign the specimen to a place in the foreign country.
- (2) The consignment is to be at the expense of the owner of the specimen.

444F Release of specimen

If a specimen is seized under section 444A, the Secretary may release the specimen to the owner, or to the person from whose possession the specimen was seized, either:

- (a) unconditionally; or
- (b) on such conditions as the Secretary thinks fit (including conditions about the giving of security for payment of its value if it is forfeited).

444G Retention of specimen

- (1) If a specimen is seized under section 444A, the specimen may be retained until the end of 30 days after whichever is the latest of the following events:
- (a) the seizure;
 - (b) if a notice is given under subsection 444B(1) in relation to the specimen—the giving of the notice;
 - (c) if an application is made under subsection 444C(1) in relation to the specimen—the making of a decision on that application;
 - (d) if:
 - (i) proceedings for an offence against Part 13A are instituted during the period within which an application
-

may be made under subsection 444C(1) in relation to the specimen; and

- (ii) the specimen may have been used or otherwise involved in the commission of the offence or the specimen may afford evidence of the commission of the offence;

the termination of the proceedings (including any appeal to a court in relation to those proceedings);

- (e) if proceedings under section 444K are instituted during the period within which an application may be made under subsection 444C(1) in relation to the specimen—the termination of the proceedings (including any appeal to a court in relation to those proceedings).

- (2) The rule in subsection (1) does not authorise the retention of the specimen if the owner of the specimen succeeds in an action under subsection 444D(1) for the delivery of the specimen to the owner. Nor does that rule require the return of the specimen if proceedings under subsection 444D(1) relating to the specimen are pending.

444H Forfeiture of specimen after end of retention period

- (1) If:

- (a) a specimen is seized under section 444A; and
- (b) none of the following happens before the end of the period for which the specimen may be retained:
 - (i) proceedings are instituted for an offence against Part 13A, where the specimen is alleged to have been used or otherwise involved in the commission of the offence;
 - (ii) the specimen is delivered to the owner;
 - (iii) the owner of the specimen brings an action under subsection 444D(1) for the delivery of the specimen to the owner;
 - (iv) proceedings are instituted under section 444K in relation to the specimen;
 - (v) the specimen is disposed of under section 449;

the specimen is forfeited to the Commonwealth at the end of that period.

- (2) Subsection (1) has effect only to the extent (if any) to which it gives effect to paragraph 1(b) of Article VIII of CITES.
-

444J Forfeiture of specimen by consent etc.

- (1) If:
- (a) a specimen is seized under section 444A; and
 - (b) the owner of the specimen agrees to transfer ownership of the specimen to the Commonwealth, either:
 - (i) unconditionally; or
 - (ii) in the event that a future contingency happens; and
 - (c) if subparagraph (b)(ii) applies—that contingency happens;
- then:
- (d) the specimen becomes the property of the Commonwealth; and
 - (e) the provisions of this Part relating to forfeiture apply as if the specimen had been forfeited to the Commonwealth under this Act.
- (2) If:
- (a) a specimen is seized under section 444A; and
 - (b) the owner of the specimen agrees to transfer ownership of the specimen to the Commonwealth in the event that a future contingency happens;
- the Secretary may retain the specimen:
- (c) until the specimen becomes the property of the Commonwealth; or
 - (d) if the specimen does not become the property of the Commonwealth—until the occurrence of the last day on which that contingency could have happened.
- (3) Subsection (2) has effect despite anything in section 444G.

444K Forfeiture of specimen by order of a civil court

- If:
- (a) a specimen is seized under section 444A; and
 - (b) the specimen has been used or otherwise involved in a contravention of Part 13A;
- a court may, on the application of the Secretary, order the forfeiture to the Commonwealth of the specimen.

29 After subsection 450(1)

Insert:

- (1A) If a court convicts a person of an offence against Part 13A, the court must order the forfeiture to the Commonwealth of any specimen used or otherwise involved in the commission of the offence.

Note: Part 13A deals with the international movement of wildlife specimens.

30 Subsection 450(2)

After “(1)”, insert “or (1A)”.

31 Subsection 450(2)

After “thing”, insert “or specimen”.

32 At the end of section 451

Add:

- (4) The Secretary must not sell a specimen forfeited to the Commonwealth under this Act unless, in the opinion of the Secretary, the buyer will use the specimen for scientific or educational purposes.

32A Paragraph 489(1)(a)

Omit “or 13”, substitute “, 13 or 13A”.

32B Paragraph 489(2A)(a)

Omit “or 13”, substitute “, 13 or 13A”.

33 At the end of section 517

Add:

- (3) A determination does not apply for the purposes of:
- (a) Part 13A; or
 - (b) the definitions of *CITES I species*, *CITES II species* and *CITES III species* in section 528.
- (4) Subsection (3) does not affect the meaning of the expression *listed threatened species* when used in Part 13A.

