



Wildlife Protection (Regulation of Exports and Imports) Amendment Act 1991

No. 133 of 1991

An Act to amend the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*

[Assented to 2 September 1991]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

1. (1) This Act may be cited as the *Wildlife Protection (Regulation of Exports and Imports) Amendment Act 1991*.

(2) In this Act, “Principal Act” means the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*¹.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

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Interpretation

3. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definition:

“‘**controlled specimen**’ means a specimen that is a controlled specimen because of a declaration in force under section 10A;”.

Act not to apply to certain specimens

4. Section 8 of the Principal Act is amended by inserting after subsection (5) the following subsections:

“(5A) 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.

“(5B) For the purposes of subsection (2), a specimen is to be 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 inspector all the time that it is in that Territory.”.

5. After section 9 of the Principal Act the following sections are inserted:

Register of persons concerned about management programs

“9A. (1) The Designated Authority must maintain a register containing a list of the names and postal addresses of persons and organisations who are to be notified of:

- (a) proposals for declarations of approved management programs under section 10; and
- (b) proposals for declarations of controlled specimens under section 10A.

“(2) As soon as practicable after the commencement of this section and on each anniversary of that commencement, the Designated Authority must give public notice:

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- (a) inviting persons and organisations to have their names and postal addresses entered on the register; and
- (b) in the case of the second or a later notice given when there is a person or organisation on the register—inviting persons and organisations on the register to have their names and postal addresses left on the register.

“(3) A notice must state that the acceptance of an invitation:

- (a) is to be in writing sent to the Designated Authority at a place specified in the notice accompanied, except in the case of an invitation under paragraph (2) (b), by particulars of the name and postal address of the acceptor; and
- (b) is to be given:
 - (i) in the case of a person, or organisation, in existence on the publication of the notice—within one month after that publication; and
 - (ii) in any other case—within 12 months after that publication.

“(4) Where a person or organisation accepts an invitation in the way required by the notice, the Designated Authority is to enter, or retain, the name and postal address of the person or organisation on the register.

“(5) The Designated Authority may vary the address on the register of a person or organisation at the written request of the person or organisation.

“(6) The Designated Authority must remove the name and address of a person or organisation from the register if:

- (a) in the case of a name and address that was on the register before the most recent notice under subsection (2)—the invitation to keep that name and address on the register was not accepted within one month after the publication of that notice; or
- (b) the person or organisation makes a written request for the removal; or
- (c) the Designated Authority becomes satisfied that:
 - (i) in the case of a natural person—the person has died; or
 - (ii) in any other case—the person or organisation has ceased to exist.

“(7) In subsection (2), a reference to public notice is a reference to a notice published:

- (a) in the *Gazette*; and
- (b) in each State and internal Territory in a newspaper circulating generally in that State or Territory; and

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- (c) in each external Territory that the Minister considers appropriate (if any) in a newspaper circulating generally in that external Territory.

Views of concerned persons to be considered before making declarations

“9B. (1) Where the Minister proposes to:

- (a) declare an approved management program under section 10; or
- (b) declare a controlled specimen under section 10A;

the Designated Authority must send each person and organisation on the register maintained under section 9A written notice of the proposal and, without contravening the *Privacy Act 1986*, sufficient information to enable the person or organisation to consider adequately the merits of the proposal.

“(2) A person or organisation on the register may give the Designated Authority written comments on the proposal within one month after its receipt of the notice or such longer period as the Designated Authority determines.

“(3) The Minister is not to make the proposed declaration unless the Minister has considered all comments on the proposal given under subsection (2).”.

Approved management programs

6. Section 10 of the Principal Act is amended by adding at the end the following subsection:

“(3) The Minister may make a declaration about a management program even though he or she considers that the program should be an approved management program only:

- (a) during a particular period; or
- (b) while certain circumstances exist; or
- (c) while a certain condition is complied with;

but:

- (d) in such a case, the instrument of declaration is to specify the period, circumstances or condition; and
- (e) where paragraph (b) or (c) applies—the Minister is to revoke the declaration if he or she becomes satisfied that:
 - (i) those circumstances have ceased to exist; or
 - (ii) that condition has been contravened.”.

