

1998-1999-2000-2001

The Parliament of the
Commonwealth of Australia

THE SENATE

As read a third time

**Environment Protection and Biodiversity
Conservation Amendment (Wildlife
Protection) Bill 2001**

No. , 2001

**A Bill for an Act to amend the *Environment
Protection and Biodiversity Conservation Act 1999*,
and for other purposes**

ISBN: 0642 459657

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1 THIS bill originated in the Senate; and,
2 having this day passed, is now ready for
3 presentation to the House of
4 Representatives for its concurrence.

5 HARRY EVANS
6 *Clerk of the Senate*

7 The Senate
8 20 June 2001

9 **A Bill for an Act to amend the *Environment***
10 ***Protection and Biodiversity Conservation Act 1999,***
11 **and for other purposes**

12 The Parliament of Australia enacts:

13 **1 Short title**

14 This Act may be cited as the *Environment Protection and*
15 *Biodiversity Conservation Amendment (Wildlife Protection) Act*
16 *2001.*

17 **2 Commencement**

- 18 (1) The following provisions of this Act commence on the day on
19 which this Act receives the Royal Assent:
20 (a) sections 1, 2 and 3; and
21 (b) Part 3 of Schedule 1.

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

Part 1 Amendments relating to wildlife

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

7 **3 Schedule(s)**

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9 Act is amended or repealed as set out in the applicable items in the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

1
2 **Schedule 1—Amendment of the Environment**
3 **Protection and Biodiversity**
4 **Conservation Act 1999**

5 **Part 1—Amendments relating to wildlife**

6 **1A After paragraph 160(2)(c)**

7 Insert:

- 8 (ca) the declaration that a specified wildlife trade operation (other
9 than an operation mentioned in paragraph 303FN(10)(d)) is
10 an approved wildlife trade operation for the purposes of
11 section 303FN where the operation is likely to have a
12 significant impact on the environment; and
13 (cb) the declaration that a specified plan is an approved wildlife
14 trade management plan for the purposes of section 303FO
15 where the activities covered by the plan are likely to have a
16 significant impact on the environment; and
17 (cc) the declaration that a specified plan is an accredited wildlife
18 trade management plan for the purposes of section 303FP
19 where the activities covered by the plan are likely to have a
20 significant impact on the environment; and

21 **1B After subsection 160(2)**

22 Insert:

- 23 (2AA) To avoid doubt, this Division applies to paragraphs (2)(ca) to (cc)
24 as if:
25 (a) the authorisation referred to in subsection (1) is the decision
26 to make the relevant declaration; and
27 (b) the action referred to in subsection (1) is the carrying out of
28 the wildlife trade operation or the carrying out of the
29 activities under the management plan (as the case may be).

30 **1 Subsection 224(2)**

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

32 **2 At the end of section 224**

33 Add:

1 (4) In this section:

2 *export/import provision* means:

3 (a) section 232A; or

4 (b) section 232B; or

5 (c) any other provision of this Division, in so far as that
6 provision relates to section 232A or 232B.

7 **3 Subdivision D of Division 3 of Part 13 (heading)**

8 Repeal the heading, substitute:

9 **Subdivision D—Offences relating to exports and imports**

10 **4 Before section 233**

11 Insert:

12 **232A Export of cetaceans**

13 (1) Subject to section 235, a person is guilty of an offence if the person
14 exports:

15 (a) a cetacean; or

16 (b) a part of a cetacean; or

17 (c) a product derived from a cetacean.

18 (2) An offence against this section is punishable on conviction by
19 imprisonment for not more than 10 years or a fine not exceeding
20 1,000 penalty units, or both.

21 **232B Import of cetaceans**

22 (1) Subject to section 235, a person is guilty of an offence if the person
23 imports:

24 (a) a cetacean; or

25 (b) a part of a cetacean; or

26 (c) a product derived from a cetacean.

27 (2) An offence against this section is punishable on conviction by
28 imprisonment for not more than 10 years or a fine not exceeding
29 1,000 penalty units, or both.

1 **5 Paragraph 233(1)(b)**

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

3 **6 Subsection 233(2)**

4 Omit “2 years”, substitute “5 years”.

5 **7 Subsection 234(2)**

6 Omit “2 years”, substitute “5 years”.

7 **8 Section 235**

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

9 Note: The heading to section 235 is altered by omitting “233” and substituting “232A, 232B,
10 233”.

11 **9 Subsection 238(2)**

12 After “230,”, insert “232A, 232B,”.

13 **10 At the end of subsection 238(3)**

14 Add:

15 ; or (d) all of the following subparagraphs apply:

16 (i) the specified action is the export of a part of a cetacean;

17 (ii) the export of the part is an export that, under the
18 regulations, is taken to be an export of a personal item;

19 (iii) the export of the part will not be detrimental to the
20 conservation of cetaceans;

21 (iv) the export of the part is not for commercial purposes; or

22 (e) all of the following subparagraphs apply:

23 (i) the specified action is the import of a part of a cetacean;

24 (ii) the import of the part is an import that, under the
25 regulations, is taken to be an import of a personal item;

26 (iii) the import of the part will not be detrimental to the
27 conservation of cetaceans;

28 (iv) the import of the part is not for commercial purposes.

29 **10A After subsection 238(4)**

30 Insert:

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

Part 1 Amendments relating to wildlife

- 1 (4A) Regulations made for the purpose of subparagraph (3)(d)(ii) or
2 (3)(e)(ii) must not prescribe scrimshaw or any other product of
3 commercial or scientific whaling as a part of a cetacean taken to be
4 a personal item for the purpose of export or import.

5 **10B Subsection 266A(1)**

6 After “Division 1, 2, 3 or 4”, insert “or Part 13A”.

7 **11 After Part 13**

8 Insert:

9 **Part 13A—International movement of wildlife**
10 **specimens**

11 **Division 1—Introduction**

12 **303BA Objects of Part**

- 13 (1) The objects of this Part are as follows:
- 14 (a) to ensure that Australia complies with its obligations under
 - 15 CITES and the Biodiversity Convention;
 - 16 (b) to protect wildlife that may be adversely affected by trade;
 - 17 (c) to promote the conservation of biodiversity in Australia and
 - 18 other countries;
 - 19 (d) to ensure that any commercial utilisation of Australian native
 - 20 wildlife for the purposes of export is managed in an
 - 21 ecologically sustainable way;
 - 22 (e) to promote the humane treatment of wildlife;
 - 23 (f) to ensure ethical conduct during any research associated with
 - 24 the utilisation of wildlife;
 - 25 (g) to ensure the humane treatment of individual animals
 - 26 involved in the international movement of wildlife
 - 27 specimens;
 - 28 (h) to ensure that the precautionary principle is taken into
 - 29 account during decisions relating to the utilisation of wildlife.

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

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

3 **303BAA Certain indigenous rights not affected**

4 To avoid doubt, nothing in this Part affects the existence and
5 operation of the inherent traditional rights of indigenous peoples
6 with respect to the ownership of native plants and wildlife and
7 knowledge of their uses.

8 **303BB Simplified outline**

9 The following is a simplified outline of this Part:

- 10 • This Part sets up a system for regulating the international
11 movement of wildlife specimens.
- 12 • A *CITES specimen* is a specimen of a species included in
13 Appendix I, II or III to the Convention on International Trade
14 in Endangered Species (CITES).
- 15 • It is an offence to export or import a *CITES specimen* unless:
16 (a) the exporter or importer holds a permit; or
17 (b) an exemption applies.
- 18 • A *regulated native specimen* is a specimen of a native species
19 subject to export control under this Part.
- 20 • It is an offence to export a *regulated native specimen* unless:
21 (a) the exporter holds a permit; or
22 (b) an exemption applies.
- 23 • A *regulated live specimen* is a live specimen of a species
24 subject to import control under this Part.
- 25 • It is an offence to import a *regulated live specimen* unless the
26 importer holds a permit.

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

3 **303BC Definitions**

4 In this Part, unless the contrary intention appears:

5 ***bear product*** means any product derived from, or any part of, a
6 member of the family Ursidae.

7 ***cat product*** means any product derived from, or any part of, a
8 member of the family Felidae, other than a member of the species
9 *Felis catus*.

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

12 ***engage in conduct*** means:

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

15 ***export*** means:

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

18 but does not include:

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

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

27 ***import*** means:

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

30 but does not include:

- 31 (c) import into Australia from an external Territory; or

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

4 ***import by way of introduction from the sea***, in relation to a
5 specimen, means take in the marine environment not under the
6 jurisdiction of any country and then bring into Australia or into an
7 external Territory without having been imported into any other
8 country.

9 ***listed migratory bird*** means a migrating bird included in the list
10 established under section 209.

11 ***marine environment*** means the sea, and includes:

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

14 ***recipient*** means:

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

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

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

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

31 ***take*** includes:

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

1 *trade* means trade within the ordinary meaning of that expression.

2 Note: See also section 528.

3 *trophy* has the meaning given by the regulations.

4 **Division 2—CITES species**

5 **Subdivision A—CITES species and CITES specimens**

6 **303CA Listing of CITES species**

7 (1) The Minister must, by instrument published in the *Gazette*,
8 establish a list of CITES species for the purposes of this Act.

9 (2) The Minister must ensure that the list is established on the
10 commencement of this section.

11 Note: See section 4 of the *Acts Interpretation Act 1901*.

12 (3) The list must include all species from time to time included in any
13 of Appendices I, II and III to CITES. The list must not include any
14 other species.

15 (4) For each species included in the list, there is to be a notation:

16 (a) describing the specimens belonging to that species that are
17 included in a particular Appendix to CITES; and

18 (b) identifying the Appendix in which the species is included;
19 and

20 (c) identifying the date on which the provisions of CITES first
21 applied to the specimens.

22 (5) A description mentioned in paragraph (4)(a):

23 (a) may cover all specimens that belong to the species; or

24 (b) may cover specified kinds of specimens that belong to the
25 species; or

26 (c) may state that the inclusion of a specimen in a particular
27 Appendix to CITES is subject to restrictions or conditions.

28 (6) A restriction or condition mentioned in paragraph (5)(c) may:

29 (a) impose a quantitative limit in relation to the export or import
30 of a specimen; or

- 1 (b) relate to the imposition of a quota in relation to the export or
2 import of specimens; or
3 (c) relate to a particular population of a species; or
4 (d) reflect any other restriction or condition set out in the
5 relevant Appendix to CITES.
- 6 (7) Subsection (6) does not limit paragraph (5)(c).
- 7 (8) A notation in the list is to be consistent with CITES.
- 8 (9) The Minister may, by instrument published in the *Gazette*:
9 (a) correct an inaccuracy or update the name of a species; or
10 (b) amend the list, as necessary, so that it includes all species
11 required to be included in the list under subsection (3); or
12 (c) amend the list, as necessary, so that the notations in the list
13 are consistent with CITES.
- 14 (10) A copy of an instrument under subsection (1) or (9) is to be made
15 available for inspection on the Internet.
- 16 (11) For the purposes of this section, it is to be assumed that the
17 definition of *specimen* in CITES includes a reference to a thing
18 that is a specimen for the purposes of this Act.
- 19 Note: See also section 303CB.

20 **303CB Stricter domestic measures**

- 21 (1) The Minister may, by instrument published in the *Gazette*, declare
22 that the list referred to in section 303CA has effect as if it were
23 modified as set out in the declaration.
- 24 Note: For variation and revocation, see subsection 33(3) of the *Acts*
25 *Interpretation Act 1901*.
- 26 (2) The Minister must not make a declaration under subsection (1)
27 unless:
28 (a) the modification has the effect of treating a specified
29 specimen that is included in Appendix II to CITES as if the
30 specimen were included in Appendix I to CITES; or
31 (b) the modification has the effect of broadening the range of
32 specimens included in a specified Appendix to CITES in
33 relation to a specified species; or
-

- 1 (c) the modification has the effect of decreasing a quantitative
2 limit in relation to the export or import of a specimen; or
3 (d) the modification has the effect of treating a specified
4 specimen that is not included in Appendix I, II or III to
5 CITES as if the specimen were included in Appendix I to
6 CITES; or
7 (e) the modification has the effect of treating a specified
8 specimen that is not included in Appendix I, II or III to
9 CITES as if the specimen were included in Appendix II to
10 CITES.
- 11 (4) A copy of an instrument under subsection (1) is to be made
12 available for inspection on the Internet.
- 13 (5) A reference in this Act to the *list referred to in section 303CA* is a
14 reference to that list as modified under this section.

15 **Subdivision B—Offences and permit system**

16 **303CC Exports of CITES specimens**

- 17 (1) A person is guilty of an offence if:
18 (a) the person exports a specimen; and
19 (b) the specimen is a CITES specimen.
- 20 Penalty: Imprisonment for 10 years or 1,000 penalty units, or
21 both.
- 22 *Authorised export—permit*
- 23 (2) Subsection (1) does not apply if the specimen is exported in
24 accordance with a permit that was issued under section 303CG,
25 303GB or 303GC and is in force.
- 26 *Authorised export—CITES exemptions*
- 27 (3) Subsection (1) does not apply if the export of the specimen is an
28 export that, in accordance with a determination made by the
29 Minister under the regulations, is taken to be part of a registered,
30 non-commercial exchange of scientific specimens between
31 scientific organisations.

- 1 (4) Subsection (1) does not apply if the Minister issues a certificate
2 under subsection (5) in relation to the specimen.
- 3 (5) If the Minister is satisfied that a specimen was acquired before the
4 provisions of CITES applied to the specimen, the Minister may
5 issue a certificate to that effect.
- 6 (6) Subsection (1) does not apply if the export of the specimen is an
7 export that, under the regulations, is taken to be an export of a
8 personal or household effect.
- 9 Note 1: See paragraph 3 of Article VII of CITES.
- 10 Note 2: The defendant bears an evidential burden in relation to the matters in
11 subsections (2), (3), (4) and (6) (see subsection 13.3(3) of the
12 *Criminal Code*).

13 **303CD Imports of CITES specimens**

- 14 (1) A person is guilty of an offence if:
15 (a) the person imports a specimen; and
16 (b) the specimen is a CITES specimen.
- 17 Penalty: Imprisonment for 10 years or 1,000 penalty units, or
18 both.
- 19 *Authorised import—permit*
- 20 (2) Subsection (1) does not apply if the specimen is imported in
21 accordance with a permit that was issued under section 303CG,
22 303GB or 303GC and is in force.
- 23 *Authorised import—CITES exemptions*
- 24 (3) Subsection (1) does not apply if the import of the specimen is an
25 import that, under the regulations, is taken to be an import of a
26 personal or household effect.
- 27 Note: See paragraph 3 of Article VII of CITES.
- 28 (4) Subsection (1) does not apply if:
29 (a) the specimen is a CITES II specimen; and
30 (b) the specimen is not a live specimen; and
31 (c) the specimen belongs to a species that is specified in the
32 regulations; and
-

- 1 (d) in a case where a quantitative limit is applicable to the
2 specimen under a notation in the list referred to in
3 section 303CA—the quantity of the specimen does not
4 exceed that limit; and
- 5 (e) the specimen is within the personal baggage of a person
6 entering Australia or an external Territory; and
- 7 (f) the specimen is not intended for sale or for any other
8 commercial purpose; and
- 9 (g) both:
- 10 (i) the country from which the specimen is proposed to be
11 imported has a relevant CITES authority; and
- 12 (ii) permission to export the specimen from that country has
13 been given by a relevant CITES authority of that
14 country.
- 15 (5) Subsection (1) does not apply if the import of the specimen is an
16 import that, in accordance with a determination made by the
17 Minister under the regulations, is taken to be part of a registered,
18 non-commercial exchange of scientific specimens between
19 scientific organisations.
- 20 (6) Subsection (1) does not apply if:
- 21 (a) the country from which the specimen is proposed to be
22 imported has a relevant CITES authority; and
- 23 (b) a relevant CITES authority of that country has issued a
24 certificate under paragraph 2 of Article VII of CITES in
25 respect of the specimen.
- 26 Note 1: Paragraph 2 of Article VII of CITES deals with a specimen that was
27 acquired before the provisions of CITES applied to the specimen.
- 28 Note 2: The defendant bears an evidential burden in relation to the matters in
29 subsections (2), (3), (4), (5) and (6) (see subsection 13.3(3) of the
30 *Criminal Code*).

31 **303CDA Regulations relating to CITES exports or imports**

- 32 (1) Regulations made for the purposes of subsection 303CC(6) or
33 303CD(3) must not prescribe any of the following as an export or
34 import that is taken to be a personal or household effect:
- 35 (a) a bear product;
- 36 (b) a cat product.
-

- 1 (2) Regulations made for the purposes of paragraph 303CD(4)(c) must
2 not prescribe species in any of the following families:
3 (a) the bear family (family Ursidae);
4 (b) the cat family (family Felidae) other than the domestic cat
5 (*Felis catus*).

6 **303CDB Export or import of trophies**

- 7 Regulations made for the purposes of subsection 303CC(6) or
8 303CD(3) must not prescribe trophies as exports or imports that are
9 taken to be personal or household effects.

10 **303CE Applications for permits**

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

15 **303CF Further information**

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

23 **303CG Minister may issue permits**

- 24 (1) The Minister may, on application made by a person under
25 section 303CE, issue a permit to the person. This subsection has
26 effect subject to subsections (3), (4A) and (4B).
27 (2) A permit authorises its holder to take the action or actions specified
28 in the permit without breaching section 303CC, 303CD, 303DD or
29 303EK.

