



Wildlife Protection (Regulation of Exports and Imports) Act 1982

Act No. 149 of 1982 as amended

[Note: This Act is repealed by Act No. 82 of 2001]

Volume 1 includes: Table of Contents
Sections 1 – 82
Schedules

This compilation was prepared on 11 January 2002
taking into account amendments up to Act No. 82 of 2001

[Note: Schedules containing amendments deemed to be made by Declaration (which are notified in the *Gazette*) have been shown separately in Note 2]

The text of any of those amendments not in force
on that date is appended in the Notes section

Volume 2 includes: Notes

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Contents

Part I—Preliminary	1
1 Short title [see Note 1]	1
2 Commencement [see Note 1]	1
3 Object of Act.....	1
4 Interpretation.....	1
5 Saving of other laws.....	12
6 Application of Act.....	12
7 Act to bind Crown.....	13
7A Application of the <i>Criminal Code</i>	13
8 Act not to apply to certain specimens.....	13
8A Act not to apply to certain specimens used by traditional inhabitants.....	15
9 Variation of Schedules [see Note 2].....	17
9A Register of persons concerned about amendments of Schedule 6 or declarations of management programs or controlled specimens.....	18
9B Views of concerned persons to be considered before making declarations	19
10 Approved management programs.....	20
10A Controlled specimens	22
11 Approved institutions	24
12 Approved zoological organizations	25
13 Inter zoological gardens transfer	26
14 Breeding in captivity.....	27
15 Artificial propagation.....	27
16 Export of household pets—native Australian animals.....	28
16A Export of household pets—other animals	29
17 Designated Authority	30
18 Constitution of Designated Authority	30
19 Remuneration and allowances of Designated Authority.....	30
20 Acting Designated Authority	31
Part II—Regulation of export and import of specimens	33
Division 1—Prohibition of certain exports and imports	33
21 Certain exports prohibited.....	33
22 Certain imports prohibited	33
Division 2—Permits to export or to import specimens	35
23 Application for permit.....	35
24 Grant of permit.....	36

Division 3—Requirements for permits to export specimens	38
25 Permits to export not to be granted if detrimental to survival of kind of animals or plants.....	38
26 Permits to export not to be granted in respect of specimens unlawfully obtained etc.	38
27 Requirements for permits to export live animals and live plants.....	38
28 Requirements for permits to export—Schedule 1.....	39
29 Requirements for permits to export—Schedule 2.....	40
30 Requirements for permits to export—Schedule 3.....	41
31 Requirements for permits to export—native Australian animals and plants.....	41
32 Permits to re-export.....	43
Division 4—Requirements for permits to import specimens	45
33 Permits to import not to be granted if detrimental to survival of kind of animals or plants.....	45
34 Requirements for permits to import live animals and live plants.....	45
35 Requirements for permits to import certain live animals and live plants.....	45
36 Requirements for permits to import—Schedule 1	46
37 Requirements for permits to import—Schedule 2	47
38 Requirements for permits to import—Schedule 3	49
38A Requirements for permits to import—Schedule 2A	49
Division 5—Authorities to export or to import specimens	51
39 Application for authority.....	51
40 Register of scientific organizations	51
41 Authority to export or import scientific specimens	52
42 Authority to export or import artificially propagated plants	55
42A Authority to export certain specimens.....	56
42B Authority to import certain specimens	58
43 Authority to export or import for the purposes of travelling circuses etc.....	60
43A Authority for Designated Authority to export or import specimens.....	63
44 Authority to export or import in exceptional circumstances.....	64
Division 6—Permits and authorities	66
45 Permit or authority to be produced.....	66
46 Revocation etc. of permits and authorities	67
47 Conditions in respect of permits and authorities	68