34 At the end of section 520

Add:

- (6) The regulations may prohibit or regulate the export from an external Territory to Australia or another external Territory of:
 - (a) CITES specimens; and
 - (b) regulated native specimens.
- (7) The regulations may prohibit or regulate the import into an external Territory from Australia or another external Territory of:
 - (a) CITES specimens; and
 - (b) regulated live specimens.
- (8) The regulations may prohibit or regulate the possession in an external Territory of:
 - (a) specimens that have been imported into that Territory in contravention of regulations made for the purposes of subsection (7); or
 - (b) the progeny of such specimens.

35 At the end of section 522B

Add:

- (3) This section is to be disregarded for the purposes of Part 13A.

36 At the end of section 523

Add:

- (3) Subsection (2) is to be disregarded for the purposes of Part 13A.

37 At the end of Division 1 of Part 23

Add:

Subdivision E—Specimens

527A Specimens

- (1) For the purposes of this Act, a *specimen* is:
 - (a) an animal; or
 - (b) animal reproductive material; or
 - (c) the skin, feathers, horns, shell or any other part of an animal;or
-

- (d) any article wholly produced by or from, or otherwise wholly derived from, a single animal; or
 - (e) a plant; or
 - (f) plant reproductive material; or
 - (g) any part of a plant; or
 - (h) any article wholly produced by or from, or otherwise wholly derived from, a single plant.
- (2) However, a fossil, or a mineralised deposit, is not a *specimen* for the purposes of this Act.
- (3) In any provision of this Act, references to a *specimen* are to be read as including references to an article that consists of, or is derived from:
- (a) a specimen and material other than a specimen; or
 - (b) 2 or more specimens; or
 - (c) 2 or more specimens and material other than a specimen.
- (4) If an article consists of, or is derived from, 2 or more specimens, either with or without any material other than a specimen, then this Act applies to and in relation to that article separately in so far as it consists of, or is derived from, each of those specimens.
- (5) For the purposes of this Act:
- (a) if a live animal (other than animal reproductive material) that was bred in captivity dies, the dead animal and specimens derived from the dead animal are taken to be specimens derived from that live animal; and
 - (b) if a live plant (other than plant reproductive material) that was artificially propagated dies, the dead plant and specimens derived from the dead plant are taken to be specimens derived from that live plant; and
 - (c) a specimen covered by paragraph (1)(b), (c) or (d) is taken to be derived from the animal concerned; and
 - (d) a specimen covered by paragraph (1)(f), (g) or (h) is taken to be derived from the plant concerned; and
 - (e) if a specimen is derived from an animal that belongs to a particular species or taxon, the specimen is taken to belong to that species or taxon; and
-

- (f) if a specimen is derived from a plant that belongs to a particular species or taxon, the specimen is taken to belong to that species or taxon.

(6) In this section:

this Act does not include sections 356 and 390E.

527B Breeding in captivity

For the purposes of this Act, a live animal of a particular kind is taken to have been ***bred in captivity*** if, and only if, it was bred in circumstances declared by the regulations to be circumstances the breeding in which of:

- (a) any live animal; or
- (b) any live animal of that kind; or
- (c) any live animal included in a class of live animals that includes live animals of that kind;

would constitute breeding in captivity.

527C Artificial propagation

For the purposes of this Act, a live plant of a particular kind is taken to have been ***artificially propagated*** if, and only if, it was propagated in circumstances declared by the regulations to be circumstances the propagation in which of:

- (a) any live plant; or
- (b) any live plant of that kind; or
- (c) any live plant included in a class of live plants that includes live plants of that kind;

would constitute artificial propagation.

527D Things represented to be CITES specimens

- (1) For the purposes of this Act, if a thing is represented by an accompanying document, the package or a mark or label, or from any other circumstances, to be:
 - (a) the skin, feathers, horns, shell or any other part of a CITES listed animal; or
 - (b) part of a CITES listed plant; or

(c) reproductive material from a CITES listed animal or a CITES listed plant; or

(d) an article produced by or from, or derived from, one or more CITES listed animals or one or more CITES listed plants, whether with or without any other material;

then the thing is taken to be a CITES specimen.

Note: This subsection has the effect (among other things) of widening the scope of sections 303CC, 303CD and 303GN, which are offence provisions relating to the export, import and possession of specimens.

(2) The Minister must not issue a permit under section 303CG authorising the export or import of a thing that is taken under subsection (1) to be a CITES specimen unless the thing is a CITES specimen apart from subsection (1).

(3) In this section:

CITES listed animal means an animal of a species included in Appendix I, II or III to CITES.

CITES listed plant means a plant of a species included in Appendix I, II or III to CITES.

export has the same meaning as in Part 13A.

import has the same meaning as in Part 13A.

38 Section 528

Insert:

animal reproductive material means:

(a) an embryo, an egg or sperm of an animal; or

(b) any other part, or product, of an animal from which another animal could be produced.