- 1 (3) The Minister must not issue a permit unless the Minister is
2 satisfied that:
- 3 (a) the action or actions specified in the permit will not be
4 detrimental to, or contribute to trade which is detrimental to:
- 5 (i) the survival of any taxon to which the specimen
6 belongs; or
- 7 (ii) the recovery in nature of any taxon to which the
8 specimen belongs; or
- 9 (iii) any relevant ecosystem (for example, detriment to
10 habitat or biodiversity); and
- 11 (b) the specimen was not obtained in contravention of, and the
12 action or actions specified in the permit would not involve
13 the contravention of, any law of the Commonwealth, of a
14 State or of a Territory; and
- 15 (c) if the specimen is a live specimen that belongs to a taxon
16 specified in the regulations—the conditions that, under the
17 regulations, are applicable to the welfare of the specimen
18 have been, or are likely to be, complied with; and
- 19 (d) if any restriction or condition is applicable to the specimen
20 under a notation in the list referred to in section 303CA—that
21 restriction or condition has been, or is likely to be, complied
22 with; and
- 23 (e) if the permit authorises the export of a CITES specimen:
- 24 (i) the proposed export would be an eligible
25 non-commercial purpose export (within the meaning of
26 section 303FA); or
- 27 (ii) the relevant conditions set out in the table in
28 section 303CH have been met; and
- 29 (f) if the permit authorises the import of a CITES specimen:
- 30 (i) the proposed import would be an eligible
31 non-commercial purpose import (within the meaning of
32 section 303FB); or
- 33 (ii) the relevant conditions set out in the table in
34 section 303CH have been met; and
- 35 (g) if:
- 36 (i) the permit authorises the import of a CITES II
37 specimen; and
-

- 1 (ii) the proposed import would be an eligible
2 non-commercial purpose import (within the meaning of
3 section 303FB);
4 the country from which the specimen is proposed to be
5 imported has a relevant CITES authority and permission to
6 export the specimen from that country has been given by a
7 relevant CITES authority of that country; and
8 (h) if the permit authorises the export of a CITES specimen that
9 is a regulated native specimen—the conditions set out in
10 subsection 303DG(4) have been met; and
11 (i) if the permit authorises the import of a CITES specimen that
12 is a regulated live specimen—the conditions set out in
13 subsection 303EN(3) have been met.
- 14 (4) Subsection (3) does not apply in relation to a permit to export from
15 Australia or an external Territory a specimen (other than a live
16 animal) that has been imported into Australia or that Territory, as
17 the case may be.
- 18 (4A) The Minister must not issue a permit for the import of any of the
19 following:
20 (a) a bear product;
21 (b) a cat product.
- 22 (4B) The Minister must not issue a permit for the import of a trophy.
- 23 (5) The Minister must not issue a permit to export a specimen (other
24 than a live animal) that has been imported into Australia or an
25 external Territory, unless the Minister is satisfied that:
26 (a) the specimen was lawfully imported (section 303GY); and
27 (b) if the specimen is a CITES I specimen:
28 (i) the country to which the specimen is proposed to be
29 exported has a relevant CITES authority; and
30 (ii) permission to import that specimen into that country has
31 been given by a relevant CITES authority of that
32 country.
- 33 (6) This section has effect subject to section 303GA.
- 34 Note: Section 303GA deals with controlled actions, and actions for which a
35 non-Part 13A permit is required.
-

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

Part 1 Amendments relating to wildlife

1 **303CH Specific conditions relating to the export or import of CITES**
2 **specimens for commercial purposes**

3 The following table sets out the conditions mentioned in
4 paragraphs 303CG(3)(e) and (f):
5

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> <p>(i) the proposed import of the specimen would be an import from an approved commercial import program in accordance with section 303FU;</p> <p>(ii) the specimen is, or is derived from, an animal that was bred in captivity (section 527B);</p> <p>(iii) the specimen is, or is derived from, a plant that was artificially propagated (section 527C).</p>
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> <p>(i) an export from an approved captive breeding program in accordance with section 303FK; or</p> <p>(ii) an export from an approved artificial propagation program in accordance with section 303FL; or</p> <p>(iii) an export in accordance with an approved wildlife trade operation (section 303FN); or</p> <p>(iv) an export in accordance with an approved wildlife trade management plan (section 303FO).</p>
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.

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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).

1 **303CI Time limit for making permit decision**

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

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

11 **303CJ Duration of permits**

12 A permit under section 303CG:

- 13 (a) comes into force on the date on which it is issued; and
14 (b) unless it is sooner cancelled, remains in force for:
15 (i) a period of 6 months beginning on the date on which it
16 is issued; or
17 (ii) if a shorter period is specified in the permit—that
18 shorter period.
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1 **303CK Register of applications and decisions**

2 (1) As soon as practicable after the commencement of this section, the
3 Minister must cause to be established a register that sets out:

4 (a) prescribed particulars of applications made under
5 section 303CE after the establishment of the register; and

6 (b) prescribed particulars of decisions made by the Minister
7 under section 303CG after the establishment of the register.

8 (2) The register may be maintained by electronic means.

9 (3) The register is to be made available for inspection on the Internet.

10 **Subdivision C—Application of CITES**

11 **303CL Application of CITES—Management Authority and**
12 **Scientific Authority**

13 For the purposes of the application of CITES to Australia:

14 (a) the Minister is the Management Authority; and

15 (b) the Secretary is the Scientific Authority.

16 **303CM Interpretation of CITES provisions**

17 (1) Except so far as the contrary intention appears, an expression that:

18 (a) is used in the CITES provisions without definition; and

19 (b) is used in CITES (whether or not it is defined in, or a
20 particular meaning is assigned to it by, CITES);

21 has, in the CITES provisions, the same meaning as it has in CITES.

22 (2) For the purposes of subsection (1), the *CITES provisions* consist
23 of:

24 (a) this Division; and

25 (b) any other provision of this Act in so far as that other
26 provision relates to, or to permits under, this Division.

27 **303CN Resolutions of the Conference of the Parties to CITES**

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

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

3 **Division 3—Exports of regulated native specimens**

4 **Subdivision A—Regulated native specimens**

5 **303DA Regulated native specimens**

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

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

10 **303DB Listing of exempt native specimens**

- 11 (1) The Minister must, by instrument published in the *Gazette*,
12 establish a list of exempt native specimens.
- 13 (2) For each specimen included in the list, there is to be a notation that
14 states whether the inclusion of the specimen in the list is subject to
15 restrictions or conditions and, if so, the nature of those restrictions
16 or conditions.
- 17 (3) A restriction or condition mentioned in subsection (2) may:
18 (a) consist of a quantitative limit in relation to the export of the
19 specimen; or
20 (b) relate to the circumstances of the export of the specimen; or
21 (c) relate to the source of the specimen; or
22 (d) relate to the circumstances in which the specimen was taken
23 or, if the specimen is derived from another specimen that was
24 taken, the circumstances in which the other specimen was
25 taken; or
26 (e) relate to an expiry date for the inclusion of the specimen on
27 the list.
- 28 (4) Subsection (3) does not limit subsection (2).
- 29 (5) The list, as first established, must:
30 (a) contain the specimens referred to in Part I of Schedule 4 to
31 the *Wildlife Protection (Regulation of Exports and Imports)*
-

- 1 *Act 1982*, as in force immediately before the commencement
2 of this section; and
- 3 (b) reflect the restrictions and conditions that are applicable to
4 the inclusion of those specimens in that Part of that Schedule.
- 5 (6) The list must not include a specimen that belongs to an eligible
6 listed threatened species or a species of listed migratory bird
7 unless:
- 8 (a) the Minister is satisfied that the export of the specimen will
9 not:
- 10 (i) adversely affect the conservation status of the species
11 concerned; and
- 12 (ii) be inconsistent with any recovery plan or wildlife
13 conservation plan for that species; and
- 14 (b) the inclusion of the specimen on the list is subject to a
15 restriction or condition to the effect that:
- 16 (i) the specimen must be, or be derived from, a plant that
17 was artificially propagated (section 527C); and
- 18 (ii) the specimen was propagated in an operation that has
19 derived its stock in a way that did not breach a law of
20 the Commonwealth, a State or a Territory.
- 21 (7) A copy of an instrument under subsection (1) is to be made
22 available for inspection on the Internet.

23 **303DC Minister may amend list**

- 24 (1) The Minister may, by instrument published in the *Gazette*, amend
25 the list referred to in section 303DB by:
- 26 (a) including items in the list; or
27 (b) deleting items from the list; or
28 (c) imposing a condition or restriction to which the inclusion of a
29 specimen in the list is subject; or
30 (d) varying or revoking a condition or restriction to which the
31 inclusion of a specimen in the list is subject; or
32 (e) correcting an inaccuracy or updating the name of a species.
- 33 (1A) In deciding whether to amend the list referred to in section 303DB
34 to include a specimen derived from a commercial fishery, the
35 Minister must rely primarily on the outcomes of any assessment in
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- 1 relation to the fishery carried out for the purposes of Division 1 or
2 2 of Part 10.
- 3 (1B) Subsection (1A) does not apply to an amendment mentioned in
4 paragraph (1)(e).
- 5 (1C) Subsection (1A) does not limit the matters that may be taken into
6 account in deciding whether to amend the list referred to in section
7 303DB to include a specimen derived from a commercial fishery.
- 8 (1D) In this section:
- 9 *fishery* has the same meaning as in section 303FN.
- 10 (2) For the purposes of paragraph (1)(e), *correcting an inaccuracy*
11 includes ensuring that the list complies with subsection 303DB(5).
- 12 (3) Before amending the list referred to in section 303DB as
13 mentioned in paragraph (1)(a), (b), (c) or (d) of this section, the
14 Minister:
- 15 (a) must consult such other Minister or Ministers as the Minister
16 considers appropriate; and
- 17 (b) must consult such other Minister or Ministers of each State
18 and self-governing Territory as the Minister considers
19 appropriate; and
- 20 (c) must consult other persons and organisations in accordance
21 with the procedures for consultation set out in subsections
22 (3A) to (3E).
- 23 (3A) For the purposes of consultation under paragraph (3)(c), the
24 Minister must cause a notice of the application to be:
- 25 (a) given to each person and organisation registered under
26 section 266A; and
- 27 (b) published on the Internet.
- 28 (3B) The notice referred to in subsection (3A) must:
- 29 (a) set out the proposal to amend the list; and
- 30 (b) set out sufficient information about the proposed amendment
31 to enable persons and organisations to consider adequately
32 the merits of the proposal; and
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- 1 (c) invite persons and organisations to give written comments to
2 the Minister about the proposal within the period specified in
3 the notice; and
4 (d) specify an address for the lodgment of comments.
- 5 (3C) The period specified in a notice under paragraph (3B)(c) must not
6 be less than 20 business days after the date on which the notice was
7 given.
- 8 (3D) In making a decision under subsection (1), the Minister must
9 consider any comments about the proposal that were given in
10 response to an invitation under subsection (3A).
- 11 (3E) Within 28 days after making a decision under subsection (1), the
12 Minister must publish written reasons for the decision on the
13 Internet.
- 14 (4) An instrument under subsection (1) (other than an instrument
15 mentioned in paragraph (1)(e)) is a disallowable instrument for the
16 purposes of section 46A of the *Acts Interpretation Act 1901*.
- 17 (5) A copy of an instrument under subsection (1) is to be made
18 available for inspection on the Internet.

19 **Subdivision B—Offence and permit system**

20 **303DD Exports of regulated native specimens**

- 21 (1) A person is guilty of an offence if:
22 (a) the person exports a specimen; and
23 (b) the specimen is a regulated native specimen.
- 24 Penalty: Imprisonment for 10 years or 1,000 penalty units, or
25 both.
- 26 *Exemption—permit*
- 27 (2) Subsection (1) does not apply if the specimen is exported in
28 accordance with a permit that was issued under section 303CG,
29 303DG, 303GB or 303GC and is in force.

1 *Exemption—accredited wildlife trade management plan*

- 2 (3) Subsection (1) does not apply if:
- 3 (a) the export of the specimen would be an export in accordance
4 with an accredited wildlife trade management plan
5 (section 303FP); and
- 6 (b) the specimen is not a live native mammal, a live native
7 reptile, a live native amphibian or a live native bird; and
- 8 (ba) the specimen is not a live terrestrial invertebrate or a live
9 freshwater fish prescribed by the regulations for the purposes
10 of this paragraph; and
- 11 (c) the specimen is not a CITES specimen; and
- 12 (d) the specimen does not belong to an eligible listed threatened
13 species.

14 *Exemption—exchange of scientific specimens*

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

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

23 **303DE Applications for permits**

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

28 **303DF Further information**

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

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

4 **303DG Minister may issue permits**

- 5 (1) The Minister may, on application made by a person under
6 section 303DE, issue a permit to the person. This subsection has
7 effect subject to subsections (3) and (4).
- 8 (2) A permit authorises its holder to take the action or actions specified
9 in the permit without breaching section 303DD.
- 10 (3) The Minister must not issue a permit authorising the export of a
11 live native mammal, a live native reptile, a live native amphibian
12 or a live native bird unless the Minister is satisfied that the
13 proposed export would be an eligible non-commercial purpose
14 export (within the meaning of section 303FA).
- 15 (3A) The Minister must not issue a permit authorising the export of a
16 live terrestrial invertebrate or a live freshwater fish prescribed by
17 the regulations for the purposes of paragraph 303DD(3)(ba) unless
18 the Minister is satisfied that the proposed export would be an
19 eligible non-commercial purpose export (within the meaning of
20 section 303FA).
- 21 (4) The Minister must not issue a permit unless the Minister is
22 satisfied that:
- 23 (a) the export of the specimen will not be detrimental to, or
24 contribute to trade which is detrimental to:
- 25 (i) the conservation status of any taxon to which the
26 specimen belongs; or
- 27 (ii) any relevant ecosystem (for example, detriment to
28 habitat or biodiversity); and
- 29 (b) if the specimen is a live specimen that belongs to a taxon
30 specified in the regulations—the conditions that, under the
31 regulations, are applicable to the welfare of the specimen
32 have been, or are likely to be, complied with; and
- 33 (c) the specimen was not obtained in contravention of, and the
34 export would not involve the contravention of, any law of the
35 Commonwealth, of a State or of a Territory; and
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- 1 (d) if the specimen belongs to an eligible listed threatened
2 species or a species of listed migratory bird—the export of
3 the specimen is covered by subsection (7) or (8), and the
4 export would not be inconsistent with any recovery plan or
5 any wildlife conservation plan for that species; and
6 (e) if the specimen does not belong to an eligible listed
7 threatened species:
8 (i) the proposed export would be an eligible
9 non-commercial purpose export (within the meaning of
10 section 303FA); or
11 (ii) the proposed export would be an eligible commercial
12 purpose export (within the meaning of section 303FJ).
- 13 (5) Subsection (4) does not apply in relation to a permit to export from
14 Australia or an external Territory a specimen (other than a live
15 animal) that has been imported into Australia or that Territory, as
16 the case may be.
- 17 (6) The Minister must not issue a permit to export from Australia or an
18 external Territory a specimen (other than a live animal) that has
19 been imported into Australia or that Territory, as the case may be,
20 unless the Minister is satisfied that the specimen was lawfully
21 imported (section 303GY).

22 *Eligible listed threatened species*

- 23 (7) This subsection covers the export of a specimen if:
24 (a) the export of the specimen would be an export from an
25 approved captive breeding program in accordance with
26 section 303FK; or
27 (b) the export of the specimen would be an export from an
28 approved artificial propagation program in accordance with
29 section 303FL; or
30 (c) the export of the specimen would be an export from an
31 approved aquaculture program in accordance with
32 section 303FM;

33 and the export of the specimen will not adversely affect the
34 conservation status of the species concerned.

35 Note: See also subsection (3).

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

10 *Section has effect subject to section 303GA*

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

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

- 14 (10) Despite paragraph (4)(b), the Minister must not issue a permit for a
15 listed threatened species if:
16 (a) there is no recovery plan for that listed threatened species;
17 and
18 (b) the time allowed for making a recovery plan for that species
19 under section 273 has expired.

20 **303DH Time limit for making permit decision**

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

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

30 **303DI Duration of permits**

31 A permit under section 303DG:

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

5 **303DJ Register of applications and decisions**

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

14 **Division 4—Imports of regulated live specimens**

15 **Subdivision A—Regulated live specimens**

16 **303EA Regulated live specimens**

- 17 For the purposes of this Act, a *regulated live specimen* is a
18 specimen that:
19 (a) is a live animal or a live plant; and
20 (b) is not included in Part 1 of the list referred to in
21 section 303EB.

22 **303EB Listing of specimens suitable for live import**

- 23 (1) The Minister must, by instrument published in the *Gazette*,
24 establish a list of specimens that are taken to be suitable for live
25 import.
- 26 (2) The list is to be divided into 2 Parts, as follows:
27 (a) Part 1 is to be a list of unregulated specimens;
28 (b) Part 2 is to be a list of allowable regulated specimens.

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

30 **303EC Minister may amend list**

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

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

3 **303ED Amendment of list on the Minister’s own initiative**

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

11 **303EE Application for amendment of list**

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

20 **303EF Requirement for assessments**

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

- 23 (a) the preparation of draft terms of reference for a report on the
24 relevant impacts; and
25 (b) the publication of the draft terms of reference for public
26 comment for a period of at least 10 business days that is
27 specified by the Minister; and
28 (c) the finalisation of the terms of reference, to the Minister’s
29 satisfaction, taking into account the comments (if any)
30 received on the draft terms of reference; and

- 1 (d) the preparation of a draft of a report on the relevant impacts;
2 and
3 (e) the publication of the draft report for public comment for a
4 period of at least 20 business days that is specified by the
5 Minister; and
6 (f) the finalisation of the report, taking into account the
7 comments (if any) received after publication of the draft
8 report; and
9 (g) any other matter prescribed by the regulations.