47A	Export of live native Australian animals by way of inter zoological gardens transfer—special conditions in respect of permits or authorities	68
48	Compliance with conditions of permit or authority	69
49	Applications to Minister to vary operation of permits or authorities	69
50	Conditions relating to imported animals	70
51	Conditions relating to imported plants	71
Division 6A—Marking of certain specimens for the purposes of identification		73
51A	Object.....	73
51B	Specimens to which Division applies.....	73
51C	Extended meaning of <i>marking</i>	73
51D	Designated Authority may make determinations about marking of specimens	74
51E	Offences.....	75
51F	Concurrent operation of State and Territory laws	76
Division 7—Miscellaneous		77
52	Matters published in <i>Gazette</i>	77
53	Possession of illegally imported specimens	78
53A	Cruelty—import or export of animals	79
53B	Imports of specimens contrary to the laws of a foreign country.....	80
Part IIA—Regulation of the possession of classified exotic birds		82
Division 1—Object		82
57A	Object.....	82
Division 2—Prohibition of the unregistered possession of classified exotic birds etc.		83
57B	Unregistered possession of classified exotic birds	83
57C	Unlawful transfers of possession of classified exotic birds	84
Division 3—Registration certificates		86
57D	Application for registration certificate	86
57E	Joint applications	86
57F	Form of application etc.	86
57G	Further information.....	86
57H	Grant of registration certificate	86
57J	Refusal of registration certificate	87
57K	Notification of refusal of application	88
57L	Duration of registration certificate	88

57M	Conditions of registration certificate.....	89
57N	Offence of contravening conditions	90
57P	Surrender of registration certificate.....	90
57Q	Cancellation of registration certificate	90
Division 4—Operation of State and Territory laws		92
57R	Concurrent operation of State and Territory laws	92
Division 5—Partnerships		93
57S	Treatment of partnerships	93
57T	Giving of documents to partnerships.....	93
Division 6—Exotic Birds Committee		94
Subdivision A—Establishment of Committee etc.		94
57U	Exotic Birds Committee.....	94
57V	Functions of Committee.....	94
57W	Appointment of members.....	95
Subdivision B—Administrative provisions		96
57X	Period of appointment.....	96
57Y	Basis on which members hold office.....	96
57Z	Remuneration and allowances.....	97
57ZA	Leave of absence.....	97
57ZB	Acting appointments	98
57ZC	Disclosure of interests.....	99
57ZD	Resignation	99
57ZE	Termination of appointment.....	99
57ZF	Other terms and conditions	100
Subdivision C—Operations of the Exotic Birds Committee		100
57ZG	Meetings of the Exotic Birds Committee	100
57ZH	Resolutions without meetings	102
Subdivision D—Other committees		103
57ZI	Committees established by the Exotic Birds Committee.....	103
57ZJ	Disclosure of interests	104
57ZK	Committee established by Exotic Birds Committee— member’s appointment to be terminated for non-disclosure of interests	105
Division 7—Monitoring of compliance		106
57ZL	Monitoring powers.....	106
57ZM	Monitoring searches—occupier gives consent	106
57ZN	Monitoring warrants.....	108
57ZO	Details of monitoring warrant to be given to occupier etc.....	109
57ZP	Occupier entitled to be present during search.....	109

57ZQ	Announcement before entry	109
Part III—Enforcement		111
Division 1—Inspectors		111
58	Appointment of inspectors	111
59	Inspectors <i>ex officio</i>	111
60	Arrangements for State and Territory officers to be inspectors	111
61	Identity cards.....	112
Division 2—Boarding of vessels etc. and access to premises by consent		114
62	Boarding of vessels etc. by inspectors.....	114
63	Access to premises by consent	118
64	Functions of inspectors—sections 62 and 63	118
Division 3—Search warrants		120
64A	When search warrants can be issued	120
64B	The things that are authorised by a search warrant.....	123
64C	Availability of assistance, and use of force, in executing a warrant.....	125
64D	Details of warrant to be given to occupier etc.	126
64E	Specific powers available to inspectors executing warrant	126
64F	Use of equipment to examine or process things	127
64G	Use of electronic equipment at premises.....	128
64H	Compensation for damage to electronic equipment.....	130
64J	Copies of seized things to be provided.....	130
64K	Occupier entitled to be present during search.....	131
64L	Receipts for things seized under warrant.....	131
64M	Warrants by telephone or other electronic means.....	132
64N	Restrictions on personal searches.....	133
64P	When a thing is in the possession of a person	133
Division 4—Stopping and searching conveyances		135
64Q	Searches of conveyances without warrant in emergency situations.....	135
64R	How an inspector exercises a power under section 64Q.....	135
Division 5—Arrest and related matters		137
65	Powers of arrest of inspectors	137
65A	Power to conduct a frisk search of an arrested person.....	137
65B	Power to conduct an ordinary search of an arrested person.....	138
65C	Power to conduct search of arrested person’s premises.....	138