39 Section 528

Insert:

artificially propagated, in relation to a plant or plant reproductive material, has the meaning given by section 527C.

40 Section 528

Insert:

bred in captivity, in relation to an animal or animal reproductive material, has the meaning given by section 527B.

41 Section 528 (definition of CITES)

Omit “as in force for Australia immediately before the commencement of this Act”, substitute “ as amended and in force for Australia from time to time”.

42 Section 528

Insert:

CITES I species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix I to CITES.

43 Section 528

Insert:

CITES I specimen means a specimen that belongs to a CITES I species, where there is a notation in the list referred to in section 303CA that describes the specimen.

44 Section 528

Insert:

CITES II species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix II to CITES.

45 Section 528

Insert:

CITES II specimen means a specimen that belongs to a CITES II species, where there is a notation in the list referred to in section 303CA that describes the specimen.

46 Section 528

Insert:

CITES III species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix III to CITES.

47 Section 528

Insert:

CITES III specimen means a specimen that belongs to a CITES III species, where there is a notation in the list referred to in section 303CA that describes the specimen.

48 Section 528

Insert:

CITES specimen means:

- (a) a CITES I specimen; or
- (b) a CITES II specimen; or
- (c) a CITES III specimen.

49 Section 528

Insert:

country includes a place that is a territory, dependency or colony (however described) of a foreign country.

50 Section 528

Insert:

disease means:

- (a) a disease, parasite or pest that, for the purposes of the *Quarantine Act 1908*, is a disease in relation to animals; or
- (b) a disease, pest or plant that, for the purposes of that Act, is a disease in relation to plants.

51 Section 528

Insert:

export, in relation to a cetacean, means:

- (a) export from Australia or from an external Territory; or
- (b) export from the sea;

but does not include:

- (c) export from Australia to an external Territory; or
- (d) export from an external Territory to Australia; or

(e) export from an external Territory to another external Territory.

52 Section 528

Insert:

export from the sea, in relation to a cetacean, means take in a Commonwealth marine area and then take out of that area to another country without bringing into Australia or into an external Territory.

53 Section 528

Insert:

live animal includes animal reproductive material.

54 Section 528

Insert:

live plant includes plant reproductive material.

55 Section 528

Insert:

native amphibian means an amphibian of a native species.

56 Section 528

Insert:

native animal means an animal of a native species.

57 Section 528

Insert:

native bird means a bird of a native species.

58 Section 528

Insert:

native mammal means a mammal of a native species.

59 Section 528

Insert:

native plant means a plant of a native species.

60 Section 528

Insert:

native reptile means a reptile of a native species.

61 Section 528

Insert:

progeny includes:

- (a) in relation to an animal—any animal reproductive material of that animal or of any progeny of that animal; and
- (b) in relation to a plant—any plant reproductive material of that plant or of any progeny of that plant; and
- (c) in relation to a live animal that is animal reproductive material—any animal resulting from that material or any progeny of such animal; and
- (d) in relation to a live plant that is plant reproductive material—any plant resulting from that material or any progeny of such plant.

To avoid doubt, a reference in this Act to *progeny* of an animal or a plant includes a reference to any descendant of that animal or plant.

62 Section 528

Insert:

regulated live specimen has the meaning given by section 303EA.

63 Section 528

Insert:

regulated native specimen has the meaning given by section 303DA.

64 Section 528 (after paragraph (c) of the definition of *species*)

Insert:

(ca) for the purposes of Part 13A—a distinct population of such biological entities; and

65 Section 528 (paragraph (d) of the definition of *species*)

Before “a distinct”, insert “except for the purposes of Part 13A—”.

66 Section 528 (at the end of the definition of *species*, before the note)

Add:

In this definition, *the purposes of Part 13A*:

- (a) include the purposes of the definitions of *CITES I species*, *CITES II species* and *CITES III species*; and
- (b) do not include determining the meaning of the expression *listed threatened species* when used in Part 13A.

67 Section 528

Insert:

specimen has the meaning given by section 527A.

68 Section 528

Insert:

taxon means any taxonomic category (for example, a species or a genus), and includes a particular population.

69 Section 528

Insert:

wildlife means:

- (a) an animal; or
- (b) a specimen derived from an animal; or
- (c) a plant; or
- (d) a specimen derived from a plant.