10 **303EG Timing of decision about proposed amendment**

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

19 *Notice of extension of time*

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

25 **303EH Requesting further information**

- 26 (1) If:
27 (a) section 303EE applies; and
28 (b) the Minister believes on reasonable grounds that he or she
29 does not have enough information to make an informed
30 decision whether or not to make the proposed amendment;
31 the Minister may request the applicant to give the Minister, within
32 the period specified in the request, information relevant to making
33 the decision.

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

4 **303EI Notice of refusal of proposed amendment**

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

8 **303EJ Reviews**

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

14 **Subdivision C—Offence and permit system**

15 **303EK Imports of regulated live specimens**

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

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

21 *Exemption—permit*

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

1 *Exemption—testing permit*

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

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

7 **303EL Applications for permits**

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

12 **303EM Further information**

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

20 **303EN Minister may issue permits**

- 21 (1) The Minister may, on application made by a person under
22 section 303EL, issue a permit to the person. This subsection has
23 effect subject to subsection (3).
24 (2) A permit authorises its holder to take the action or actions specified
25 in the permit without breaching section 303EK.
26 (3) The Minister must not issue a permit unless the Minister is
27 satisfied that:
28 (a) the proposed import would not be:
29 (i) detrimental to the conservation status of a species or
30 ecological community; or
31 (ii) likely to threaten biodiversity; and
-

- 1 (b) the specimen is included in Part 2 of the list referred to in
2 section 303EB; and
3 (c) if any restriction or condition is applicable to the specimen
4 under a notation in Part 2 of the list referred to in
5 section 303EB—that restriction or condition has been, or is
6 likely to be, complied with; and
7 (d) the specimen was not obtained in contravention of, and the
8 import would not involve the contravention of, any law of the
9 Commonwealth, of a State or of a Territory; and
10 (e) if the specimen belongs to a taxon specified in the
11 regulations—the conditions that, under the regulations, are
12 applicable to the welfare of the specimen have been, or are
13 likely to be, complied with.

14 (4) This section has effect subject to section 303GA.

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

17 (5) In this section:

18 *not likely to threaten biodiversity* has the meaning given by the
19 regulations.

20 **303EO Time limit for making permit decision**

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

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

30 **303EP Duration of permits**

31 A permit under section 303EN:

- 32 (a) comes into force on the date on which it is issued; and
33 (b) unless it is sooner cancelled, remains in force for:
-

- 1 (i) a period of 3 years beginning on the date on which it is
2 issued; or
3 (ii) if a shorter period is specified in the permit—that
4 shorter period.

5 **303EQ Register of applications and decisions**

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

14 **Subdivision D—Marking of certain specimens for the purposes**
15 **of identification**

16 **303ER Object**

- 17 The object of this Subdivision is:
18 (a) to comply with Australia's obligations under:
19 (i) the Biodiversity Convention; and
20 (ii) CITES; and
21 (b) otherwise to further the protection and conservation of the
22 wild fauna and flora of Australia and of other countries;
23 by requiring the marking of certain live specimens for the purposes
24 of identification.

25 Note: See Article 8 of the Biodiversity Convention.

26 **303ES Specimens to which Subdivision applies**

- 27 This Subdivision applies to a regulated live specimen if:
28 (a) the specimen has been imported in accordance with:
29 (i) a permit under this Division; or
30 (ii) a permit or authority under the *Wildlife Protection*
31 *(Regulation of Exports and Imports) Act 1982*; or
-

- 1 (b) the specimen is the progeny of a specimen referred to in
2 paragraph (a).

3 **303ET Extended meaning of *marking***

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

- 6 (a) in the case of a live plant:
7 (i) the marking or labelling of a container in which the
8 plant is kept or in which the plant is growing; and
9 (ii) the placement of a label or tag on the plant;
10 (b) in the case of a live animal:
11 (i) the implantation of a scannable device in the animal;
12 and
13 (ii) the placement of a band on any part of the animal; and
14 (iii) the placement (whether by piercing or otherwise) of a
15 tag or ring on any part of the animal; and
16 (iv) the marking or labelling of a container within which the
17 animal is kept.

18 **303EU Secretary may make determinations about marking of**
19 **specimens**

20 *Determinations*

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

24 *Matters that may be covered by determination*

- 25 (2) Without limiting subsection (1), a determination by the Secretary
26 under that subsection may:
27 (a) require specimens to be marked; and
28 (b) deal with the manner in which specimens are to be marked;
29 and
30 (c) deal with the times at which marking is to occur; and
31 (d) deal with the removal or destruction of marks; and
32 (e) deal with the replacement or modification of marks; and
-

- 1 (f) require that marking be carried out by persons approved in
2 writing by the Secretary under that determination; and
3 (g) deal with the circumstances in which marks may be, or are
4 required to be, rendered useless; and
5 (h) in the case of a mark that consists of a label, tag, band or
6 device:
7 (i) set out specifications relating to the label, tag, band or
8 device; and
9 (ii) require that any destruction or removal of the label, tag,
10 band or device be carried out by a person approved in
11 writing by the Secretary under that determination.

12 *Marking of animals not to involve undue pain etc.*

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

17 *Marking of plants not to involve undue risk of death*

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

21 *Disallowable instrument*

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

24 **303EV Offences**

25 *Owner to ensure specimens marked etc.*

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

28 *Person not to remove or interfere with mark etc.*

- 29 (2) A person contravenes this subsection if:
-

-
- 1 (a) a specimen is marked in accordance with a determination
2 under section 303EU; and
3 (b) the person engages in conduct; and
4 (c) the conduct causes the removal of the mark or interference
5 with the mark, or renders the mark unusable.

6 *Offence*

- 7 (3) A person who contravenes subsection (1) or (2) is guilty of an
8 offence punishable on conviction by a fine not exceeding 120
9 penalty units.
- 10 (4) Subsection (2) does not apply if the person engages in the conduct
11 in accordance with a determination under section 303EU.
- 12 Note: The defendant bears an evidential burden in relation to the matter in
13 subsection (4). See subsection 13.3(3) of the *Criminal Code*.
- 14 (5) In subsections (1) and (2), strict liability applies to the
15 circumstance that a determination was made under section 303EU.
- 16 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

17 **303EW This Subdivision does not limit conditions of permits**

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

20 **Division 5—Concepts relating to permit criteria**

21 **Subdivision A—Non-commercial purpose exports and imports**

22 **303FA Eligible non-commercial purpose exports**

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

- 25 (a) the export of the specimen would be an export for the
26 purposes of research in accordance with section 303FC; or
27 (b) the export of the specimen would be an export for the
28 purposes of education in accordance with section 303FD; or
29 (c) the export of the specimen would be an export for the
30 purposes of exhibition in accordance with section 303FE; or

- 1 (d) the export of the specimen would be an export for the
2 purposes of conservation breeding or propagation in
3 accordance with section 303FF; or
4 (e) the export of the specimen would be an export of a household
5 pet in accordance with section 303FG; or
6 (f) the export of the specimen would be an export of a personal
7 item in accordance with section 303FH; or
8 (g) the export of a specimen would be an export for the purposes
9 of a travelling exhibition in accordance with section 303FI.

10 **303FB Eligible non-commercial purpose imports**

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

- 13 (a) the import of the specimen would be an import for the
14 purposes of research in accordance with section 303FC; or
15 (b) the import of the specimen would be an import for the
16 purposes of education in accordance with section 303FD; or
17 (c) the import of the specimen would be an import for the
18 purposes of exhibition in accordance with section 303FE; or
19 (d) the import of the specimen would be an import for the
20 purposes of conservation breeding or propagation in
21 accordance with section 303FF; or
22 (e) the import of the specimen would be an import of a
23 household pet in accordance with section 303FG; or
24 (f) the import of the specimen would be an import of a personal
25 item in accordance with section 303FH; or
26 (g) the import of a specimen would be an import for the purposes
27 of a travelling exhibition in accordance with section 303FI.

28 **303FC Export or import for the purposes of research**

- 29 (1) The export of a specimen is an export for the purposes of research
30 in accordance with this section if:
31 (a) the specimen will be used for the purpose of scientific
32 research; and
33 (b) the objects of the research are covered by any or all of the
34 following subparagraphs:

- 1 (i) the acquisition of a better understanding, and/or
2 increased knowledge, of a taxon to which the specimen
3 belongs;
- 4 (ii) the conservation of biodiversity; and
- 5 (c) any commercial purpose is incidental to the purpose of the
6 export; and
- 7 (d) such other conditions as are specified in the regulations have
8 been, or are likely to be, satisfied.
- 9 (2) The import of a specimen is an import for the purposes of research
10 in accordance with this section if:
- 11 (a) the specimen will be used for the purpose of scientific
12 research; and
- 13 (b) the objects of the research are covered by any or all of the
14 following subparagraphs:
- 15 (i) the acquisition of a better understanding, and/or
16 increased knowledge, of a taxon to which the specimen
17 belongs;
- 18 (ii) the conservation of biodiversity; and
- 19 (c) any commercial purpose is incidental to the purpose of the
20 import; and
- 21 (d) such other conditions as are specified in the regulations have
22 been, or are likely to be, satisfied.

23 **303FD Export or import for the purposes of education**

- 24 (1) The export of a specimen is an export for the purposes of education
25 in accordance with this section if:
- 26 (a) the specimen will be used for the purpose of education or
27 training; and
- 28 (b) any commercial purpose is incidental to the purpose of the
29 export; and
- 30 (c) such other conditions as are specified in the regulations have
31 been, or are likely to be, satisfied.
- 32 (2) The import of a specimen is an import for the purposes of
33 education in accordance with this section if:
- 34 (a) the specimen will be used for the purpose of education or
35 training; and
-

- 1 (b) any commercial purpose is incidental to the purpose of the
2 import; and
3 (c) such other conditions as are specified in the regulations have
4 been, or are likely to be, satisfied.

5 **303FE Export or import for the purposes of exhibition**

- 6 (1) The export of a specimen is an export for the purposes of
7 exhibition in accordance with this section if:
8 (a) the specimen will be used for the purpose of an exhibition;
9 and
10 (b) any commercial purpose is incidental to the purpose of the
11 export; and
12 (c) such other conditions as are specified in the regulations have
13 been, or are likely to be, satisfied.
- 14 (2) The import of a specimen is an import for the purposes of
15 exhibition in accordance with this section if:
16 (a) the specimen will be used for the purpose of an exhibition;
17 and
18 (b) any commercial purpose is incidental to the purpose of the
19 import; and
20 (c) such other conditions as are specified in the regulations have
21 been, or are likely to be, satisfied.
- 22 (3) In this section:
23 *exhibition* includes:
24 (a) a zoo; or
25 (b) a travelling exhibition.
- 26 *travelling exhibition* does not include a travelling exhibition with
27 live specimens.
- 28 *zoo* means an organisation involved in the public exhibition of
29 animals primarily for educational or scientific purposes.

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) any commercial purpose is incidental to the purpose of the export; and
 - (e) such other conditions 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) any commercial purpose is incidental to the purpose of the import; and
 - (e) such other conditions 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) any commercial purpose is incidental to the purpose of the export; and

1 (c) such other conditions as are specified in the regulations have
2 been, or are likely to be, satisfied.

3 *Export of live CITES specimens*

- 4 (2) The export of a CITES specimen is an export of a household pet in
5 accordance with this section if:
- 6 (a) the specimen is a live animal; and
 - 7 (b) if the animal is a native animal—the animal is included in the
8 list referred to in subsection (4); and
 - 9 (c) any commercial purpose is incidental to the purpose of the
10 export; and
 - 11 (d) such other conditions as are specified in the regulations have
12 been, or are likely to be, satisfied.

13 *Import of live animals*

- 14 (3) The import of a live animal is an import of a household pet in
15 accordance with this section if:
- 16 (a) the conditions specified in the regulations have been, or are
17 likely to be, satisfied; and
 - 18 (b) any commercial purpose is incidental to the purpose of the
19 import; and
 - 20 (c) the animal is included in Part 2 of the list referred to in
21 section 303EB.

22 *Listing of native household pet animals*

- 23 (4) The Minister must, by instrument published in the *Gazette*,
24 establish a list of native household pet animals.
- 25 (5) The list, as first established, must contain the animals referred to in
26 Schedule 7 to the *Wildlife Protection (Regulation of Exports and*
27 *Imports) Act 1982*, as in force immediately before the
28 commencement of this section.
- 29 (6) The Minister may, by instrument in the *Gazette*, amend the list
30 referred to in subsection (4) by:
- 31 (a) including items in the list; or
 - 32 (b) deleting items from the list; or
 - 33 (c) correcting an inaccuracy or updating the name of a species.
-

- 1 (7) An instrument under subsection (6) (other than an instrument
2 mentioned in paragraph (6)(c)) is a disallowable instrument for the
3 purposes of section 46A of the *Acts Interpretation Act 1901*.
- 4 (8) Before amending the list referred to in subsection (4) as mentioned
5 in paragraph (6)(a) or (b), the Minister must cause a notice of the
6 proposed amendment to be:
- 7 (a) given to each person and organisation registered under
8 section 266A; and
9 (b) published on the Internet.
- 10 (9) A notice referred to in subsection (8) must:
- 11 (a) set out the proposal to amend the list; and
12 (b) set out sufficient information about the proposal to enable
13 persons and organisations to consider adequately the merits
14 of the proposal; and
15 (c) invite persons and organisations to give written comments to
16 the Minister about the proposal within the period specified in
17 the notice; and
18 (d) specify an address for the lodgment of comments.
- 19 (10) The period specified in a notice under paragraph (9)(c) must not be
20 less than 20 business days after the date on which the notice was
21 given.
- 22 (11) In making a decision under subsection (6), the Minister must
23 consider any comments about the proposal that were given in
24 response to an invitation under subsection (8).
- 25 (12) Within 28 days after making a decision under subsection (6), the
26 Minister must publish written reasons for the decision on the
27 Internet.

28 **303FH Export or import of personal items**

- 29 (1) The export of a specimen is an export of a personal item in
30 accordance with this section if:
- 31 (a) the specimen is not a live specimen; and
32 (b) any commercial purpose is incidental to the purpose of the
33 export; and
-

- 1 (c) the conditions specified in the regulations have been, or are
2 likely to be, satisfied.
- 3 (2) The import of a specimen is an import of a personal item in
4 accordance with this section if:
- 5 (a) the specimen is not a live specimen; and
6 (b) any commercial purpose is incidental to the purpose of the
7 import; and
8 (c) the conditions specified in the regulations have been, or are
9 likely to be, satisfied.

10 **Subdivision B—Commercial purpose exports and imports**

11 **303FJ Eligible commercial purpose exports**

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

- 14 (a) the export of the specimen would be an export from an
15 approved captive breeding program in accordance with
16 section 303FK; or
17 (b) the export of the specimen would be an export from an
18 approved artificial propagation program in accordance with
19 section 303FL; or
20 (c) the export of the specimen would be an export from an
21 approved aquaculture program in accordance with
22 section 303FM; or
23 (d) the export of the specimen would be an export in accordance
24 with an approved wildlife trade operation (section 303FN); or
25 (e) the export of the specimen would be an export in accordance
26 with an approved wildlife trade management plan
27 (section 303FO).

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

30 **303FK Export or import from an approved captive breeding**
31 **program**

- 32 (1) The export of a specimen is an export from an approved captive
33 breeding program in accordance with this section if the specimen
-

1 was sourced from a program that, under the regulations, is taken to
2 be an approved captive breeding program.

3 (2) The export of a specimen is an export from an approved
4 CITES-registered captive breeding program in accordance with
5 this section if the specimen was sourced from a program that,
6 under the regulations, is taken to be an approved CITES-registered
7 captive breeding program.

8 (3) The import of a specimen is an import from an approved
9 CITES-registered captive breeding program in accordance with
10 this section if the specimen was sourced from a program that,
11 under the regulations, is taken to be an approved CITES-registered
12 captive breeding program.

13 **303FL Export from an approved artificial propagation program**

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

18 **303FM Export from an approved aquaculture program**

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

23 **303FN Approved wildlife trade operation**

24 (1) The export of a specimen is an export in accordance with an
25 approved wildlife trade operation if the specimen is, or is derived
26 from, a specimen that was taken in accordance with a wildlife trade
27 operation declared by a declaration in force under subsection (2) to
28 be an approved wildlife trade operation.

29 (2) The Minister may, by instrument published in the *Gazette*, declare
30 that a specified wildlife trade operation is an ***approved wildlife***
31 ***trade operation*** for the purposes of this section.