7. After section 10 of the Principal Act the following section is inserted:

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Controlled specimens

“10A. (1) In this section:

‘ordinary Australian specimen’ means a specimen that is, or is derived from, a native Australian animal or a native Australian plant other than:

- (a) a live native Australian animal of a species included in the sub-phylum vertebrata, not being a fish; or
- (b) a specimen specified in Part I of Schedule 1; or
- (c) a specimen specified in Part I of Schedule 3;

‘ordinary specimen’ means a specimen other than:

- (a) a live animal; or
- (b) a specimen specified in Part I of Schedule 1; or
- (c) a specimen specified in Part I of Schedule 3.

“(2) Where the Minister decides that it would be consistent with the object of this Act for ordinary Australian specimens of a particular kind to be taken from a particular place in Australia or an external Territory otherwise than in accordance with an approved management program and exported, he or she may, by signed instrument published in the *Gazette*, declare those specimens so taken to be controlled specimens for the purposes of this Act.

“(3) Where the Minister decides that it would be consistent with the object of this Act for ordinary specimens of a particular kind to be taken in a particular place in a foreign country otherwise than in accordance with an approved management program and imported, he or she may, by signed instrument published in the *Gazette*, declare those specimens so taken to be controlled specimens for the purposes of this Act.

“(4) The Minister may make a decision under subsection (2) or (3) about specimens of a particular kind even though the decision is:

- (a) limited to specimens taken during a particular period; or
- (b) limited to a particular number or other quantity of the specimens; or
- (c) subject to the existence of particular circumstances; or
- (d) subject to compliance with a particular condition;

but:

- (e) in such a case, the instrument of declaration is to specify the period, quantity, circumstances or condition; and
- (f) where paragraph (c) or (d) applies—the Minister is to revoke the declaration that the specimens are controlled specimens if he or she becomes satisfied that:
 - (i) those circumstances have ceased to exist; or
 - (ii) that condition has been contravened.

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“(5) The Minister, in making a decision about specimens for the purposes of subsection (2) or (3), is to take into account advice from the Designated Authority on:

- (a) the size of the populations of the animals or plants from which the specimens would be taken; and
- (b) the potential impact on those populations of taking the specimens; and
- (c) any management program relating to those animals or plants; and
- (d) the extent of controls over the taking, possession and disposal of the specimens; and
- (e) the extent of any proposed or potential export or import, as the case requires, of the specimens for commercial purposes; and
- (f) any other prescribed matter.

“(6) The Designated Authority must maintain a register containing descriptions of the controlled specimens.

“(7) The register is to set out opposite to each description of controlled specimens the date of the declaration of the specimens.”.

Export of household pets—native Australian animals

8. Section 16 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (d) “and”;
- (b) by adding at the end of subsection (1) the following word and paragraph:
 - “; and (f) it is not proposed to export (whether by virtue of this subsection or otherwise) more than 6 animals (including the animal referred to in paragraph (a) or the animal and one other animal of that species) of species specified in Schedule 7 that have been kept as household pets by the exporter or the members of the household of the exporter.”.

Certain exports prohibited

9. Section 21 of the Principal Act is amended by omitting “5 years” and substituting “10 years, or both”.

Certain imports prohibited

10. Section 22 of the Principal Act is amended by omitting “5 years” and substituting “10 years, or both”.

Permit or authority to be produced

11. Section 45 of the Principal Act is amended:

- (a) by omitting from subsection (1) all words from and including “he or she produced” and substituting:

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“he or she:

- (a) produced the permit or authority, or caused the permit or authority to be produced, to:
 - (i) where the export is from Australia—an officer of Customs; or
 - (ii) where the export is from an external Territory—an inspector;
doing duty in relation to the export of the specimen;
or
- (b) received written notice from the Designated Authority authorising the export of the specimen without the production of the permit or authority.”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) The Designated Authority must not give the notice referred to in paragraph (1) (b) unless he or she:

 - (a) is satisfied that the production of the permit or authority is impracticable; and
 - (b) endorses a copy of the permit or authority to show that the notice is being given; and
 - (c) makes that copy available to an officer of Customs, or an inspector, doing duty in relation to the export of the specimen.”.