Part 2—Transitional provisions relating to wildlife

70 Transitional—applications pending immediately before this item commenced

- (1) For the purposes of this item, an application for a permit or authority to export or import a specimen is a ***pending application*** if:
- (a) the application was made by a person under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* (other than section 41 or 43A) before the commencement of this item; and
 - (b) the application was not withdrawn before that commencement; and
 - (c) the permit or authority was neither granted, nor refused, before that commencement.
- (2) If:
- (a) the pending application is an application for a permit or authority to export or import a CITES specimen; and
 - (b) within 28 days after the commencement of this item, the person pays the fee prescribed by the regulations;
- the person is taken, on the day on which the fee is paid, to have made an application (the ***fresh application***) under section 303CE of the *Environment Protection and Biodiversity Conservation Act 1999* for a permit to be issued under section 303CG of that Act authorising the export or import, as the case may be, of the specimen.
- (3) If:
- (a) the pending application is an application for a permit or authority to export a regulated native specimen (other than a CITES specimen); and
 - (b) within 28 days after the commencement of this item, the person pays the fee prescribed by the regulations;
- the person is taken, on the day on which the fee is paid, to have made an application (the ***fresh application***) under section 303DE of the *Environment Protection and Biodiversity Conservation Act 1999* for a permit to be issued under section 303DG of that Act authorising the export of the specimen.
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- (4) If:
- (a) the pending application is an application for a permit or authority to import a regulated live specimen (other than a CITES specimen); and
 - (b) within 28 days after the commencement of this item, the person pays the fee prescribed by the regulations;
- the person is taken, on the day on which the fee is paid, to have made an application (the *fresh application*) under section 303EL of the *Environment Protection and Biodiversity Conservation Act 1999* for a permit to be issued under section 303EN of that Act authorising the import of the specimen.
- (5) If information was given to the Minister in connection with the pending application, the information is taken to have been given to the Minister in connection with the fresh application.
- (6) At the same time as the fee was paid, or at any time during the 28-day period beginning on the day on which the fee was paid, the person may:
- (a) give the Minister a written notice:
 - (i) setting out information relevant to the fresh application; and
 - (ii) requesting the Minister to have regard to the information when dealing with the fresh application; or
 - (b) give the Minister a written notice requesting the Minister to consider the fresh application as soon as practicable.
- (7) If the person gives the Minister a notice under paragraph (6)(a), the Minister must have regard to the information when considering the fresh application.
- (8) The Minister must not consider the fresh application until whichever is the earlier of the following days:
- (a) the first day after the end of the 28-day period beginning on the day on which the fee was paid;
 - (b) if the person gives the Minister a notice under paragraph (6)(a) or (b)—the day on which the notice was given.
- (9) For the purposes of the application of sections 303CF, 303CI, 303DF, 303DH, 303EM, 303EO and 303GB of the *Environment Protection and Biodiversity Conservation Act 1999* to the fresh application, the period of 40 business days is to be increased by one business day for each
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business day in the period beginning on the day on which the fee was paid and ending on whichever is the earlier of the following days:

- (a) the last day of the 28-day period beginning on the day on which the fee was paid;
 - (b) if the person gives the Minister a notice under paragraph (6)(a) or (b)—the day on which the notice was given.
- (10) If, before the commencement of this item, the person paid a fee in respect of the grant of the permit or authority under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*:
- (a) the Commonwealth must refund the fee unless the person elects to treat the payment as fully discharging the person's liability to pay the fee for the fresh application worked out under whichever of subitem (2), (3) or (4) is applicable; and
 - (b) if, under paragraph (a), the person elects to treat a payment as fully discharging the person's liability to pay a fee under whichever of subitem (2), (3) or (4) is applicable, the fee is taken to have been paid when the election was made.
- (11) Subsections 303CE(2), 303DE(2) and 303EL(2) of the *Environment Protection and Biodiversity Conservation Act 1999* do not apply to the fresh application.
- (12) A fee under subitem (2) must not exceed the fee that would have been payable under subsection 303CE(2) of the *Environment Protection and Biodiversity Conservation Act 1999* if that subsection applied to the fresh application.
- (13) A fee under subitem (3) must not exceed the fee that would have been payable under subsection 303DE(2) of the *Environment Protection and Biodiversity Conservation Act 1999* if that subsection applied to the fresh application.
- (14) A fee under subitem (4) must not exceed the fee that would have been payable under subsection 303EL(2) of the *Environment Protection and Biodiversity Conservation Act 1999* if that subsection applied to the fresh application.
- (15) If, before the commencement of this item, any comments had been given to the Minister in relation to the pending application in response to a notice given under paragraph 44(1)(f) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, those comments have
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effect as if they had been given to the Minister in relation to the fresh application in response to a notice given under subsection 303GB(7) of the *Environment Protection and Biodiversity Conservation Act 1999*.

- (16) The Governor-General may make regulations for the purposes of subitem (2), (3) or (4).
- (17) A fee provided for under subitem (2), (3) or (4) must be reasonably related to the expenses incurred or to be incurred by the Commonwealth in relation to the matters to which the fee relates and must not be such as to amount to taxation.
- (18) In this item:
grant includes give.