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

Part 1 Amendments relating to wildlife

- 1 (3) The Minister must not declare an operation under subsection (2)
2 unless the Minister is satisfied that:
- 3 (a) the operation is consistent with the objects of this Part; and
4 (b) the operation will not be detrimental to:
5 (i) the survival of a taxon to which the operation relates; or
6 (ii) the conservation status of a taxon to which the operation
7 relates; or
8 (iii) any relevant ecosystem including (but not limited to)
9 any habitat or biodiversity; and
10 (c) if the operation relates to the taking of live specimens that
11 belong to a taxon specified in the regulations—the conditions
12 that, under the regulations, are applicable to the welfare of
13 the specimens are likely to be complied with; and
14 (d) such other conditions (if any) as are specified in the
15 regulations have been, or are likely to be, satisfied.
- 16 (4) In deciding whether to declare an operation under subsection (2),
17 the Minister must have regard to the following:
- 18 (a) the significance of the impact of the operation on an
19 ecosystem (for example, an impact on habitat or
20 biodiversity);
21 (b) the effectiveness of the management arrangements for the
22 operation (including monitoring procedures);
23 (c) the effectiveness of the legislation in the receiving country
24 relating to the welfare, protection or conservation of the
25 specimens to which the operation relates;
26 (d) whether legislation relating to the protection, conservation or
27 management of the specimens to which the operation relates:
28 (i) is in force in the State or Territory concerned; and
29 (ii) applies throughout the State or Territory concerned; and
30 (iii) is, in the opinion of the Minister, effective.
- 31 (6) A declaration under subsection (2) ceases to be in force at the
32 beginning of the third anniversary of the day on which the
33 declaration took effect. However, this rule does not apply if a
34 period of less than 3 years is specified in the declaration in
35 accordance with subsection 303FT(4).
-

- 1 (10) For the purposes of this section, an operation is a *wildlife trade*
2 *operation* if, and only if, the operation is an operation for the
3 taking of specimens and:
- 4 (a) the operation is an operation that, under the regulations, is
5 taken to be a market-testing operation; or
- 6 (b) the operation is an operation that, under the regulations, is
7 taken to be a small-scale operation; or
- 8 (c) the operation is an operation that, under the regulations, is
9 taken to be a developmental operation; or
- 10 (d) the operation is a commercial fishery; or
- 11 (e) the operation is an operation that, under the regulations, is
12 taken to be a provisional operation; or
- 13 (f) the operation is an operation of a kind specified in the
14 regulations.
- 15 (10A) In deciding whether to declare that a commercial fishery is an
16 approved wildlife trade operation for the purposes of this section,
17 the Minister must rely primarily on the outcomes of any
18 assessment in relation to the fishery carried out for the purposes of
19 Division 1 or 2 of Part 10.
- 20 (10B) Subsection (10A) does not limit the matters that may be taken into
21 account in deciding whether to declare that a fishery is an approved
22 wildlife trade operation for the purposes of this section.
- 23 (11) In this section:
- 24 *fish* includes all species of bony fish, sharks, rays, crustaceans,
25 molluscs and other marine organisms, but does not include marine
26 mammals or marine reptiles.
- 27 *fishery* means a class of activities by way of fishing, including
28 activities identified by reference to all or any of the following:
- 29 (a) a species or type of fish;
- 30 (b) a description of fish by reference to sex or any other
31 characteristic;
- 32 (c) an area of waters or of seabed;
- 33 (d) a method of fishing;
- 34 (e) a class of vessels;
- 35 (f) a class of persons;
-

1 (g) a purpose of activities.

2 **303FO Approved wildlife trade management plan**

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

8 (2) The Minister may, by instrument published in the *Gazette*, declare
9 that a specified plan is an ***approved wildlife trade management***
10 ***plan*** for the purposes of this section.

11 (3) The Minister must not declare a plan under subsection (2) unless
12 the Minister is satisfied that:

13 (a) the plan is consistent with the objects of this Part; and

14 (b) there has been an assessment of the environmental impact of
15 the activities covered by the plan, including (but not limited
16 to) an assessment of:

17 (i) the status of the species to which the plan relates in the
18 wild; and

19 (ii) the extent of the habitat of the species to which the plan
20 relates; and

21 (iii) the threats to the species to which the plan relates; and

22 (iv) the impacts of the activities covered by the plan on the
23 habitat or relevant ecosystems; and

24 (c) the plan includes management controls directed towards
25 ensuring that the impacts of the activities covered by the plan
26 on:

27 (i) a taxon to which the plan relates; and

28 (ii) any taxa that may be affected by activities covered by
29 the plan; and

30 (iii) any relevant ecosystem (for example, impacts on habitat
31 or biodiversity);

32 are ecologically sustainable; and

33 (d) the activities covered by the plan will not be detrimental to:

34 (i) the survival of a taxon to which the plan relates; or

-
- 1 (ii) the conservation status of a taxon to which the plan
2 relates; or
3 (iii) any relevant ecosystem (for example, detriment to
4 habitat or biodiversity); and
5 (e) the plan includes measures:
6 (i) to mitigate and/or minimise the environmental impact of
7 the activities covered by the plan; and
8 (ii) to monitor the environmental impact of the activities
9 covered by the plan; and
10 (iii) to respond to changes in the environmental impact of
11 the activities covered by the plan; and
12 (f) if the plan relates to the taking of live specimens that belong
13 to a taxon specified in the regulations—the conditions that,
14 under the regulations, are applicable to the welfare of the
15 specimens are likely to be complied with; and
16 (g) such other conditions (if any) as are specified in the
17 regulations have been, or are likely to be, satisfied.
- 18 (4) In deciding whether to declare a plan under subsection (2), the
19 Minister must have regard to:
20 (a) whether legislation relating to the protection, conservation or
21 management of the specimens to which the plan relates is in
22 force in the State or Territory concerned; and
23 (b) whether the legislation applies throughout the State or
24 Territory concerned; and
25 (c) whether, in the opinion of the Minister, the legislation is
26 effective.
- 27 (5) A declaration under subsection (2) ceases to be in force at the
28 beginning of the fifth anniversary of the day on which the
29 declaration took effect. However, this rule does not apply if a
30 period of less than 5 years is specified in the declaration in
31 accordance with subsection 303FT(4).
- 32 (6) If a declaration ceases to be in force, this Act does not prevent the
33 Minister from making a fresh declaration under subsection (2).
- 34 (7) A fresh declaration may be made during the 90-day period before
35 the time when the current declaration ceases to be in force.

- 1 (8) A fresh declaration that is made during that 90-day period takes
2 effect immediately after the end of that period.

3 **303FP Accredited wildlife trade management plan**

- 4 (1) The export of a specimen is an export in accordance with an
5 accredited wildlife trade management plan if the specimen is, or is
6 derived from, a specimen that was taken in accordance with a plan
7 declared by a declaration in force under subsection (2) to be an
8 accredited wildlife trade management plan.
- 9 (2) The Minister may, by instrument published in the *Gazette*, declare
10 that a specified plan is an ***accredited wildlife trade management***
11 ***plan*** for the purposes of this section.
- 12 (3) The Minister must not declare a plan under subsection (2) unless
13 the Minister is satisfied that:
- 14 (a) the plan is in force under a law of the Commonwealth or of a
15 State or Territory; and
 - 16 (aa) the implementation of the plan will be beneficial to the
17 conservation of the taxon to which the plan relates; and
 - 18 (b) the conditions set out in subsection 303FO(3) have been met
19 in relation to the plan; and
 - 20 (c) the plan imposes limits in relation to the taking of specimens;
21 and
 - 22 (d) the compliance and enforcement measures relating to the
23 plan are likely to be effective in preventing specimens taken
24 in breach of the plan from being traded or exported; and
 - 25 (e) the plan provides for the monitoring of:
 - 26 (i) the taking of specimens under the plan; and
 - 27 (ii) the export of specimens taken under the plan; and
 - 28 (iii) the status of the species to which the plan relates in the
29 wild; and
 - 30 (iv) the impacts of the activities under the plan on the habitat
31 of the species to which the plan relates; and
 - 32 (f) the plan provides for statistical reports about specimens taken
33 under the plan to be given to the Minister on a regular basis;
34 and
 - 35 (g) such other conditions (if any) as are specified in the
36 regulations have been, or are likely to be, satisfied.
-

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- 1 (4) A declaration under subsection (2) ceases to be in force at the
2 beginning of the fifth anniversary of the day on which the
3 declaration took effect. However, this rule does not apply if a
4 period of less than 5 years is specified in the declaration in
5 accordance with subsection 303FT(4).
- 6 (5) If a declaration ceases to be in force, this Act does not prevent the
7 Minister from making a fresh declaration under subsection (2).
- 8 (6) A fresh declaration may be made during the 90-day period before
9 the time when the current declaration ceases to be in force.
- 10 (7) A fresh declaration that is made during that 90-day period takes
11 effect immediately after the end of that period.
- 12 (8) The Minister must publish on the Internet copies of reports given
13 as mentioned in paragraph (3)(f).
- 14 (9) The Minister is not required to comply with subsection (8) to the
15 extent to which compliance could reasonably be expected to be
16 detrimental to:
- 17 (a) the survival of a taxon to which the plan relates; or
18 (b) the conservation status of a taxon to which the plan relates.
- 19 (10) An instrument under subsection (2) is a disallowable instrument for
20 the purposes of section 46A of the *Acts Interpretation Act 1901*.

21 **303FQ Consultation with State and Territory agencies**

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

25 **303FR Public consultation**

- 26 (1) Before making a declaration under section 303FN, 303FO or
27 303FP, the Minister must cause a notice of the proposal to make a
28 declaration to be:
- 29 (a) given to each person and body registered under section
30 266A; and
31 (b) published on the Internet.

32 (1A) A notice under subsection (1) must:

- 1 (a) set out the proposal to make the declaration; and
2 (b) set out sufficient information about the declaration to enable
3 persons and organisations to consider adequately the merits
4 of the proposal; and
5 (c) invite persons and organisations to give the Minister written
6 comments about the proposal within the period specified in
7 the notice.
- 8 (2) A period specified in a notice under subsection (1A) must not be
9 shorter than 20 business days after the date on which the notice
10 was published on the Internet.
- 11 (3) In making a decision about whether to make a declaration under
12 section 303FN, 303FO or 303FP, the Minister must consider any
13 comments about the proposal to make the declaration that were
14 given in response to an invitation under subsection (1).
- 15 (4) Within 28 days after making a decision whether to make a
16 declaration under section 303FN, 303FO or 303FP, the Minister
17 must publish written reasons for the decision on the Internet.

18 **303FS Register of declarations**

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

23 **303FT Additional provisions relating to declarations**

- 24 (1) This section applies to a declaration under section 303FN, 303FO
25 or 303FP.
- 26 (2) A declaration may be made:
27 (a) on the Minister's own initiative; or
28 (b) on written application being made to the Minister.
- 29 (3) The Minister may make a declaration about a plan or operation
30 even though he or she considers that the plan or operation should
31 be the subject of the declaration only to the extent that the plan or
32 operation relates to a particular class of specimens. In such a case:
-

- 1 (a) the instrument of declaration is to specify that class of
2 specimens; and
3 (b) the plan or operation is covered by the declaration only to the
4 extent that the plan or operation relates to that class of
5 specimens.
- 6 (4) The Minister may make a declaration about a plan or operation
7 even though he or she considers that the plan or operation should
8 be the subject of the declaration only:
9 (a) during a particular period; or
10 (b) while certain circumstances exist; or
11 (c) while a certain condition is complied with.
12 In such a case, the instrument of declaration is to specify the
13 period, circumstances or condition.
- 14 (5) If a declaration specifies a particular period as mentioned in
15 subsection (4), the declaration ceases to be in force at the end of
16 that period.
- 17 (6) If a declaration specifies circumstances as mentioned in
18 subsection (4), the Minister must, by instrument published in the
19 *Gazette*, revoke the declaration if he or she is satisfied that those
20 circumstances have ceased to exist.
- 21 (7) The Minister may, by instrument published in the *Gazette*, vary a
22 declaration by:
23 (a) specifying one or more conditions (or further conditions) to
24 which the declaration is subject; or
25 (b) revoking or varying a condition:
26 (i) specified in the instrument of declaration; or
27 (ii) specified under paragraph (a).
- 28 (8) A condition may relate to reporting or monitoring.
- 29 (9) The Minister must, by instrument published in the *Gazette*, revoke
30 a declaration if he or she is satisfied that a condition of the
31 declaration has been contravened.
- 32 (10) The Minister may, by instrument published in the *Gazette*, revoke a
33 declaration at any time.
-

- 1 (11) A copy of an instrument under section 303FN, 303FO or 303FP or
2 this section is to be made available for inspection on the Internet.

3 **303FU Approved commercial import program**

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

8 **Division 6—Miscellaneous**

9 **303GA Permit decision—controlled action, and action for which a**
10 **non-Part 13A permit is required**

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

24 *Deferral of decision*

- 25 (2) The Minister must neither issue, nor refuse to issue, the first permit
26 before whichever is the latest of the following days:
- 27 (a) if subparagraph (1)(b)(i) applies—the day on which the
 - 28 Minister makes a decision under section 75 about whether
 - 29 the proposed action is a controlled action;
 - 30 (b) if subparagraph (1)(b)(i) applies and the Minister makes a
 - 31 decision under section 75 that the proposed action is a
 - 32 controlled action—the day on which the Minister makes a

- 1 decision under section 133 approving, or refusing to approve,
2 the taking of the controlled action;
- 3 (c) if subparagraph (1)(b)(ii) applies—the day on which the
4 Minister makes a decision under section 75 about whether
5 the related action is a controlled action;
- 6 (d) if subparagraph (1)(b)(ii) applies and the Minister makes a
7 decision under section 75 that the related action is a
8 controlled action—the day on which the Minister makes a
9 decision under section 133 approving, or refusing to approve,
10 the taking of the controlled action;
- 11 (e) if subparagraph (1)(b)(iii) applies—the day on which a
12 decision is made to issue, or to refuse to issue, the
13 non-Part 13A permit referred to in that subparagraph;
- 14 (f) if subparagraph (1)(b)(iv) applies—the day on which a
15 decision is made to issue, or to refuse to issue, the
16 non-Part 13A permit referred to in that subparagraph.

17 *Refusal of permit*

- 18 (3) The Minister must not issue the first permit if:
19 (a) subparagraph (1)(b)(i) applies; and
20 (b) the Minister makes a decision under section 75 that the
21 proposed action is a controlled action; and
22 (c) the Minister makes a decision under section 133 refusing to
23 approve the taking of the controlled action.
- 24 (4) The Minister must not issue the first permit if:
25 (a) subparagraph (1)(b)(ii) applies; and
26 (b) the Minister makes a decision under section 75 that the
27 related action is a controlled action; and
28 (c) the Minister makes a decision under section 133 refusing to
29 approve the taking of the controlled action.
- 30 (5) The Minister must not issue the first permit if:
31 (a) subparagraph (1)(b)(iii) applies; and
32 (b) a decision is made to refuse to issue the non-Part 13A permit
33 referred to in that subparagraph.
- 34 (6) The Minister must not issue the first permit if:
35 (a) subparagraph (1)(b)(iv) applies; and
-

1 (b) a decision is made to refuse to issue the non-Part 13A permit
2 referred to in that subparagraph.

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

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

9 (8) For the purposes of this section, a ***non-Part 13A permit*** is a permit
10 issued under this Act (other than this Part) or the regulations.

11 *Related action*

12 (9) For the purposes of this section, if a specimen was taken, the action
13 of exporting or importing the specimen is related to:

- 14 (a) that taking; and
15 (b) any action that affected the specimen after that taking and
16 before that export or import.

17 (10) For the purposes of this section, if a specimen is derived from a
18 specimen that was taken, the action of exporting or importing the
19 first-mentioned specimen is related to:

- 20 (a) that taking; and
21 (b) any action that affected the first-mentioned specimen, or
22 either of those specimens, after that taking and before that
23 export or import.

24 **303GB Exceptional circumstances permit**

25 (1) If:

- 26 (a) the Minister is considering an application by a person for a
27 permit to be issued under section 303CG, 303DG or 303EN
28 in relation to a specimen; and
29 (b) under this Part, the Minister is precluded from issuing that
30 permit unless the Minister is satisfied in relation to a matter;
31 and
32 (c) even though the Minister is not satisfied in relation to that
33 matter, the Minister is satisfied that:
-

- 1 (i) the export or import of the specimen, as the case may
2 be, would not be contrary to the objects of this Part; and
3 (ii) exceptional circumstances exist that justify the proposed
4 export or import of the specimen; and
5 (iii) the export or import of the specimen, as the case may
6 be, would not adversely affect biodiversity;
7 the Minister may issue a permit to the person.

8 (1A) The Minister must not issue a permit under this section unless the
9 grant of that permit would be in accordance with CITES.

10 (2) A permit under this section authorises the holder of the permit to
11 take the action or actions specified in the permit without breaching
12 section 303CC, 303CD, 303DD or 303EK.

13 *Duration of permit*

14 (3) A permit under this section that relates to a CITES specimen:

- 15 (a) comes into force on the date on which it is issued; and
16 (b) unless it is sooner cancelled, remains in force for:
17 (i) a period of 6 months beginning on the date on which it
18 is issued; or
19 (ii) if a shorter period is specified in the permit—that
20 shorter period.

21 (4) A permit under this section that relates to a specimen other than a
22 CITES specimen:

- 23 (a) comes into force on the date on which it is issued; and
24 (b) unless it is sooner cancelled, remains in force for:
25 (i) a period of 12 months beginning on the date on which it
26 is issued; or
27 (ii) if a shorter period is specified in the permit—that
28 shorter period.

29 (4A) If a permit issued under this section has expired or has been
30 revoked or cancelled, a new permit may not be issued under this
31 section:

- 32 (a) to the same person; or
33 (b) in relation to the same activity.
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Further information

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(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.

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(6) 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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(10) In this section:

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exceptional circumstances has the meaning given by the regulations.

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303GC Permit authorising the Secretary to export or import specimens

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(1) The Secretary may apply to the Minister for a permit to be issued under subsection (2).

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(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).

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(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.