Boarding of vessels etc. by inspectors

12. Section 62 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (b) “matter or thing” and substituting “goods”;
- (b) by inserting in subsection (10) the following definition:

“‘goods’ includes documents but does not include any specimen or any article to which subsection 4 (2) applies.”.

Access to premises

13. Section 63 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (b) “matter or thing” and substituting “goods”;
- (b) by omitting from subparagraph (3) (a) (ii) “matter or thing” and substituting “goods”;
- (c) by adding at the end the following subsection:

“(6) In this section:
‘goods’ includes documents but does not include any specimen or any article to which subsection 4 (2) applies.”.

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Delegation by Minister

14. Section 76 of the Principal Act is amended:

- (a) by adding at the end of paragraph (1) (ca) “and”;
- (b) by omitting paragraph (1) (d).

Review on decisions

15. Section 80 of the Principal Act is amended by inserting after paragraph (1) (a) the following paragraphs:

- “(aa) the revocation by the Minister under paragraph 10 (3) (e) of a declaration;
- (ab) a declaration by the Minister under subsection 10A (2) or (3);
- (ac) the revocation by the Minister under paragraph 10A (4) (f) of a declaration;”.

Amendments relating to controlled specimens

16. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 16

AMENDMENTS RELATING TO CONTROLLED SPECIMENS

Subparagraph 29 (d) (iii):

Omit “or” (last occurring).

Subparagraph 29 (d) (iv):

Omit “and”, substitute “or”.

After subparagraph 29 (d) (iv):

Insert the following subparagraph:

“(v) in the case of a specimen that is, or is derived from, a native Australian animal, the specimen is, or is derived from, a controlled specimen; and”.

Subparagraph 29 (e) (ii):

Omit “or” (last occurring).

After subparagraph 29 (e) (iii):

Insert the following word and subparagraph:

“; or (iv) the specimen is, or is derived from, a plant specimen that is a controlled specimen.”.

Subparagraph 31 (b) (i):

Omit “or” (last occurring).

After subparagraph 31 (b) (ii):

Insert the following word and subparagraph:

“; or (iii) the specimen is, or is derived from, an animal specimen that is a controlled specimen.”.

Subparagraph 31 (c) (iii):

Omit “or”.

After subparagraph 31 (c) (iv):

Insert the following subparagraph:

“(v) the specimen is, or is derived from, an animal specimen that is a controlled specimen; or”.

Subparagraph 31 (d) (ii):

Omit “or” (last occurring).

After subparagraph 31 (d) (iii):

Insert the following word and subparagraph:

“; or (iv) the specimen is, or is derived from, a plant specimen that is a controlled specimen.”.

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SCHEDULE—continued

Subparagraph 37 (1) (c) (iii):

Omit “or” (last occurring).

Subparagraph 37 (1) (c) (iv):

Omit “and”, substitute “or”.

After subparagraph 37 (1) (c) (iv):

Insert the following subparagraph:

“(v) the specimen is, or is derived from, an animal specimen that is a controlled specimen; and”.

Subparagraph 37 (1) (d) (ii):

Omit “or” (last occurring).

After subparagraph 37 (1) (d) (iii):

Insert the following word and subparagraph:

“; or (iv) the specimen is, or is derived from, a plant specimen, that is a controlled specimen.”.

Subparagraph 42A (7) (a) (i):

Omit “or” (last occurring).

After subparagraph 42A (7) (a) (ii):

Insert the following subparagraph:

“(iii) specimens that are, or are derived from, animal specimens that are controlled specimens; or”.

Subparagraph 42A (7) (b) (i):

Omit “or” (last occurring).

After subparagraph 42A (7) (b) (ii):

Insert the following word and subparagraph:

“; or (iii) specimens that are, or are derived from, plant specimens that are controlled specimens.”.

NOTE

1. No. 149, 1982, as amended. For previous amendments, see No. 22, 1984; No. 120, 1986 (as amended by No. 141, 1987); and No. 99, 1988.

[*Minister’s second reading speech made in—
House of Representatives on 22 August 1990
Senate on 13 August 1991*]