71 Transitional—permits or authorities in force immediately before this item commenced

- (1) For the purposes of this item, a permit or authority to export or to import a specimen is an *old permit* or an *old authority* if:
 - (a) the permit or authority was granted or given to a person under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* (other than section 41 or 43A) before the commencement of this item; and
 - (b) the permit or authority was in force immediately before that commencement; and
 - (c) the specimen had not been exported or imported, as the case may be, before that commencement.
 - (2) If the old permit or old authority authorised the export or import of a CITES specimen, the *Environment Protection and Biodiversity Conservation Act 1999* has effect as if:
 - (a) the old permit or old authority were a permit issued under section 303CG of that Act authorising the export or import, as the case may be, of the specimen; and
 - (b) the person were the holder of the section 303CG permit; and
 - (c) the section 303CG permit ceases to be in force when the old permit or old authority would have ceased to be in force if this Act had not been enacted (unless the section 303CG permit is sooner cancelled under section 303GI of the *Environment Protection and Biodiversity Conservation Act 1999*); and
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- (d) any conditions of the old permit or old authority were conditions of the section 303CG permit; and
 - (e) a notice from the Designated Authority under paragraph 45(1)(b) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* in relation to the old permit or old authority were a notice from the Secretary under paragraph 303GK(1)(b) of the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the section 303CG permit.
- (3) If the old permit or old authority authorised the export of a regulated native specimen (other than a CITES specimen), the *Environment Protection and Biodiversity Conservation Act 1999* has effect as if:
- (a) the old permit or old authority were a permit issued under section 303DG of that Act authorising the export of the specimen; and
 - (b) the person were the holder of the section 303DG permit; and
 - (c) the section 303DG permit ceases to be in force when the old permit or old authority would have ceased to be in force if this Act had not been enacted (unless the section 303DG permit is sooner cancelled under section 303GI of the *Environment Protection and Biodiversity Conservation Act 1999*); and
 - (d) any conditions of the old permit or old authority were conditions of the section 303DG permit; and
 - (e) a notice from the Designated Authority under paragraph 45(1)(b) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* in relation to the old permit or old authority were a notice from the Secretary under paragraph 303GK(1)(b) of the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the section 303DG permit.
- (4) If the old permit or old authority authorised the import of a regulated live specimen (other than a CITES specimen), the *Environment Protection and Biodiversity Conservation Act 1999* has effect as if:
- (a) the old permit or old authority were a permit issued under section 303EN of that Act authorising the import of the specimen; and
 - (b) the person were the holder of the section 303EN permit; and
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- (c) the section 303EN permit ceases to be in force when the old permit or old authority would have ceased to be in force if this Act had not been enacted (unless the section 303EN permit is sooner cancelled under section 303GI of the *Environment Protection and Biodiversity Conservation Act 1999*); and
- (d) any conditions of the old permit or old authority were conditions of the section 303EN permit.

72 Transitional—section 303EU of the *Environment Protection and Biodiversity Conservation Act 1999*

- (1) This item applies if a determination was in force under section 51D of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
 - (a) the determination had been made by the Secretary under section 303EU of the *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (b) each reference in the determination to the Designated Authority were a reference to the Secretary; and
 - (c) anything done under the determination by or in relation to the Designated Authority before the commencement of this item had been done by or in relation to the Secretary under the corresponding provision of the determination.

73 Transitional—section 303FN of the *Environment Protection and Biodiversity Conservation Act 1999*

- (1) This item applies if:
 - (a) a declaration relating to specimens was in force under subsection 10A(2) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item; and
 - (b) the declaration related to a particular operation.
 - (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
 - (a) the declaration had been made under subsection 303FN(2) of that Act; and
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- (b) the operation were a wildlife trade operation; and
- (c) the declaration had provided that the operation is an approved wildlife trade operation for the purposes of section 303FN of that Act; and
- (d) the period:
 - (i) beginning on the day on which the declaration took effect; and
 - (ii) ending when the declaration would have ceased to be in force if this Act had not been enacted;were specified in the declaration in accordance with subsection 303FT(4) the *Environment Protection and Biodiversity Conservation Act 1999*.

74 Transitional—section 303FO of the *Environment Protection and Biodiversity Conservation Act 1999*

- (1) This item applies if a declaration relating to a program was in force under subsection 10(1) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
 - (a) the declaration had been made under subsection 303FO(2) of that Act; and
 - (b) the program were a plan; and
 - (c) each reference in the declaration to a program were a reference to a plan; and
 - (d) each reference in the declaration to an approved management program were a reference to an approved wildlife trade management plan; and
 - (e) each reference in the declaration to the purposes of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* were a reference to the purposes of section 303FO of the *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (f) the period:
 - (i) beginning on the day on which the declaration took effect; and

(ii) ending when the declaration would have ceased to be in force if this Act had not been enacted;

were specified in the declaration in accordance with subsection 303FT(4) the *Environment Protection and Biodiversity Conservation Act 1999*.