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(4) The Minister must not issue a permit under this section to export a specimen unless the Minister is satisfied that:

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25

(a) both:

26

(i) the recipient of the specimen will be a relevant CITES authority of a country; and

27

28

(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

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(b) both:

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(i) the specimen has been seized under this Act; and

- 1 (ii) the specimen will be used to facilitate investigations in
2 or outside Australia in relation to trade relating to
3 wildlife.
- 4 (5) The Minister must not issue a permit under this section to import a
5 specimen unless the Minister is satisfied that:
- 6 (a) the specimen will be used by the Secretary for the purposes
7 of the identification of a specimen; or
8 (b) both:
- 9 (i) the sender of the specimen will be a relevant CITES
10 authority of a country; and
11 (ii) the specimen will be used for the purpose of the
12 identification of a specimen and/or for the purpose of
13 education or training; or
14 (c) the specimen was exported from Australia in contravention
15 of:
- 16 (i) this Part; or
17 (ii) the *Wildlife Protection (Regulation of Exports and*
18 *Imports) Act 1982*; or
19 (d) the specimen will be used to facilitate investigations in or
20 outside Australia in relation to trade relating to wildlife.
- 21 (6) A permit under this section:
- 22 (a) comes into force on the date on which it is issued; and
23 (b) unless it is sooner cancelled, remains in force for:
- 24 (i) a period of 12 months beginning on the date on which it
25 is issued; or
26 (ii) if a shorter period is specified in the permit—that
27 shorter period.

28 **303GD Testing permit—section 303EE assessments**

29 *Applications for permits*

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

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(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.

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(4) The Minister may refuse to consider the application until the person gives the Minister the information in accordance with the request.

7

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9

Minister may issue permits

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(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).

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(6) A permit authorises its holder to take the action or actions specified in the permit without breaching section 303EK.

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15

(7) The Minister must not issue a permit to a person unless the Minister is satisfied that:

16

17

(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

18

19

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(b) if the proposed amendment were made, the specimen would be covered by the item; and

21

22

(c) the specimen is not a CITES specimen; and

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24

(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

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(e) the person proposes to conduct tests on the specimen in Australia in order to obtain information for the assessment; and

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(f) the information is required for the assessment; and

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(g) it is not reasonably practicable for the person to obtain the information without conducting the tests in Australia; and

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(h) the tests will be conducted in a controlled environment.

- 1 (8) The Minister must not issue a permit under this section unless the
2 permit is subject to one or more conditions about holding the
3 specimen in quarantine.

4 *Duration of permit*

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

12 *Investigations*

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

15 **303GE Conditions of permits**

- 16 (1) This section applies to a permit issued under this Part.
17 (2) A permit is subject to such conditions as are specified in the permit
18 or as are imposed under subsection (3).
19 (3) The Minister may, in accordance with the regulations:
20 (a) vary or revoke a condition of a permit; or
21 (b) impose further conditions of a permit.
22 (4) The Minister's powers under subsection (3) may be exercised:
23 (a) on the Minister's own initiative; or
24 (b) on the application of the holder of the permit concerned.
25 (5) If a permit authorises its holder to take a particular action, a
26 condition of the permit may require the holder to do, or not do, an
27 act or thing before, at or after the time when the action takes place.
28 (6) If a person is given an authority under section 303GG by the holder
29 of a permit, subsection (5) applies to the person in a corresponding
30 way to the way in which it applies to the holder of the permit.
-

- 1 (7) Subsections (4), (5) and (6) are to be disregarded in determining
2 the meaning of a provision of this Act (other than a provision of
3 this Part) that relates to conditions of permits issued otherwise than
4 under this Part.

5 **303GEA Public consultation on permits**

- 6 (1) This section applies to a permit issued under this Part.
- 7 (2) Before issuing a permit, the Minister must cause a notice of the
8 application for a permit to be:
9 (a) given to each person and body registered under section
10 266A; and
11 (b) published on the Internet.
- 12 (3) The notice must:
13 (a) state that an application for a permit has been made; and
14 (b) set out sufficient information about the application to enable
15 persons and organisations to consider adequately the merits
16 of the application; and
17 (c) invite persons and organisations to give the Minister written
18 comments about the proposals within the period specified in
19 the notice.
- 20 (4) The period specified in a notice under paragraph (3)(c) must not be
21 less than 10 business days after the date on which the notice was
22 given.
- 23 (5) In making a decision whether to issue a permit, the Minister must
24 consider any comments about the application that were given in
25 response to a notice under subsection (2).
- 26 (6) Within 28 days of making a decision under this Part whether to
27 issue a permit, the Minister must publish written reasons for the
28 decision on the Internet.
- 29 (7) The regulations may prescribe categories of permit applications to
30 be exempt from the requirements of subsections (2) to (6).

31 **303GF Contravening conditions of a permit**

- 32 (1) This section applies to a permit issued under this Part.
-

- 1 (2) A person is guilty of an offence if:
2 (a) the person is:
3 (i) the holder of a permit; or
4 (ii) a person to whom an authority under section 303GG has
5 been given by the holder of a permit; and
6 (b) the person engages in conduct; and
7 (c) the conduct results in a contravention of a condition of the
8 permit.

9 Penalty: 300 penalty units.

- 10 (3) The holder of a permit is guilty of an offence if:
11 (a) the person is:
12 (i) the holder of a permit; or
13 (ii) a person to whom an authority under section 303GG has
14 been given by the holder of a permit; and
15 (b) the person engages in conduct; and
16 (c) the conduct results in a contravention of a condition of the
17 permit; and
18 (d) the condition relates to:
19 (i) the sale or other disposal of a live animal or a live plant;
20 or
21 (ii) the sale or other disposal of the progeny of a live animal
22 or a live plant; or
23 (iii) the release from captivity of a live animal; or
24 (iv) the release from captivity of the progeny of a live
25 animal; or
26 (v) the escape of a live plant.

27 Penalty: 600 penalty units.

- 28 (4) For the purposes of subsection (3), a person is taken to have
29 released an animal from captivity if:
30 (a) that animal has escaped from captivity; and
31 (b) either:
32 (i) the person allowed the animal to escape; or
33 (ii) the person failed to take all reasonable measures to
34 prevent the animal from escaping.

- 1 (4A) For the purposes of subsection (3), a person is taken to have
2 allowed a plant to escape if:
3 (a) the plant has grown or propagated in the wild; and
4 (b) either:
5 (i) the person allowed the plant to escape; or
6 (ii) the person failed to take all reasonable measures to
7 prevent the plant from growing or propagating in the
8 wild.

- 9 (5) In subsections (2) and (3), strict liability applies to the
10 circumstance that the person was given an authority under
11 section 303GG.

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

13 **303GG Authorities under permits**

- 14 (1) This section applies to a permit issued under this Part.
- 15 (2) Except as provided in this section, a permit does not authorise the
16 taking of any action by a person for or on behalf of the holder of
17 the permit.
- 18 (3) Subject to subsection (4), the holder of a permit may give a person
19 written authority to take for or on behalf of the holder any action
20 authorised by the permit. The authority may be given generally or
21 as otherwise provided by the instrument of authority.
- 22 (4) The holder of a permit must not give an authority unless:
23 (a) the permit contains a condition permitting the holder to do
24 so; and
25 (b) the authority is given in accordance with any requirements
26 set out in the condition.
- 27 (5) A permit is, for the purposes of this Act, taken to authorise the
28 taking of a particular action by a person if the taking of that action
29 by the person is authorised by an authority given by the holder of
30 the permit.
- 31 (6) The giving of an authority does not prevent the taking of any action
32 by the holder of the permit.

- 1 (7) A person who gives an authority must give to the Minister written
2 notice of it within 14 days after giving the authority.

3 **303GH Transfer of permits**

- 4 (1) This section applies to a permit issued under this Part.
- 5 (2) On the application, in accordance with the regulations, of the
6 holder of a permit, the Minister may, in accordance with the
7 regulations, transfer the permit to another person.
- 8 (3) In deciding whether to transfer the permit to another person, the
9 Minister must consider:
- 10 (a) whether the transferee is a suitable person to hold the permit,
11 having regard to the transferee's record in relation to
12 environmental and animal welfare matters; and
13 (b) the transferee's ability to meet the conditions of the permit.

14 **303GI Suspension or cancellation of permits**

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

19 **303GJ Review of decisions**

- 20 (1) An application may be made to the Tribunal for review of a
21 decision:
- 22 (a) to issue or refuse a permit; or
23 (b) to specify, vary or revoke a condition of a permit; or
24 (c) to impose a further condition of a permit; or
25 (d) to transfer or refuse to transfer a permit; or
26 (e) to suspend or cancel a permit; or
27 (f) to issue or refuse a certificate under subsection 303CC(5); or
28 (g) of the Secretary under a determination in force under
29 section 303EU; or
30 (h) to make or refuse a declaration under section 303FN, 303FO
31 or 303FP; or
-

- 1 (i) to vary or revoke a declaration under section 303FN, 303FO
2 or 303FP.
- 3 (2) In giving a direction as to the persons who are to constitute the
4 Tribunal for the purposes of a review of a decision of the Minister
5 to issue or refuse a permit, where any of the following provisions
6 are relevant for the purposes of the review:
- 7 (a) paragraph 303CG(3)(a);
8 (b) paragraph 303CG(3)(c);
9 (c) paragraph 303DG(4)(a);
10 (d) paragraph 303DG(4)(b);
11 (e) paragraph 303EN(3)(e);
- 12 the President of the Tribunal must ensure that, for the purposes of
13 the review, the Tribunal is constituted by, or includes, a member of
14 the Tribunal who, in the opinion of the President, has special
15 knowledge or skill in relation to environmental matters.
- 16 (3) In this section:
- 17 *permit* means a permit under this Part.
- 18 *Tribunal* means:
- 19 (a) before the commencement of Parts 4 to 10 of the
20 *Administrative Review Tribunal Act 2001*—the
21 Administrative Appeals Tribunal; and
22 (b) after the commencement of Parts 4 to 10 of the
23 *Administrative Review Tribunal Act 2001*—the
24 Administrative Review Tribunal.

25 **303GK Permit to be produced**

26 *Export permit*

- 27 (1) For the purposes of this Part, if the holder of a permit to export a
28 specimen exports that specimen, he or she is not to be taken to
29 have exported that specimen in accordance with that permit unless,
30 before exporting the specimen, he or she:
- 31 (a) produced the permit, or caused the permit to be produced, to
32 an authorised officer doing duty in relation to the export of
33 the specimen; or

1 (b) received written notice from the Secretary authorising the
2 export of the specimen without the production of the permit.

3 (2) The Secretary must not give the notice referred to in
4 paragraph (1)(b) unless he or she:

5 (a) is satisfied that the production of the permit is impracticable;
6 and

7 (b) endorses a copy of the permit to show that the notice is being
8 given; and

9 (c) makes that copy available to an authorised officer doing duty
10 in relation to the export of the specimen.

11 *Import permit*

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

19 *Authorities under section 303GG*

20 (4) If a person is given an authority under section 303GG by the holder
21 of a permit, this section applies to the person in a corresponding
22 way to the way in which it applies to the holder of the permit.

23 **303GL Pre-CITES certificate to be produced**

24 *Export certificate*

25 (1) If a person exports a specimen and wishes to rely on a certificate
26 issued under subsection 303CC(5), he or she is not entitled to rely
27 on that certificate unless, before exporting the specimen, he or she:

28 (a) produced the certificate, or caused the certificate to be
29 produced, to an authorised officer doing duty in relation to
30 the export of the specimen; or

31 (b) received written notice from the Secretary authorising the
32 export of the specimen without the production of the
33 certificate.

- 1 (2) The Secretary must not give the notice referred to in
2 paragraph (1)(b) unless he or she:
3 (a) is satisfied that the production of the certificate is
4 impracticable; and
5 (b) endorses a copy of the certificate to show that the notice is
6 being given; and
7 (c) makes that copy available to an authorised officer doing duty
8 in relation to the export of the specimen.

9 *Import certificate*

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

16 **303GM Fees**

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

23 **303GN Possession of illegally imported specimens**

24 *Object*

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

32 Note: See Article 8 of the Biodiversity Convention.

1 *Possession of CITES specimens and unlisted regulated live*
2 *specimens*

3 (2) A person is guilty of an offence if:

4 (a) the person has in the person's possession, in the Australian
5 jurisdiction, a specimen; and

6 (b) the specimen is:

7 (i) a CITES specimen; or

8 (ii) a regulated live specimen that is not included in the list
9 referred to in section 303EB;

10 and the person is reckless as to that fact; and

11 (c) the specimen does not belong to a native species.

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

13 (3) Subsection (2) does not apply if:

14 (a) the specimen was lawfully imported; or

15 (b) the specimen was not imported, but all of the specimens of
16 which it is the progeny were lawfully imported.

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

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

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

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

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

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

29 *Possession of listed regulated live specimens*

30 (6) A person is guilty of an offence if:

31 (a) the person has in the person's possession, in the Australian
32 jurisdiction, a specimen; and

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- 1 (b) the specimen is a regulated live specimen that is included in
2 Part 2 of the list referred to in section 303EB, and the person
3 is reckless as to that fact; and
4 (c) the specimen does not belong to a native species; and
5 (d) either:
6 (i) the specimen was unlawfully imported; or
7 (ii) the specimen was not imported, but any of the
8 specimens of which it is the progeny was unlawfully
9 imported.

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

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

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

15 *Unlawfully imported*

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

19 **303GO Regulations relating to welfare**

- 20 (1) This section applies to regulations made for the purposes of
21 paragraph 303CG(3)(c), 303DG(4)(b), 303EN(3)(e), 303FN(3)(c)
22 or 303FO(3)(f).
23 (2) The conditions specified in those regulations in relation to a live
24 animal may:
25 (a) deal with the welfare of the animal:
26 (i) when the animal is taken; or
27 (ii) when the animal is being held after it has been taken; or
28 (iii) when the animal is being prepared or shipped; or
29 (iv) when the animal is under the control of the proposed
30 recipient; and
31 (b) may deal with eliminating or minimising the risk of:
32 (i) injury to the animal; or
33 (ii) adverse effects on the health of the animal; or
-

- 1 (iii) cruel treatment of the animal.
- 2 (3) The conditions specified in those regulations in relation to a live
3 plant may:
- 4 (a) deal with the welfare of the plant:
- 5 (i) when the plant is taken; or
- 6 (ii) when the plant is being held after it has been taken; or
- 7 (iii) when the plant is being prepared or shipped; or
- 8 (iv) when the plant is under the control of the proposed
9 recipient; and
- 10 (b) may deal with eliminating or minimising the risk of:
- 11 (i) injury to the plant; or
- 12 (ii) adverse effects on the health of the plant.
- 13 (4) Subsections (2) and (3) do not limit paragraph 303CG(3)(c),
14 303DG(4)(b), 303EN(3)(e), 303FN(3)(c) or 303FO(3)(f).

15 **303GP Cruelty—export or import of animals**

- 16 (1) A person is guilty of an offence if:
- 17 (a) the person exports or imports a live animal in a manner that
18 subjects the animal to cruel treatment; and
- 19 (b) the person knows that, or is reckless as to whether, the export
20 or import subjects the animal to cruel treatment; and
- 21 (c) the animal is a CITES specimen; and
- 22 (d) the person contravenes section 303CC or 303CD in relation
23 to the export or import of the animal.
- 24 Penalty: Imprisonment for 2 years.
- 25 (2) A person is guilty of an offence if:
- 26 (a) the person exports a live animal in a manner that subjects the
27 animal to cruel treatment; and
- 28 (b) the person knows that, or is reckless as to whether, the export
29 subjects the animal to cruel treatment; and
- 30 (c) the animal is a regulated native specimen; and
- 31 (d) the person contravenes section 303DD in relation to the
32 export of the animal.

33 Penalty: Imprisonment for 2 years.

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

9 Penalty: Imprisonment for 2 years.

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

11 **303GQ Imports of specimens contrary to the laws of a foreign**
12 **country**

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

19 Penalty: Imprisonment for 5 years.

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

26 **303GR Evidence**

- 27 (1) In any proceedings for an offence against this Part:
28 (a) any record kept in accordance with the regulations or another
29 law of the Commonwealth or a law of a State or Territory is
30 admissible as prima facie evidence of the facts stated in the
31 record; and
32 (b) a copy of an entry in such a record, being a copy certified by
33 the person by whom the record is kept to be a true copy of
-

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

14 **303GS Evidence of examiner**

- 15 (1) The Minister may, by writing, appoint appropriately qualified
16 persons to be examiners for the purposes of this Part.
- 17 (2) Subject to subsection (4), a certificate signed by an examiner
18 appointed under subsection (1) setting out, in relation to a
19 substance, matter, specimen or thing, one or more of the following:
- 20 (a) that he or she is appointed as the examiner under
21 subsection (1);
- 22 (b) when and from whom the substance, matter, specimen or
23 thing was received;
- 24 (c) what labels or other means of identification accompanied the
25 substance, matter, specimen or thing when it was received;
- 26 (d) what container held the substance, matter, specimen or thing
27 when it was received;
- 28 (e) a description, including the weight, of the substance, matter,
29 specimen or thing when it was received;
- 30 (f) the name of any method used to analyse the substance,
31 matter, specimen or thing or any portion of it;
- 32 (g) the results of any such analysis;
- 33 (h) how the substance, matter, specimen or thing was dealt with
34 after handling by the examiner, including details of:
- 35 (i) the quantity of the substance, matter, specimen or thing
36 retained after analysis; and
-

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- 1 (ii) names of any persons to whom any of the substance,
2 matter, specimen or thing was given after analysis; and
3 (iii) measures taken to secure any retained quantity of the
4 substance, matter, specimen or thing after analysis;
5 is admissible in any proceeding for an offence against this Part as
6 prima facie evidence of the matters in the certificate and the
7 correctness of the results of the analysis.
- 8 (3) For the purposes of this section, a document purporting to be a
9 certificate referred to in subsection (2) is taken to be such a
10 certificate unless the contrary is established.
- 11 (4) A certificate is not to be admitted in evidence in accordance with
12 subsection (2) in proceedings for an offence against this Part
13 unless:
14 (a) the person charged with the offence; or
15 (b) a solicitor who has appeared for the person in those
16 proceedings;
17 has, at least 14 days before the certificate is sought to be admitted,
18 been given a copy of the certificate together with reasonable notice
19 of the intention to produce the certificate as evidence in the
20 proceedings.
- 21 (5) Subject to subsection (6), if, under subsection (2), a certificate is
22 admitted in evidence in proceedings for an offence against this
23 Part, the person charged with the offence may require the person
24 giving the certificate to be called as a witness for the prosecution
25 and cross-examined as if he or she had given evidence of the
26 matters stated in the certificate.
- 27 (6) Subsection (5) does not entitle the person charged to require the
28 person giving a certificate to be called as a witness for the
29 prosecution unless:
30 (a) the prosecutor has been given at least 4 days notice of the
31 person's intention to require the examiner to be so called; or
32 (b) the court, by order, allows the person charged to require the
33 person giving the certificate to be so called.
- 34 (7) Any evidence given in support, or in rebuttal, of a matter stated in
35 a certificate given under subsection (2) must be considered on its
-

1 merits and the credibility and probative value of such evidence
2 must be neither increased nor diminished by reason of this section.