Division 6—Miscellaneous provisions about searches, entry to premises, warrants etc.	139
65D Conduct of ordinary searches and frisk searches.....	139
65E Announcement before entry	139
65F Offence of making false statements in warrants.....	139
65G Offences relating to telephone warrants	139
65H Retention of things which are seized.....	140
65J Magistrate may permit a thing to be retained.....	141
65K Law relating to legal professional privilege not affected.....	142
65L Other laws about search, arrest etc. not affected	142
66 Persons to assist inspectors	142
Division 7—Power to search baggage etc.	144
67 Power to search baggage etc.	144
Division 8—Power to ask questions about specimens	146
69 Inspector may ask questions about the nature or origin of specimens.....	146
Division 9—Power to ask for names and addresses	148
69A Inspector may ask a person to give the person’s name and address	148
Division 10—Seizure and forfeiture etc.	149
Subdivision A—Seizure of specimens involved in a contravention of this Act or the regulations	149
69B Seizure of specimens involved in a contravention of this Act or the regulations.....	149
69C Notice about seizure.....	149
69D Applications for return of specimen.....	150
69E Court action for return of specimen	150
69F Consignment of specimen with consent of owner	151
69G Release of specimen.....	151
69H Retention of specimen.....	152
69J Forfeiture of specimen after end of retention period	153
69K Forfeiture of specimen by consent etc.....	153
69L Forfeiture of specimen by order of a civil court	154
Subdivision B—Seizure of goods other than specimens	154
69M Seizure of goods other than specimens.....	154
69N Retention of goods that have been seized.....	155
69P Disposal of goods if owner cannot be located	156
69Q Release of goods that have been seized.....	156

Subdivision C—Immediate disposal of seized items	156
69R Immediate disposal of seized items.....	156
Subdivision D—Court-ordered forfeiture	158
69S Court-ordered forfeiture.....	158
Subdivision E—Dealings in forfeited items	158
69T Dealings in forfeited items.....	158
Subdivision F—Delivery of forfeited items to the Commonwealth	159
69U Delivery of forfeited items to the Commonwealth.....	159
Subdivision G—Keeping of specimens that have been seized	159
69V Keeping of specimens retained under this Part.....	159
69W Recovery of costs of storing or keeping specimens.....	159
Subdivision H—Rescuing goods	160
71A Rescuing goods.....	160
Part IV—Miscellaneous	162
72 False statements.....	162
74 Evidence.....	163
75 Evidence of examiner.....	163
75A Protection of witness.....	164
76 Delegation by Minister.....	165
76A Delegation by Designated Authority.....	165
77 Arrangements by Minister and Designated Authority.....	166
78 Co-operation with States and Territories.....	167
79 Fees.....	169
80 Review on decisions.....	169
81 Regulations.....	172
82 Customs (Endangered Species) Regulations.....	172

Schedule 1—Specimens the export or import of which, otherwise than in accordance with a permit or an authority, is prohibited, and in relation to which sections 28 and 36 apply <i>[see Note 2]</i>	174
Schedule 2—Specimens the export or import of which, otherwise than in accordance with a permit or an authority, is prohibited, and in relation to which sections 29 and 37 apply <i>[see Note 2]</i>	174
Schedule 2A—Cites Appendix III specimens <i>[see Note 2]</i>	174
Schedule 3—Specimens the export or import of which, otherwise than in accordance with a permit or an authority, is prohibited, and in relation to which sections 30 and 38 apply	175
Part I—Specimens	175
Part II—Animals	175
Schedule 4—Specimens that are, or are derived from, native Australian animals or native Australian plants and the export of which is not prohibited by paragraph 21(b) <i>[see Note 2]</i>	176
Schedule 5—Live animals and live plants the import of which is not prohibited by paragraph 22(b) and in relation to which section 9 does not apply	177
Part I—Live specimens	177
Part II—Animals	178
Division 1—Class Aves	178
Division 2—Class Insecta	178
Division 3—Class Mammalia	178
Schedule 6—Live animals and live plants the import of which is not prohibited by paragraph 22(b) and in relation to which section 9 applies <i>[see Note 2]</i>	180