75 Transitional—section 303FR of the *Environment Protection and Biodiversity Conservation Act 1999*

(1) This item applies if:

- (a) before the commencement of this item, the Minister formulated a proposal to declare specimens under section 10A of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; and
- (b) before the commencement of this item, any comments had been given to the Minister in relation to the proposal in response to a notice given under section 9B of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; and
- (c) the proposal related to a particular operation; and
- (d) the operation is a wildlife trade operation for the purposes of section 303FN of the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (e) after the commencement of this item, the Minister formulates a proposal (the *new proposal*) to declare the operation under subsection 303FN(2) of the *Environment Protection and Biodiversity Conservation Act 1999*.

(2) Those comments have effect as if they had been given to the Minister in relation to the new proposal in response to a notice given under subsection 303FR(1) of the *Environment Protection and Biodiversity Conservation Act 1999*.

76 Transitional—section 303FR of the *Environment Protection and Biodiversity Conservation Act 1999*

(1) This item applies if:

- (a) before the commencement of this item, the Minister formulated a proposal to declare a program under section 10 of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; and
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- (b) before the commencement of this item, any comments had been given to the Minister in relation to the proposal in response to a notice given under section 9B of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; and
 - (c) the program is a plan; and
 - (d) after the commencement of this item, the Minister formulates a proposal (the ***new proposal***) to declare the plan under subsection 303FO(2) of the *Environment Protection and Biodiversity Conservation Act 1999*.
- (2) Those comments have effect as if they had been given to the Minister in relation to the new proposal in response to a notice given under subsection 303FR(1) of the *Environment Protection and Biodiversity Conservation Act 1999*.

77 Transitional—section 303FU of the *Environment Protection and Biodiversity Conservation Act 1999*

- (1) This item applies if:
- (a) a declaration relating to specimens was in force under subsection 10A(3) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item; and
 - (b) the declaration related to a particular program.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if the program were a program that, under regulations made for the purposes of section 303FU of that Act, is taken to be an approved commercial import program.
- (3) Subitem (2) ceases to have effect in relation to the program at:
- (a) the time when the declaration would have ceased to be in force if this Act had not been enacted; or
 - (b) if an earlier time is specified in the regulations in relation to the program—that earlier time.
- (4) Subitem (2) does not prevent the program from becoming an approved commercial import program under regulations made for the purposes of section 303FU of the *Environment Protection and Biodiversity Conservation Act 1999*.
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Conservation Act 1999 at any time after subitem (2) ceases to have effect in relation to that program.

- (5) The Governor-General may make regulations for the purposes of subitem (3).

78 Transitional—section 303GS of the *Environment Protection and Biodiversity Conservation Act 1999*

- (1) This item applies if an appointment was in force under section 75 of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
- (a) the appointment had been made under the corresponding provision of section 303GS of the *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (b) each reference in the appointment to the purposes of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* were a reference to the purposes of Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999*.

79 Transitional—section 303GX of the *Environment Protection and Biodiversity Conservation Act 1999*

- (1) This item applies if a declaration was in force under subsection 8A(2) or (3) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
- (a) the declaration had been made under the corresponding provision of section 303GX of the *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (b) each reference in the declaration to section 8A of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* were a reference to section 303GX of the *Environment Protection and Biodiversity Conservation Act 1999*.

80 Transitional—section 396 of the *Environment Protection and Biodiversity Conservation Act 1999*

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- (1) This item applies if an appointment or determination was in force under subsection 58(1) or (2) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* immediately before the commencement of this item.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if:
- (a) the appointment or determination had been made under the corresponding provision of section 396 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (b) the appointment or determination was revoked at the end of the 6-month period beginning at the commencement of this item; and
 - (c) in the case of a determination—each reference in the determination to particular powers conferred on an inspector by the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* were a reference to powers conferred on an inspector by the corresponding provisions of the *Environment Protection and Biodiversity Conservation Act 1999*.
- (3) This item does not prevent the Minister, at the end of that 6-month period, from making a fresh appointment or determination under section 396 of the *Environment Protection and Biodiversity Conservation Act 1999* in terms corresponding to the first-mentioned appointment or determination.

81 Transitional—Part 17 of the *Environment Protection and Biodiversity Conservation Act 1999*

- (1) Part 17 of the *Environment Protection and Biodiversity Conservation Act 1999* applies to an offence against the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* in a corresponding way to the way in which it applies to an offence against Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999*.
- (2) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if anything done under Part III of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* (other than section 58 or 60) before the commencement of this item had been done under the corresponding

Schedule 1 Amendment of the Environment Protection and Biodiversity Conservation Act 1999

Part 2 Transitional provisions relating to wildlife

provision of Part 17 of the *Environment Protection and Biodiversity Conservation Act 1999*.

- (3) The *Environment Protection and Biodiversity Conservation Act 1999* has effect, after the commencement of this item, as if anything done under Part III of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* by or in relation to the Designated Authority before the commencement of this item had been done by or in relation to the Secretary under the corresponding provision of Part 17 of the *Environment Protection and Biodiversity Conservation Act 1999*.

82 Transitional—regulations

- (1) The regulations may make provision for matters of a transitional nature relating to the amendments made by Part 1 of this Schedule.
- (2) The Governor-General may make regulations for the purposes of subitem (1).