3 **303GT Protection of witness**

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

20 **303GU Forms and declarations—persons arriving in Australia or an**
21 **external Territory**

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

25 **303GV Saving of other laws**

- 26 (1) This Part is in addition to the following laws:
27 (a) the *Customs Act 1901*;
28 (b) the *Quarantine Act 1908*;
29 (c) any other law of the Commonwealth or of an external
30 Territory, whether passed or made before or after the
31 commencement of this Part.

- 1 (2) The holder of a permit under this Part authorising the export or
2 import of a specimen is not, by reason only of being the holder of
3 the permit, exempt from compliance with any law referred to in
4 paragraph (1)(a), (b) or (c) that applies in relation to that specimen.
- 5 (3) Without limiting subsection (1), this Part, and regulations made for
6 the purposes of this Part, do not authorise or permit the doing of
7 any act in contravention of the *Quarantine Act 1908* or of a law of
8 an external Territory relating to quarantine.

9 **303GW Part not to apply to certain specimens**

10 *Transshipment*

- 11 (1) For the purposes of this Part, if a specimen is brought into
12 Australia from a country:
13 (a) for the purpose of transshipment to another country; or
14 (b) as part of an aircraft's stores or ship's stores;
15 that specimen:
16 (c) is taken not to have been imported into Australia; and
17 (d) when it leaves Australia, is taken not to be exported from
18 Australia.
- 19 (2) For the purposes of this Part, if a specimen is brought into an
20 external Territory:
21 (a) for the purpose of transshipment to another country; or
22 (b) as part of an aircraft's stores or ship's stores;
23 that specimen:
24 (c) is taken not to have been imported into that Territory; and
25 (d) when it leaves that Territory, is taken not to be exported from
26 that Territory.
- 27 (3) For the purposes of subsection (1), a specimen is to be taken to be
28 brought into Australia for the purpose of transshipment to another
29 country if, and only if:
30 (a) the specimen is brought into Australia in the course of being
31 transported to an identified person in the other country; and
32 (b) any delay in its leaving Australia will be due solely to the
33 arrangements for its transport; and

1 (c) it will be under the control of the Customs all the time that it
2 is in Australia.

3 (4) For the purposes of subsection (2), a specimen is taken to be
4 brought into an external Territory for the purpose of transshipment
5 to another country if, and only if:

6 (a) the specimen is brought into that Territory in the course of
7 being transported to an identified person in the other country;
8 and

9 (b) any delay in its leaving that Territory will be due solely to the
10 arrangements for its transport; and

11 (c) it will be under the control of an authorised officer all the
12 time that it is in that Territory.

13 *Emergency*

14 (5) For the purposes of this Part, if:

15 (a) the Minister, the Director of Animal and Plant Quarantine, a
16 prescribed person or a prescribed organisation is satisfied
17 that, in order to meet an emergency involving danger to the
18 life or health of a human or an animal, it is necessary or
19 desirable that a specimen that could be used in treating that
20 person or animal should be sent out of, or brought into,
21 Australia or an external Territory; and

22 (b) that specimen is sent out of, or brought into, Australia or that
23 Territory, as the case requires, to meet that emergency;
24 that specimen is taken not to have been exported or imported, as
25 the case may be.

26 *Quarantine*

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

33 (a) if a person holds a permit to import that specimen—the
34 holder of that permit; or

1 (b) in any other case—a person whose identity is not known;
2 but this subsection does not affect the commission of any offence
3 committed before the importation of that specimen.

4 *Definitions*

5 (7) In this section:

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

8 **303GX Part not to apply to certain specimens used by traditional**
9 **inhabitants**

10 (1) In this section:

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

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

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

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

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

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

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

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

- 1 (2) The Minister may, by notice published in the *Gazette*, declare an
2 area adjacent to the Protected Zone to be an area in the vicinity of
3 the Protected Zone for the purposes of this section.
- 4 (3) The Minister may, by notice published in the *Gazette*, declare that
5 a specimen of a kind specified in the notice is a prescribed
6 specimen for the purposes of this section.
- 7 (4) For the purposes of this Part, if a prescribed specimen that is
8 owned by, or is under the control of, a traditional inhabitant and
9 that has been used, is being used or is intended to be used by him
10 or her in connection with the performance of traditional activities
11 in the Protected Zone or in an area in the vicinity of the Protected
12 Zone, is:
- 13 (a) brought to an Australian place from a Papua New Guinea
14 place; or
15 (b) taken from an Australian place to a Papua New Guinea place;
16 then, subject to subsection (5), that specimen:
- 17 (c) in the case where the specimen is brought into Australia as
18 mentioned in paragraph (a)—is taken not to have been
19 imported into Australia; and
20 (d) in the case where the specimen is taken from Australia as
21 mentioned in paragraph (b)—is taken not to have been
22 exported from Australia.
- 23 (5) If:
- 24 (a) a prescribed specimen that has been brought into Australia is,
25 under subsection (4), taken not to have been imported into
26 Australia; and
27 (b) that prescribed specimen is brought to a place in Australia
28 that is not in the Protected Zone or in an area in the vicinity
29 of the Protected Zone;
30 the prescribed specimen is taken to have been imported into
31 Australia upon being brought to the place referred to in
32 paragraph (b).

33 **303GY When a specimen is *lawfully imported***

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

- 1 (a) in a case where the specimen was imported after the
2 commencement of this Part—it was not imported in
3 contravention of this Part; or
4 (b) in a case where the specimen was imported when the *Wildlife*
5 *Protection (Regulation of Exports and Imports) Act 1982* was
6 in force—it was not imported in contravention of that Act; or
7 (c) in a case where the specimen was imported before the
8 commencement of the *Wildlife Protection (Regulation of*
9 *Exports and Imports) Act 1982*—it was not imported in
10 contravention of:
11 (i) the Customs (Endangered Species) Regulations; or
12 (ii) the Customs (Prohibited Imports) Regulations.

13 **303GZ Inventory of scientific specimens**

- 14 (1) Scientific organisations may provide the Secretary with a list of
15 specimens:
16 (a) held by the organisation; and
17 (b) that are available for exchange with other scientific
18 organisations.
- 19 (2) The Secretary must publish on the Internet an inventory that
20 identifies specimens available for registered non-commercial
21 exchanges between scientific organisations.
- 22 (3) Where information has been provided to the Secretary under
23 subsection (1), the Secretary must publish the information in the
24 inventory.
- 25 (4) The Secretary must take reasonable steps to ensure that the
26 inventory is maintained in an up-to-date form.

27 **12 Subsection 391(3) (after table item 10)**

28 Insert:

29

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

1 **13 At the end of section 397**

2 Add:

3 (2) Paragraph (1)(b) does not apply for the purposes of the application
4 of this Act to an offence against, or a matter relating to, Part 13A.

5 (3) By force of this section, for the purposes of the application of this
6 Act to an offence against, or a matter relating to, Part 13A, each of
7 the following is an inspector:

8 (a) each officer of Customs;

9 (b) each member of the police force of an external Territory;

10 (c) each quarantine officer (animals) (within the meaning of the
11 *Quarantine Act 1908*);

12 (d) each quarantine officer (plants) (within the meaning of the
13 *Quarantine Act 1908*).

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

15 **14 Subsection 399(1)**

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

17 **15 Subsection 404(1)**

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

20 **16 After paragraph 404(1)(a)**

21 Insert:

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

5 **17 Subsection 404(3)**

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

8 **18 After paragraph 404(3)(a)**

9 Insert:

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

13 **19 Subsection 408(4)**

14 After “section”, insert “444A or”.

15 **20 After paragraph 408(7)(c)**

16 Insert:

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

20 **21 Subsection 409(5)**

21 After “section”, insert “444A or”.

22 **22 Subsection 430(2)**

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

25 **23 After paragraph 430(2)(a)**

26 Insert:

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

30 **24 Subsection 442(5)**

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

3 **25 After paragraph 442(5)(a)**

4 Insert:

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

8 **26 After Division 8 of Part 17**

9 Insert:

10 **Division 8A—Power to ask questions about specimens**

11 **443A Authorised officer may ask questions about the nature or**
12 **origin of specimens**

13 *When section applies*

14 (1) This section applies if an authorised officer has reasonable grounds
15 to suspect that:

- 16 (a) a specimen has been exported, or is proposed to be exported,
17 in contravention of section 303CC or 303DD; or
18 (b) a specimen has been imported, or is proposed to be imported,
19 in contravention of section 303CD or 303EK; or
20 (c) a person has in the person’s possession a specimen, and that
21 possession contravenes section 303GN.

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

25 *Questions*

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

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1 *Answers to questions*

2 (3) Subject to subsections (6) and (7), if a person is asked a question
3 under subsection (2), the person must not intentionally refuse or
4 intentionally fail to answer the question to the extent that the
5 person is capable of doing so.

6 (4) A person who contravenes subsection (3) is guilty of an offence
7 punishable on conviction by a fine not exceeding 10 penalty units.

8 (5) In subsection (3), strict liability applies to the circumstance that the
9 person was asked a question under subsection (2).

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

11 *No requirement to give incriminating answers*

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

15 *Identity cards etc.*

16 (7) If a person is asked a question under subsection (2) by an
17 authorised officer, the person is not required to answer the question
18 unless:

19 (a) if the authorised officer is a member of a police force—the
20 authorised officer produces, for inspection by the person,
21 written evidence of the fact that the authorised officer is a
22 member of that police force; or

23 (b) if the authorised officer is an officer of Customs—the
24 authorised officer produces, for inspection by the person,
25 written evidence of the fact that the authorised officer is an
26 officer of Customs; or

27 (c) if the authorised officer is neither a member of a police force
28 nor an officer of Customs—the authorised officer produces
29 the authorised officer's identity card for inspection by the
30 person.

31 **27 After paragraph 444(4)(a)**

32 Insert:

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

4 **28 Before Subdivision A of Division 10 of Part 17**

5 Insert:

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

8 **444A Seizure of specimens involved in a contravention of Part 13A**

9 An authorised officer may seize a specimen if he or she has
10 reasonable grounds to suspect that the specimen has been used or
11 otherwise involved in the commission of an offence against
12 Part 13A.

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

14 **444B Notice about seizure**

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

1 **444C Applications for return of specimen**

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

14 Note: Under section 444G, the Secretary may retain the specimen for up to
15 30 days after making a decision on the application.

16 **444D Court action for return of specimen**

- 17 (1) If a specimen is seized under section 444A, the owner of the
18 specimen may bring an action against the Commonwealth in a
19 court of competent jurisdiction for the delivery of the specimen to
20 the owner on the ground that the specimen was not used or
21 otherwise involved in the commission of an offence against
22 Part 13A.
- 23 (2) An action under subsection (1) must be brought:
24 (a) within 30 days after the seizure; or
25 (b) if a notice is given under subsection 444B(1) in relation to
26 the specimen—within 30 days after the giving of the notice.
- 27 (3) If:
28 (a) an action is brought under subsection (1); and
29 (b) the court finds that the specimen was used or otherwise
30 involved in the commission of the offence concerned;
31 the court must order the specimen to be forfeited to the
32 Commonwealth.
- 33 (4) If:
-

- 1 (a) an action is brought under subsection (1); and
2 (b) the action is discontinued by the owner otherwise than
3 because of:
4 (i) the delivery of the specimen to the owner; or
5 (ii) the forfeiture of the specimen to the Commonwealth; or
6 (iii) the disposal of the specimen under section 449;
7 the specimen is forfeited to the Commonwealth.

8 **444E Consignment of specimen with consent of owner**

- 9 (1) If:
10 (a) a specimen is seized under section 444A; and
11 (b) the specimen was imported from a particular foreign country;
12 and
13 (c) the export of the specimen from the foreign country was not
14 in contravention of a law of the foreign country that
15 corresponds to Part 13A; and
16 (d) if the importer had applied for a permit authorising the
17 import of the specimen, there is no reasonable likelihood that
18 the permit would have been granted; and
19 (e) the importer produces written evidence from the relevant
20 CITES authority of the foreign country that the specimen
21 may be returned to the foreign country without contravening
22 such a law;
23 the Secretary may, with the consent of the owner of the specimen,
24 consign the specimen to a place in the foreign country.
25 (2) The consignment is to be at the expense of the owner of the
26 specimen.

27 **444F Release of specimen**

- 28 If a specimen is seized under section 444A, the Secretary may
29 release the specimen to the owner, or to the person from whose
30 possession the specimen was seized, either:
31 (a) unconditionally; or
32 (b) on such conditions as the Secretary thinks fit (including
33 conditions about the giving of security for payment of its
34 value if it is forfeited).
-

1 **444G Retention of specimen**

- 2 (1) If a specimen is seized under section 444A, the specimen may be
3 retained until the end of 30 days after whichever is the latest of the
4 following events:
5 (a) the seizure;
6 (b) if a notice is given under subsection 444B(1) in relation to
7 the specimen—the giving of the notice;
8 (c) if an application is made under subsection 444C(1) in
9 relation to the specimen—the making of a decision on that
10 application;
11 (d) if:
12 (i) proceedings for an offence against Part 13A are
13 instituted during the period within which an application
14 may be made under subsection 444C(1) in relation to
15 the specimen; and
16 (ii) the specimen may have been used or otherwise involved
17 in the commission of the offence or the specimen may
18 afford evidence of the commission of the offence;
19 the termination of the proceedings (including any appeal to a
20 court in relation to those proceedings);
21 (e) if proceedings under section 444K are instituted during the
22 period within which an application may be made under
23 subsection 444C(1) in relation to the specimen—the
24 termination of the proceedings (including any appeal to a
25 court in relation to those proceedings).
- 26 (2) The rule in subsection (1) does not authorise the retention of the
27 specimen if the owner of the specimen succeeds in an action under
28 subsection 444D(1) for the delivery of the specimen to the owner.
29 Nor does that rule require the return of the specimen if proceedings
30 under subsection 444D(1) relating to the specimen are pending.

31 **444H Forfeiture of specimen after end of retention period**

- 32 (1) If:
33 (a) a specimen is seized under section 444A; and
34 (b) none of the following happens before the end of the period
35 for which the specimen may be retained:
-

- 1 (i) proceedings are instituted for an offence against
2 Part 13A, where the specimen is alleged to have been
3 used or otherwise involved in the commission of the
4 offence;
5 (ii) the specimen is delivered to the owner;
6 (iii) the owner of the specimen brings an action under
7 subsection 444D(1) for the delivery of the specimen to
8 the owner;
9 (iv) proceedings are instituted under section 444K in
10 relation to the specimen;
11 (v) the specimen is disposed of under section 449;
12 the specimen is forfeited to the Commonwealth at the end of that
13 period.
- 14 (2) Subsection (1) has effect only to the extent (if any) to which it
15 gives effect to paragraph 1(b) of Article VIII of CITES.

16 **444J Forfeiture of specimen by consent etc.**

- 17 (1) If:
18 (a) a specimen is seized under section 444A; and
19 (b) the owner of the specimen agrees to transfer ownership of the
20 specimen to the Commonwealth, either:
21 (i) unconditionally; or
22 (ii) in the event that a future contingency happens; and
23 (c) if subparagraph (b)(ii) applies—that contingency happens;
24 then:
25 (d) the specimen becomes the property of the Commonwealth;
26 and
27 (e) the provisions of this Part relating to forfeiture apply as if the
28 specimen had been forfeited to the Commonwealth under this
29 Act.
- 30 (2) If:
31 (a) a specimen is seized under section 444A; and
32 (b) the owner of the specimen agrees to transfer ownership of the
33 specimen to the Commonwealth in the event that a future
34 contingency happens;
35 the Secretary may retain the specimen:
-

- 1 (c) until the specimen becomes the property of the
2 Commonwealth; or
3 (d) if the specimen does not become the property of the
4 Commonwealth—until the occurrence of the last day on
5 which that contingency could have happened.
- 6 (3) Subsection (2) has effect despite anything in section 444G.

7 **444K Forfeiture of specimen by order of a civil court**

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

14 **29 After subsection 450(1)**

- 15 Insert:
16 (1A) If a court convicts a person of an offence against Part 13A, the
17 court must order the forfeiture to the Commonwealth of any
18 specimen used or otherwise involved in the commission of the
19 offence.
20 Note: Part 13A deals with the international movement of wildlife specimens.

21 **30 Subsection 450(2)**

- 22 After “(1)”, insert “or (1A)”.

23 **31 Subsection 450(2)**

- 24 After “thing”, insert “or specimen”.

25 **32 At the end of section 451**

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

1 **32A Paragraph 489(1)(a)**

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

3 **32B Paragraph 489(2A)(a)**

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

5 **33 At the end of section 517**

6 Add:

7 (3) A determination does not apply for the purposes of:

8 (a) Part 13A; or

9 (b) the definitions of *CITES I species*, *CITES II species* and
10 *CITES III species* in section 528.

11 (4) Subsection (3) does not affect the meaning of the expression *listed*
12 *threatened species* when used in Part 13A.

13 **34 At the end of section 520**

14 Add:

15 (6) The regulations may prohibit or regulate the export from an
16 external Territory to Australia or another external Territory of:

17 (a) CITES specimens; and

18 (b) regulated native specimens.

19 (7) The regulations may prohibit or regulate the import into an external
20 Territory from Australia or another external Territory of:

21 (a) CITES specimens; and

22 (b) regulated live specimens.

23 (8) The regulations may prohibit or regulate the possession in an
24 external Territory of:

25 (a) specimens that have been imported into that Territory in
26 contravention of regulations made for the purposes of
27 subsection (7); or

28 (b) the progeny of such specimens.

29 **35 At the end of section 522B**

30 Add:

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

2 **36 At the end of section 523**

3 Add:

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

5 **36A After section 523**

6 Insert:

7 **523A Management plans**

8 (1) This section applies to an action that is the making or
9 implementation of a plan of management (however described).

10 (2) To avoid doubt, the impacts of the action include the impacts of
11 any action that is likely to be authorised by or under, or otherwise
12 taken in accordance with, the plan of management.

13 **37 At the end of Division 1 of Part 23**

14 Add:

15 **Subdivision E—Specimens**

16 **527A Specimens**

17 (1) For the purposes of this Act, a *specimen* is:

18 (a) an animal; or

19 (b) animal reproductive material; or

20 (c) the skin, feathers, horns, shell or any other part of an animal;
21 or

22 (d) any article wholly produced by or from, or otherwise wholly
23 derived from, a single animal; or

24 (e) a plant; or

25 (f) plant reproductive material; or

- 1 (g) any part of a plant; or
2 (h) any article wholly produced by or from, or otherwise wholly
3 derived from, a single plant.
- 4 (2) However, a fossil, or a mineralised deposit, is not a *specimen* for
5 the purposes of this Act.
- 6 (3) In any provision of this Act, references to a *specimen* are to be
7 read as including references to an article that consists of, or is
8 derived from:
- 9 (a) a specimen and material other than a specimen; or
10 (b) 2 or more specimens; or
11 (c) 2 or more specimens and material other than a specimen.
- 12 (4) If an article consists of, or is derived from, 2 or more specimens,
13 either with or without any material other than a specimen, then this
14 Act applies to and in relation to that article separately in so far as it
15 consists of, or is derived from, each of those specimens.
- 16 (5) For the purposes of this Act:
- 17 (a) if a live animal (other than animal reproductive material) that
18 was bred in captivity dies, the dead animal and specimens
19 derived from the dead animal are taken to be specimens
20 derived from that live animal; and
- 21 (b) if a live plant (other than plant reproductive material) that
22 was artificially propagated dies, the dead plant and
23 specimens derived from the dead plant are taken to be
24 specimens derived from that live plant; and
- 25 (c) a specimen covered by paragraph (1)(b), (c) or (d) is taken to
26 be derived from the animal concerned; and
- 27 (d) a specimen covered by paragraph (1)(f), (g) or (h) is taken to
28 be derived from the plant concerned; and
- 29 (e) if a specimen is derived from an animal that belongs to a
30 particular species or taxon, the specimen is taken to belong to
31 that species or taxon; and
- 32 (f) if a specimen is derived from a plant that belongs to a
33 particular species or taxon, the specimen is taken to belong to
34 that species or taxon.
- 35 (6) In this section:
-

1 *this Act* does not include sections 356 and 390E.

2 **527B Breeding in captivity**

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

- 7 (a) any live animal; or
8 (b) any live animal of that kind; or
9 (c) any live animal included in a class of live animals that
10 includes live animals of that kind;
11 would constitute breeding in captivity.

12 **527C Artificial propagation**

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

- 17 (a) any live plant; or
18 (b) any live plant of that kind; or
19 (c) any live plant included in a class of live plants that includes
20 live plants of that kind;
21 would constitute artificial propagation.

22 **527D Things represented to be CITES specimens**

- 23 (1) For the purposes of this Act, if a thing is represented by an
24 accompanying document, the package or a mark or label, or from
25 any other circumstances, to be:
26 (a) the skin, feathers, horns, shell or any other part of a CITES
27 listed animal; or
28 (b) part of a CITES listed plant; or
29 (c) reproductive material from a CITES listed animal or a CITES
30 listed plant; or
31 (d) an article produced by or from, or derived from, one or more
32 CITES listed animals or one or more CITES listed plants,
33 whether with or without any other material;
-

1 then the thing is taken to be a CITES specimen.

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

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

9 (3) In this section:

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

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

14 *export* has the same meaning as in Part 13A.

15 *import* has the same meaning as in Part 13A.

16 **38 Section 528**

17 Insert:

18 *animal reproductive material* means:

- 19 (a) an embryo, an egg or sperm of an animal; or
20 (b) any other part, or product, of an animal from which another
21 animal could be produced.

22 **39 Section 528**

23 Insert:

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

26 **40 Section 528**

27 Insert:

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

30 **41 Section 528 (definition of CITES)**

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

Part 1 Amendments relating to wildlife

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

4 **42 Section 528**

5 Insert:

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

9 **43 Section 528**

10 Insert:

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

14 **44 Section 528**

15 Insert:

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

19 **45 Section 528**

20 Insert:

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

24 **46 Section 528**

25 Insert:

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

29 **47 Section 528**

30 Insert:

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

4 **48 Section 528**

5 Insert:

6 **CITES specimen** means:
7 (a) a CITES I specimen; or
8 (b) a CITES II specimen; or
9 (c) a CITES III specimen.

10 **49 Section 528**

11 Insert:

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

14 **50 Section 528**

15 Insert:

16 **disease** means:
17 (a) a disease, parasite or pest that, for the purposes of the
18 *Quarantine Act 1908*, is a disease in relation to animals; or
19 (b) a disease, pest or plant that, for the purposes of that Act, is a
20 disease in relation to plants.

21 **51 Section 528**

22 Insert:

23 **export**, in relation to a cetacean, means:
24 (a) export from Australia or from an external Territory; or
25 (b) export from the sea;
26 but does not include:
27 (c) export from Australia to an external Territory; or
28 (d) export from an external Territory to Australia; or
29 (e) export from an external Territory to another external
30 Territory.

1 **52 Section 528**

2 Insert:

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

7 **53 Section 528**

8 Insert:

9 *live animal* includes animal reproductive material.

10 **54 Section 528**

11 Insert:

12 *live plant* includes plant reproductive material.

13 **55 Section 528**

14 Insert:

15 *native amphibian* means an amphibian of a native species.

16 **56 Section 528**

17 Insert:

18 *native animal* means an animal of a native species.

19 **57 Section 528**

20 Insert:

21 *native bird* means a bird of a native species.

22 **58 Section 528**

23 Insert:

24 *native mammal* means a mammal of a native species.

25 **59 Section 528**

26 Insert:

1 *native plant* means a plant of a native species.

2 **60 Section 528**

3 Insert:

4 *native reptile* means a reptile of a native species.

5 **61 Section 528**

6 Insert:

7 *progeny* includes:

- 8 (a) in relation to an animal—any animal reproductive material of
9 that animal or of any progeny of that animal; and
10 (b) in relation to a plant—any plant reproductive material of that
11 plant or of any progeny of that plant; and
12 (c) in relation to a live animal that is animal reproductive
13 material—any animal resulting from that material or any
14 progeny of such animal; and
15 (d) in relation to a live plant that is plant reproductive material—
16 any plant resulting from that material or any progeny of such
17 plant.

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

21 **62 Section 528**

22 Insert:

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

24 **63 Section 528**

25 Insert:

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

28 **64 Section 528 (after paragraph (c) of the definition of**
29 ***species*)**

30 Insert:

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

3 **65 Section 528 (paragraph (d) of the definition of *species*)**

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

5 **66 Section 528 (at the end of the definition of *species*, before
6 the note)**

7 Add:

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

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

13 **67 Section 528**

14 Insert:

15 *specimen* has the meaning given by section 527A.

16 **68 Section 528**

17 Insert:

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

20 **69 Section 528**

21 Insert:

22 *wildlife* means:

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

1

2

Part 2—Transitional provisions relating to wildlife

3

70 Transitional—applications pending immediately before this item commenced

4

5

(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:

6

7

(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

8

9

10

11

(b) the application was not withdrawn before that commencement; and

12

13

(c) the permit or authority was neither granted, nor refused, before that commencement.

14

15

(2) If:

16

(a) the pending application is an application for a permit or authority to export or import a CITES specimen; and

17

18

(b) within 28 days after the commencement of this item, the person pays the fee prescribed by the regulations;

19

20

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.

21

22

23

24

25

26

(3) If:

27

(a) the pending application is an application for a permit or authority to export a regulated native specimen (other than a CITES specimen); and

28

29

30

(b) within 28 days after the commencement of this item, the person pays the fee prescribed by the regulations;

31

32

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.

33

34

35

36

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

Part 2 Transitional provisions relating to wildlife

- 1 (4) If:
- 2 (a) the pending application is an application for a permit or
- 3 authority to import a regulated live specimen (other than a
- 4 CITES specimen); and
- 5 (b) within 28 days after the commencement of this item, the
- 6 person pays the fee prescribed by the regulations;
- 7 the person is taken, on the day on which the fee is paid, to have
- 8 made an application (the *fresh application*) under section 303EL
- 9 of the *Environment Protection and Biodiversity Conservation Act*
- 10 *1999* for a permit to be issued under section 303EN of that Act
- 11 authorising the import of the specimen.
- 12 (5) If information was given to the Minister in connection with the pending
- 13 application, the information is taken to have been given to the Minister
- 14 in connection with the fresh application.
- 15 (6) At the same time as the fee was paid, or at any time during the 28-day
- 16 period beginning on the day on which the fee was paid, the person may:
- 17 (a) give the Minister a written notice:
- 18 (i) setting out information relevant to the fresh application;
- 19 and
- 20 (ii) requesting the Minister to have regard to the
- 21 information when dealing with the fresh application; or
- 22 (b) give the Minister a written notice requesting the Minister to
- 23 consider the fresh application as soon as practicable.
- 24 (7) If the person gives the Minister a notice under paragraph (6)(a), the
- 25 Minister must have regard to the information when considering the
- 26 fresh application.
- 27 (8) The Minister must not consider the fresh application until whichever is
- 28 the earlier of the following days:
- 29 (a) the first day after the end of the 28-day period beginning on
- 30 the day on which the fee was paid;
- 31 (b) if the person gives the Minister a notice under
- 32 paragraph (6)(a) or (b)—the day on which the notice was
- 33 given.
- 34 (9) For the purposes of the application of sections 303CF, 303CI, 303DF,
- 35 303DH, 303EM, 303EO and 303GB of the *Environment Protection and*
- 36 *Biodiversity Conservation Act 1999* to the fresh application, the period
-

-
- 1 of 40 business days is to be increased by one business day for each
2 business day in the period beginning on the day on which the fee was
3 paid and ending on whichever is the earlier of the following days:
- 4 (a) the last day of the 28-day period beginning on the day on
5 which the fee was paid;
- 6 (b) if the person gives the Minister a notice under
7 paragraph (6)(a) or (b)—the day on which the notice was
8 given.
- 9 (10) If, before the commencement of this item, the person paid a fee in
10 respect of the grant of the permit or authority under the *Wildlife*
11 *Protection (Regulation of Exports and Imports) Act 1982*:
- 12 (a) the Commonwealth must refund the fee unless the person
13 elects to treat the payment as fully discharging the person's
14 liability to pay the fee for the fresh application worked out
15 under whichever of subitem (2), (3) or (4) is applicable; and
16 (b) if, under paragraph (a), the person elects to treat a payment as
17 fully discharging the person's liability to pay a fee under
18 whichever of subitem (2), (3) or (4) is applicable, the fee is
19 taken to have been paid when the election was made.
- 20 (11) Subsections 303CE(2), 303DE(2) and 303EL(2) of the *Environment*
21 *Protection and Biodiversity Conservation Act 1999* do not apply to the
22 fresh application.
- 23 (12) A fee under subitem (2) must not exceed the fee that would have been
24 payable under subsection 303CE(2) of the *Environment Protection and*
25 *Biodiversity Conservation Act 1999* if that subsection applied to the
26 fresh application.
- 27 (13) A fee under subitem (3) must not exceed the fee that would have been
28 payable under subsection 303DE(2) of the *Environment Protection and*
29 *Biodiversity Conservation Act 1999* if that subsection applied to the
30 fresh application.
- 31 (14) A fee under subitem (4) must not exceed the fee that would have been
32 payable under subsection 303EL(2) of the *Environment Protection and*
33 *Biodiversity Conservation Act 1999* if that subsection applied to the
34 fresh application.
- 35 (15) If, before the commencement of this item, any comments had been
36 given to the Minister in relation to the pending application in response
-

1 to a notice given under paragraph 44(1)(f) of the *Wildlife Protection*
2 *(Regulation of Exports and Imports) Act 1982*, those comments have
3 effect as if they had been given to the Minister in relation to the fresh
4 application in response to a notice given under subsection 303GB(7) of
5 the *Environment Protection and Biodiversity Conservation Act 1999*.

6 (16) The Governor-General may make regulations for the purposes of
7 subitem (2), (3) or (4).

8 (17) A fee provided for under subitem (2), (3) or (4) must be reasonably
9 related to the expenses incurred or to be incurred by the Commonwealth
10 in relation to the matters to which the fee relates and must not be such
11 as to amount to taxation.

12 (18) In this item:
13 *grant* includes give.

14 **71 Transitional—permits or authorities in force immediately**
15 **before this item commenced**

16 (1) For the purposes of this item, a permit or authority to export or to
17 import a specimen is an *old permit* or an *old authority* if:
18 (a) the permit or authority was granted or given to a person
19 under the *Wildlife Protection (Regulation of Exports and*
20 *Imports) Act 1982* (other than section 41 or 43A) before the
21 commencement of this item; and
22 (b) the permit or authority was in force immediately before that
23 commencement; and
24 (c) the specimen had not been exported or imported, as the case
25 may be, before that commencement.

26 (2) If the old permit or old authority authorised the export or import of a
27 CITES specimen, the *Environment Protection and Biodiversity*
28 *Conservation Act 1999* has effect as if:
29 (a) the old permit or old authority were a permit issued under
30 section 303CG of that Act authorising the export or import,
31 as the case may be, of the specimen; and
32 (b) the person were the holder of the section 303CG permit; and
33 (c) the section 303CG permit ceases to be in force when the old
34 permit or old authority would have ceased to be in force if
35 this Act had not been enacted (unless the section 303CG

-
- 1 permit is sooner cancelled under section 303GI of the
2 *Environment Protection and Biodiversity Conservation Act*
3 *1999*); and
- 4 (d) any conditions of the old permit or old authority were
5 conditions of the section 303CG permit; and
- 6 (e) a notice from the Designated Authority under paragraph
7 45(1)(b) of the *Wildlife Protection (Regulation of Exports*
8 *and Imports) Act 1982* in relation to the old permit or old
9 authority were a notice from the Secretary under paragraph
10 303GK(1)(b) of the *Environment Protection and Biodiversity*
11 *Conservation Act 1999* in relation to the section 303CG
12 permit.
- 13 (3) If the old permit or old authority authorised the export of a regulated
14 native specimen (other than a CITES specimen), the *Environment*
15 *Protection and Biodiversity Conservation Act 1999* has effect as if:
- 16 (a) the old permit or old authority were a permit issued under
17 section 303DG of that Act authorising the export of the
18 specimen; and
- 19 (b) the person were the holder of the section 303DG permit; and
- 20 (c) the section 303DG permit ceases to be in force when the old
21 permit or old authority would have ceased to be in force if
22 this Act had not been enacted (unless the section 303DG
23 permit is sooner cancelled under section 303GI of the
24 *Environment Protection and Biodiversity Conservation Act*
25 *1999*); and
- 26 (d) any conditions of the old permit or old authority were
27 conditions of the section 303DG permit; and
- 28 (e) a notice from the Designated Authority under paragraph
29 45(1)(b) of the *Wildlife Protection (Regulation of Exports*
30 *and Imports) Act 1982* in relation to the old permit or old
31 authority were a notice from the Secretary under paragraph
32 303GK(1)(b) of the *Environment Protection and Biodiversity*
33 *Conservation Act 1999* in relation to the section 303DG
34 permit.
- 35 (4) If the old permit or old authority authorised the import of a regulated
36 live specimen (other than a CITES specimen), the *Environment*
37 *Protection and Biodiversity Conservation Act 1999* has effect as if:
-

- 1 (a) the old permit or old authority were a permit issued under
2 section 303EN of that Act authorising the import of the
3 specimen; and
4 (b) the person were the holder of the section 303EN permit; and
5 (c) the section 303EN permit ceases to be in force when the old
6 permit or old authority would have ceased to be in force if
7 this Act had not been enacted (unless the section 303EN
8 permit is sooner cancelled under section 303GI of the
9 *Environment Protection and Biodiversity Conservation Act*
10 *1999*); and
11 (d) any conditions of the old permit or old authority were
12 conditions of the section 303EN permit.