Part 3—Other amendments

83 At the end of Division 1 of Part 3

Add:

Subdivision H—Actions that are taken to be covered by this Division

25A Actions that are taken to be covered by this Division

- (1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.
- (3) Regulations made for the purposes of subsection (1) may only specify actions:
- (a) taken in a Territory; or
 - (b) taken in a Commonwealth marine area; or
 - (c) taken for the purpose of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or
 - (d) taken by a constitutional corporation; or
 - (e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (4) Regulations specifying an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.
- (5) In this section:

regulatory provision means:

- (a) a civil penalty provision set out in this Division; or
- (b) a provision of this Division that creates an offence.

Subdivision I—Evidentiary certificates

25B Evidentiary certificates

Contravention

- (1) The Minister may issue a written certificate:
 - (a) stating that a specified person has contravened, or is contravening, a specified civil penalty provision set out in this Division; and
 - (b) setting out particulars of that contravention.
- (2) The Minister may issue a certificate under subsection (1) relating to a particular contravention if the Minister has reason to believe that the person concerned has committed, or is committing, the contravention.
- (3) To avoid doubt, a certificate under subsection (1) may be issued even if any relevant proceedings under section 475 or 481 have been instituted.

Proposal

- (4) The Minister may issue a written certificate stating that, if a specified person were to carry out a proposal to engage in specified conduct, that conduct would contravene a specified civil penalty provision set out in this Division.
- (5) The Minister may issue a certificate under subsection (4) if the Minister has reason to believe that:
 - (a) the person proposes to engage in the conduct concerned; and
 - (b) the conduct would contravene the civil penalty provision concerned.
- (6) To avoid doubt, a certificate under subsection (4) may be issued even if any relevant proceedings under section 475 have been instituted.

25C Certificate to be given to person

As soon as practicable after issuing a certificate under subsection 25B(1) or (4), the Minister must give a copy of the certificate to the person concerned.

25D Evidentiary effect of certificate

- (1) In any proceedings under section 475 or 481, a certificate under subsection 25B(1) is prima facie evidence of the matters in the certificate.
- (2) In any proceedings under section 475, a certificate under subsection 25B(4) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection 25B(1) or (4) must, unless the contrary is established, be taken to be such a certificate and to have been properly issued.
- (4) The Minister may certify that a document is a copy of a certificate under subsection 25B(1) or (4).
- (5) This section applies to the certified copy as if it were the original.

25E Variation of certificate

- (1) The Minister may vary a certificate under subsection 25B(1) or (4) so long as the variation is of a minor nature.
- (2) If a certificate is varied, the Minister must give the person concerned a written notice setting out the terms of the variation.

25F Revocation of certificate

- (1) The Minister may revoke a certificate under subsection 25B(1) or (4).
- (2) If a certificate is revoked, the Minister must give the person concerned a written notice stating that the certificate has been revoked.

83A At the end of Part 4

Add:

Division 6—Actions with prior authorisation

43A Actions with prior authorisation

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:
- (a) the action consists of a use of land, sea or seabed; and
 - (b) the action was specifically authorised under a law of the Commonwealth, a State or a self-governing Territory before the commencement of this Act; and
 - (c) immediately before the commencement of this Act, no further environmental authorisation was necessary to allow the action to be taken lawfully.
- (2) In this section:

environmental authorisation means an authorisation under a law of the Commonwealth, a State or a self-governing Territory that has either or both of the following objects (whether express or implied):

- (a) to protect the environment;
- (b) to promote the conservation and ecologically sustainable use of natural resources.

43B Actions which are lawful continuations of use of land etc.

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if the action is a lawful continuation of a use of land, sea or seabed that was occurring immediately before the commencement of this Act. For this purpose, an enlargement, expansion or intensification of use is not a *continuation* of a use.
- (2) However, subsection (1) does not apply to an action that was specifically authorised under a law of the Commonwealth, a State or a self-governing Territory before the commencement of this Act.

Note: Section 43A applies to actions that were specifically authorised under a law before the commencement of this Act.

84 At the end of section 70

Add:

Deemed referral of proposal

- (3) If:
- (a) the Minister has made a request under subsection (1); and
 - (b) the period for compliance with the request has ended; and
 - (c) the requested person has not referred the proposal to the Minister in accordance with the request;
- the Minister may, within 20 business days after the end of that period, determine in writing that this Act has effect as if:
- (d) if paragraph (1)(a) applies—the requested person had referred the proposal to the Minister under subsection 68(1) at the time the determination was made; or
 - (e) if paragraph (1)(b) applies—the requested person had referred the proposal to the Minister under subsection 69(1) at the time the determination was made.
- (4) A determination under subsection (3) has effect accordingly.
- (5) A copy of a determination under subsection (3) is to be given to the requested person.
- (6) Subsection 68(3) and section 72 do not apply to a referral covered by subsection (3) of this section.
- (7) Despite subsection 74(4), section 74 applies to a referral covered by subsection (3) of this section.
- (8) Subsection 74(3) applies to a referral covered by subsection (3) of this section as if the reference in paragraph 74(3)(a) to the referral were a reference to the determination concerned.