13 **72 Transitional—section 303EU of the *Environment***
14 ***Protection and Biodiversity Conservation Act 1999***

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

29 **73 Transitional—section 303FN of the *Environment***
30 ***Protection and Biodiversity Conservation Act 1999***

- 31 (1) This item applies if:
- 32 (a) a declaration relating to specimens was in force under
33 subsection 10A(2) of the *Wildlife Protection (Regulation of*
34 *Exports and Imports) Act 1982* immediately before the
35 commencement of this item; and
-

-
- 1 (b) the declaration related to a particular operation.
- 2 (2) The *Environment Protection and Biodiversity Conservation Act 1999*
- 3 has effect, after the commencement of this item, as if:
- 4 (a) the declaration had been made under subsection 303FN(2) of
- 5 that Act; and
- 6 (b) the operation were a wildlife trade operation; and
- 7 (c) the declaration had provided that the operation is an
- 8 approved wildlife trade operation for the purposes of
- 9 section 303FN of that Act; and
- 10 (d) the period:
- 11 (i) beginning on the day on which the declaration took
- 12 effect; and
- 13 (ii) ending when the declaration would have ceased to be in
- 14 force if this Act had not been enacted;
- 15 were specified in the declaration in accordance with
- 16 subsection 303FT(4) the *Environment Protection and*
- 17 *Biodiversity Conservation Act 1999*.

18 **74 Transitional—section 303FO of the *Environment***

19 ***Protection and Biodiversity Conservation Act 1999***

- 20 (1) This item applies if a declaration relating to a program was in force
- 21 under subsection 10(1) of the *Wildlife Protection (Regulation of Exports*
- 22 *and Imports) Act 1982* immediately before the commencement of this
- 23 item.
- 24 (2) The *Environment Protection and Biodiversity Conservation Act 1999*
- 25 has effect, after the commencement of this item, as if:
- 26 (a) the declaration had been made under subsection 303FO(2) of
- 27 that Act; and
- 28 (b) the program were a plan; and
- 29 (c) each reference in the declaration to a program were a
- 30 reference to a plan; and
- 31 (d) each reference in the declaration to an approved management
- 32 program were a reference to an approved wildlife trade
- 33 management plan; and
- 34 (e) each reference in the declaration to the purposes of the
- 35 *Wildlife Protection (Regulation of Exports and Imports) Act*
- 36 *1982* were a reference to the purposes of section 303FO of

- 1 the *Environment Protection and Biodiversity Conservation*
2 *Act 1999*; and
3 (f) the period:
4 (i) beginning on the day on which the declaration took
5 effect; and
6 (ii) ending when the declaration would have ceased to be in
7 force if this Act had not been enacted;
8 were specified in the declaration in accordance with
9 subsection 303FT(4) the *Environment Protection and*
10 *Biodiversity Conservation Act 1999*.

11 **75 Transitional—section 303FR of the *Environment***
12 ***Protection and Biodiversity Conservation Act 1999***

- 13 (1) This item applies if:
14 (a) before the commencement of this item, the Minister
15 formulated a proposal to declare specimens under
16 section 10A of the *Wildlife Protection (Regulation of Exports*
17 *and Imports) Act 1982*; and
18 (b) before the commencement of this item, any comments had
19 been given to the Minister in relation to the proposal in
20 response to a notice given under section 9B of the *Wildlife*
21 *Protection (Regulation of Exports and Imports) Act 1982*;
22 and
23 (c) the proposal related to a particular operation; and
24 (d) the operation is a wildlife trade operation for the purposes of
25 section 303FN of the *Environment Protection and*
26 *Biodiversity Conservation Act 1999*; and
27 (e) after the commencement of this item, the Minister formulates
28 a proposal (the ***new proposal***) to declare the operation under
29 subsection 303FN(2) of the *Environment Protection and*
30 *Biodiversity Conservation Act 1999*.
- 31 (2) Those comments have effect as if they had been given to the Minister in
32 relation to the new proposal in response to a notice given under
33 subsection 303FR(1) of the *Environment Protection and Biodiversity*
34 *Conservation Act 1999*.

35 **76 Transitional—section 303FR of the *Environment***
36 ***Protection and Biodiversity Conservation Act 1999***

-
- 1 (1) This item applies if:
- 2 (a) before the commencement of this item, the Minister
- 3 formulated a proposal to declare a program under section 10
- 4 of the *Wildlife Protection (Regulation of Exports and*
- 5 *Imports) Act 1982*; and
- 6 (b) before the commencement of this item, any comments had
- 7 been given to the Minister in relation to the proposal in
- 8 response to a notice given under section 9B of the *Wildlife*
- 9 *Protection (Regulation of Exports and Imports) Act 1982*;
- 10 and
- 11 (c) the program is a plan; and
- 12 (d) after the commencement of this item, the Minister formulates
- 13 a proposal (the ***new proposal***) to declare the plan under
- 14 subsection 303FO(2) of the *Environment Protection and*
- 15 *Biodiversity Conservation Act 1999*.
- 16 (2) Those comments have effect as if they had been given to the Minister in
- 17 relation to the new proposal in response to a notice given under
- 18 subsection 303FR(1) of the *Environment Protection and Biodiversity*
- 19 *Conservation Act 1999*.

20 **77 Transitional—section 303FU of the *Environment***

21 ***Protection and Biodiversity Conservation Act 1999***

- 22 (1) This item applies if:
- 23 (a) a declaration relating to specimens was in force under
- 24 subsection 10A(3) of the *Wildlife Protection (Regulation of*
- 25 *Exports and Imports) Act 1982* immediately before the
- 26 commencement of this item; and
- 27 (b) the declaration related to a particular program.
- 28 (2) The *Environment Protection and Biodiversity Conservation Act 1999*
- 29 has effect, after the commencement of this item, as if the program were
- 30 a program that, under regulations made for the purposes of
- 31 section 303FU of that Act, is taken to be an approved commercial
- 32 import program.
- 33 (3) Subitem (2) ceases to have effect in relation to the program at:
- 34 (a) the time when the declaration would have ceased to be in
- 35 force if this Act had not been enacted; or

- 1 (b) if an earlier time is specified in the regulations in relation to
2 the program—that earlier time.
- 3 (4) Subitem (2) does not prevent the program from becoming an approved
4 commercial import program under regulations made for the purposes of
5 section 303FU of the *Environment Protection and Biodiversity*
6 *Conservation Act 1999* at any time after subitem (2) ceases to have
7 effect in relation to that program.
- 8 (5) The Governor-General may make regulations for the purposes of
9 subitem (3).

10 **78 Transitional—section 303GS of the *Environment***
11 ***Protection and Biodiversity Conservation Act 1999***

- 12 (1) This item applies if an appointment was in force under section 75 of the
13 *Wildlife Protection (Regulation of Exports and Imports) Act 1982*
14 immediately before the commencement of this item.
- 15 (2) The *Environment Protection and Biodiversity Conservation Act 1999*
16 has effect, after the commencement of this item, as if:
- 17 (a) the appointment had been made under the corresponding
18 provision of section 303GS of the *Environment Protection*
19 *and Biodiversity Conservation Act 1999*; and
- 20 (b) each reference in the appointment to the purposes of the
21 *Wildlife Protection (Regulation of Exports and Imports) Act*
22 *1982* were a reference to the purposes of Part 13A of the
23 *Environment Protection and Biodiversity Conservation Act*
24 *1999*.

25 **79 Transitional—section 303GX of the *Environment***
26 ***Protection and Biodiversity Conservation Act 1999***

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

1 (b) each reference in the declaration to section 8A of the *Wildlife*
2 *Protection (Regulation of Exports and Imports) Act 1982*
3 were a reference to section 303GX of the *Environment*
4 *Protection and Biodiversity Conservation Act 1999*.

5 **80 Transitional—section 396 of the *Environment Protection***
6 ***and Biodiversity Conservation Act 1999***

7 (1) This item applies if an appointment or determination was in force under
8 subsection 58(1) or (2) of the *Wildlife Protection (Regulation of Exports and*
9 *Imports) Act 1982* immediately before the commencement of this
10 item.

11 (2) The *Environment Protection and Biodiversity Conservation Act 1999*
12 has effect, after the commencement of this item, as if:

13 (a) the appointment or determination had been made under the
14 corresponding provision of section 396 of the *Environment*
15 *Protection and Biodiversity Conservation Act 1999*; and

16 (b) the appointment or determination was revoked at the end of
17 the 6-month period beginning at the commencement of this
18 item; and

19 (c) in the case of a determination—each reference in the
20 determination to particular powers conferred on an inspector
21 by the *Wildlife Protection (Regulation of Exports and*
22 *Imports) Act 1982* were a reference to powers conferred on
23 an inspector by the corresponding provisions of the
24 *Environment Protection and Biodiversity Conservation Act*
25 *1999*.

26 (3) This item does not prevent the Minister, at the end of that 6-month
27 period, from making a fresh appointment or determination under
28 section 396 of the *Environment Protection and Biodiversity*
29 *Conservation Act 1999* in terms corresponding to the first-mentioned
30 appointment or determination.

31 **81 Transitional—Part 17 of the *Environment Protection and***
32 ***Biodiversity Conservation Act 1999***

33 (1) Part 17 of the *Environment Protection and Biodiversity Conservation*
34 *Act 1999* applies to an offence against the *Wildlife Protection*
35 *(Regulation of Exports and Imports) Act 1982* in a corresponding way

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

Part 2 Transitional provisions relating to wildlife

1 to the way in which it applies to an offence against Part 13A of the
2 *Environment Protection and Biodiversity Conservation Act 1999*.

3 (2) The *Environment Protection and Biodiversity Conservation Act 1999*
4 has effect, after the commencement of this item, as if anything done
5 under Part III of the *Wildlife Protection (Regulation of Exports and*
6 *Imports) Act 1982* (other than section 58 or 60) before the
7 commencement of this item had been done under the corresponding
8 provision of Part 17 of the *Environment Protection and Biodiversity*
9 *Conservation Act 1999*.

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

17 **82 Transitional—regulations**

18 (1) The regulations may make provision for matters of a transitional nature
19 relating to the amendments made by Part 1 of this Schedule.

20 (2) The Governor-General may make regulations for the purposes of
21 subitem (1).

1

2 Part 3—Other amendments

2

3 83 At the end of Division 1 of Part 3

3

4 Add:

4

5 Subdivision H—Actions that are taken to be covered by this 6 Division

5

6

7 25A Actions that are taken to be covered by this Division

7

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

8

9

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

10

11

- 12 (2) To avoid doubt, if, as a result of a regulation made for the purposes
13 of subsection (1), a regulatory provision applies to an action, the
14 action is taken to be described in the provision.

12

13

14

- 15 (3) Regulations made for the purposes of subsection (1) may only
16 specify actions:

15

16

17 (a) taken in a Territory; or

17

18 (b) taken in a Commonwealth marine area; or

18

19 (c) taken for the purpose of trade or commerce:

19

20 (i) between Australia and another country; or

20

21 (ii) between 2 States; or

21

22 (iii) between a State and a Territory; or

22

23 (iv) between 2 Territories; or

23

24 (d) taken by a constitutional corporation; or

24

25 (e) whose regulation is appropriate and adapted to give effect to
26 Australia's obligations under an agreement with one or more
27 other countries.

25

26

27

- 28 (4) Regulations specifying an action whose regulation is appropriate
29 and adapted to give effect to Australia's obligations under an
30 agreement with one or more countries must specify the agreement.

28

29

30

- 31 (5) In this section:

31

- 1 *regulatory provision* means:
- 2 (a) a civil penalty provision set out in this Division; or
- 3 (b) a provision of this Division that creates an offence.

4 **Subdivision I—Evidentiary certificates**

5 **25B Evidentiary certificates**

6 *Contravention*

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

19 *Proposal*

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

1 **25C Certificate to be given to person**

2 As soon as practicable after issuing a certificate under subsection
3 25B(1) or (4), the Minister must give a copy of the certificate to the
4 person concerned.

5 **25D Evidentiary effect of certificate**

6 (1) In any proceedings under section 475 or 481, a certificate under
7 subsection 25B(1) is prima facie evidence of the matters in the
8 certificate.

9 (2) In any proceedings under section 475, a certificate under
10 subsection 25B(4) is prima facie evidence of the matters in the
11 certificate.

12 (3) A document purporting to be a certificate under subsection 25B(1)
13 or (4) must, unless the contrary is established, be taken to be such a
14 certificate and to have been properly issued.

15 (4) The Minister may certify that a document is a copy of a certificate
16 under subsection 25B(1) or (4).

17 (5) This section applies to the certified copy as if it were the original.

18 **25E Variation of certificate**

19 (1) The Minister may vary a certificate under subsection 25B(1) or (4)
20 so long as the variation is of a minor nature.

21 (2) If a certificate is varied, the Minister must give the person
22 concerned a written notice setting out the terms of the variation.

23 **25F Revocation of certificate**

24 (1) The Minister may revoke a certificate under subsection 25B(1) or
25 (4).

26 (2) If a certificate is revoked, the Minister must give the person
27 concerned a written notice stating that the certificate has been
28 revoked.

29 **83A At the end of Part 4**

1 Add:

2 **Division 6—Actions with prior authorisation**

3 **43A Actions with prior authorisation**

4 (1) A person may take an action described in a provision of Part 3
5 without an approval under Part 9 for the purposes of the provision
6 if:

- 7 (a) the action consists of a use of land, sea or seabed; and
8 (b) the action was specifically authorised under a law of the
9 Commonwealth, a State or a self-governing Territory before
10 the commencement of this Act; and
11 (c) immediately before the commencement of this Act, no
12 further environmental authorisation was necessary to allow
13 the action to be taken lawfully.

14 (2) In this section:

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

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

22 **43B Actions which are lawful continuations of use of land etc.**

23 (1) A person may take an action described in a provision of Part 3
24 without an approval under Part 9 for the purposes of the provision
25 if the action is a lawful continuation of a use of land, sea or seabed
26 that was occurring immediately before the commencement of this
27 Act. For this purpose, an enlargement, expansion or intensification
28 of use is not a *continuation* of a use.

29 (2) However, subsection (1) does not apply to an action that was
30 specifically authorised under a law of the Commonwealth, a State
31 or a self-governing Territory before the commencement of this Act.

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

1 **84 At the end of section 70**

2 Add:

3 *Deemed referral of proposal*

4 (3) If:

- 5 (a) the Minister has made a request under subsection (1); and
6 (b) the period for compliance with the request has ended; and
7 (c) the requested person has not referred the proposal to the
8 Minister in accordance with the request;

9 the Minister may, within 20 business days after the end of that
10 period, determine in writing that this Act has effect as if:

- 11 (d) if paragraph (1)(a) applies—the requested person had
12 referred the proposal to the Minister under subsection 68(1)
13 at the time the determination was made; or
14 (e) if paragraph (1)(b) applies—the requested person had
15 referred the proposal to the Minister under subsection 69(1)
16 at the time the determination was made.

17 (4) A determination under subsection (3) has effect accordingly.

18 (5) A copy of a determination under subsection (3) is to be given to the
19 requested person.

20 (6) Subsection 68(3) and section 72 do not apply to a referral covered
21 by subsection (3) of this section.

22 (7) Despite subsection 74(4), section 74 applies to a referral covered
23 by subsection (3) of this section.

24 (8) Subsection 74(3) applies to a referral covered by subsection (3) of
25 this section as if the reference in paragraph 74(3)(a) to the referral
26 were a reference to the determination concerned.

27 **84A Subsection 146(1)**

28 Repeal the subsection, substitute:

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

1 **84B Subsection 146(2) (note 1)**

2 Omit “relevant”.

3 **84C Paragraph 148(1)(a)**

4 Repeal the paragraph, substitute:

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

8 **84D Paragraph 148(2)(a)**

9 Repeal the paragraph, substitute:

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

14 **84E Paragraph 149(a)**

15 Repeal the paragraph, substitute:

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

20 **84F Subsection 150(2)**

21 Repeal the subsection, substitute:

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

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

29 **84G Subsection 150(3)**

30 Repeal the subsection, substitute:

1 *All fisheries to be covered by agreements in 5 years*

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

8 **84H Subsection 151(2)**

9 Repeal the subsection, substitute:

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

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

17 **84J Subsection 516A(6)**

18 Omit "actions" (wherever occurring), substitute "activities".

19 **84K At the end of section 516A**

20 Add:

21 (7) In subsection (6):

22 *activities* includes:

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

27 **84L Section 522B**

28 Repeal the section.

29 **84M Subsection 523(2)**

30 Repeal the subsection.

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

Part 3 Other amendments

1

85 Section 524B

2

Repeal the section.

3

85A Section 528 (definition of *continuation*)

4

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

5

86 Section 528 (definition of *significant*)

6

Repeal the definition.

1
2 **Schedule 2—Repeal of the Wildlife Protection**
3 **(Regulation of Exports and Imports)**
4 **Act 1982**
5

6 ***Wildlife Protection (Regulation of Exports and Imports) Act***
7 ***1982***

8 **1 The whole of the Act**

9 Repeal the Act.

10 **2 Transitional—section 75 of the *Wildlife Protection***
11 ***(Regulation of Exports and Imports) Act 1982***

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

17 **3 Transitional—section 75A of the *Wildlife Protection***
18 ***(Regulation of Exports and Imports) Act 1982***

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

24 **4 Transitional—regulations**

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

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Schedule 3—Amendment of other Acts

4

Biological Control Act 1984

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1 Paragraph 5(2)(b)

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

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