84A Subsection 146(1)

Repeal the subsection, substitute:

- (1) The Minister may agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3.

84B Subsection 146(2) (note 1)

Omit “relevant”.

84C Paragraph 148(1)(a)

Repeal the paragraph, substitute:

- (a) make an agreement with the Minister under section 146 for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and

84D Paragraph 148(2)(a)

Repeal the paragraph, substitute:

- (a) make an agreement under section 146 with the Minister (the *Environment Minister*) administering this section for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and

84E Paragraph 149(a)

Repeal the paragraph, substitute:

- (a) make an agreement with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions permitted under the Authority's policy for managing the fishery; and

84F Subsection 150(2)

Repeal the subsection, substitute:

Two-thirds of fisheries to be covered by agreements in 3 years

- (2) Before the day that is the third anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing at least $\frac{2}{3}$ of the fisheries.

84G Subsection 150(3)

Repeal the subsection, substitute:

All fisheries to be covered by agreements in 5 years

- (3) Before the day that is the fifth anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of
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Part 3, being actions that are permitted under the Authority's policies for managing the fisheries.

84H Subsection 151(2)

Repeal the subsection, substitute:

Policies for all actions to be covered by agreements in 5 years

- (2) Before the day that is the fifth anniversary of this Act commencing, the Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under section 146 with the Minister administering this section for assessment of the impacts of the actions on each matter protected by a provision of Part 3, being actions that are permitted by policies under that Act.

84HA At the end of section 197

Add:

- ; or (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 208A.

84HB Before section 208

Insert:

208A Minister may accredit plans or regimes

The Minister may, by instrument in writing, accredit for the purposes of this Division:

- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
- (b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
- (c) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

if satisfied that:

- (d) the plan or regime requires persons engaged in fishing under the plan or regime to take all reasonable steps to ensure that

members of listed threatened species are not killed or injured as a result of the fishing; and

- (e) the fishery to which the plan or regime relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.

84HC At the end of section 212

Add:

- ; or (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 222A.

84HD Before section 223

Insert:

222A Minister may accredit plans or regimes

The Minister may, by instrument in writing, accredit for the purposes of this Division:

- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
- (b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
- (c) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

if satisfied that:

- (d) the plan or regime requires persons engaged in fishing under the plan or regime to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and
- (e) the fishery to which the plan or regime relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.

84HE Paragraph 231(h)

Repeal the paragraph, substitute:

- (h) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 245.

84HF After paragraph 245(b)

Insert:

- ; or (ba) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

Note: The heading to section 245 is altered by omitting “**of management**” and substituting “**or regimes**”.

84HG Paragraph 255(k)

Omit “of management”, substitute “or regime”.

84HH After paragraph 265(b)

Insert:

- ; or (ba) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

Note: The heading to section 265 is altered by omitting “**of management**” and substituting “**or regimes**”.

84J Subsection 516A(6)

Omit “actions” (wherever occurring), substitute “activities”.

84K At the end of section 516A

Add:

(7) In subsection (6):

activities includes:

- (a) developing and implementing policies, plans, programs and legislation; and
(b) the operations of a department, authority, company or agency referred to in this section.

84L Section 522B

Repeal the section.

84M Subsection 523(2)

Repeal the subsection.

85 Section 524B

Repeal the section.

85A Section 528 (definition of *continuation*)

Omit “subsection 523(2)”, substitute “section 43B”.

86 Section 528 (definition of *significant*)

Repeal the definition.

Schedule 2—Repeal of the Wildlife Protection (Regulation of Exports and Imports) Act 1982

Wildlife Protection (Regulation of Exports and Imports) Act 1982

1 The whole of the Act

Repeal the Act.

2 Transitional—section 75 of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*

Despite the repeal of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* by this Schedule, section 75 of that Act continues to apply, after the commencement of this item, in relation to a proceeding for an offence against that Act committed before that commencement, as if that Act had not been repealed.

3 Transitional—section 75A of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*

Despite the repeal of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* by this Schedule, section 75A of that Act continues to apply, after the commencement of this item, in relation to a proceeding for an offence against that Act committed before that commencement, as if that Act had not been repealed.

4 Transitional—regulations

- (1) The regulations may make provision for matters of a transitional nature relating to the repeal of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* by this Schedule.
- (2) The Governor-General may make regulations for the purposes of subitem (1).

Schedule 3—Amendment of other Acts

Biological Control Act 1984

1 Paragraph 5(2)(b)

Omit “the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*”, substitute “Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999*”.

[*Minister’s second reading speech made in—
Senate on 24 May 2001
House of Representatives on 27 June 2001*]

(92/01)