Schedule 7—Species of native Australian animals eligible to be treated as household pets [<i>see</i> Note 2]	180
Schedule 8—Convention on International Trade in Endangered Species of Wild Fauna and Flora	181
Schedule 9—Exotic birds that are not classified exotic birds [<i>see</i> Note 2]	200

An Act to further the protection and conservation of wildlife by regulating the export and import of certain animals, plants and goods, and by regulating the possession of certain exotic birds, and for related purposes

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*.

2 Commencement [see Note 1]

This Act shall come into operation on a date to be fixed by Proclamation.

3 Object of Act

The object of this Act is to comply with the obligations of Australia under the Convention and otherwise to further the protection and conservation of the wild fauna and flora of Australia and of other countries.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

animal means any member, alive or dead, of the animal kingdom (other than man).

animal reproductive material means:

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

Section 4

animal specimen means:

- (a) an animal;
- (b) animal reproductive material;
- (c) the skin, feathers, horns, shell or any other part of an animal;
or
- (d) any article wholly produced by or from, or otherwise wholly derived from, a single animal;

but does not include:

- (e) a fossil; or
- (f) a mineralised deposit.

approved institution means an organization declared by a declaration in force under section 11 to be an approved institution in relation to a class, or classes, of specimens.

approved management program means a management program declared by a declaration in force under section 10 to be an approved management program.

approved zoological organization means a zoological organization declared by a declaration in force under section 12 to be an approved zoological organization in relation to a class, or classes, of specimens.

article includes a substance or a mixture of substances.

artificially propagated, in relation to a plant or plant reproductive material, has the meaning given by section 15.

authority means an authority to export or to import a specimen given under section 41, 42, 43 or 44.

bred in captivity, in relation to an animal or animal reproductive material, has the meaning given by section 14.

care, in relation to an animal or a plant, includes, where appropriate, the provision of suitable housing for the animal or plant.

classified exotic bird means a bird (other than a native Australian bird) that belongs to a species that is not specified in Schedule 9.

coastal sea:

- (a) in relation to Australia, means:
 - (i) the territorial sea of Australia; and
 - (ii) the sea on the landward side of the territorial sea of Australia; and
- (b) in relation to an external Territory, means:
 - (i) the Territorial sea of that Territory; and
 - (ii) the sea on the landward side of the territorial sea of that Territory.

continental shelf, in relation to Australia or to an external Territory, has the same meaning as it has for the purposes of the *Seas and Submerged Lands Act 1973*.

controlled specimen means a specimen that is a controlled specimen because of a declaration in force under section 10A.

Convention means the Convention on International Trade in Endangered Species of Wild Fauna and Flora done at Washington in the United States of America on 3 March 1973 (a copy of the version of which in the English language, apart from the Appendices to it, is set out in Schedule 8).

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

Note: These species are included in those listed in Schedules 1, 2, 2A and 3.

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

Note: These species are included in those listed in Schedules 1, 2, 2A and 3.

conveyance includes an aircraft, vehicle or vessel.

Designated Authority means the Designated Authority established by section 17.

disease means:

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

Section 4

- (b) a disease, pest or plant that, for the purposes of that Act, is a disease in relation to plants.

eligible seizable item means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

evidential material means a thing relevant to an offence against this Act, including such a thing in electronic form.

executing inspector, in relation to a warrant, means the inspector named in the warrant as being responsible for executing the warrant.

Exotic Birds Committee means the Exotic Birds Committee established by section 57U.

export means export from Australia or from an external Territory, but does not include:

- (a) export from Australia to a prescribed Territory;
- (b) export from a prescribed Territory to Australia; and
- (c) export from a prescribed Territory to the other prescribed Territory.

fish means any animal that is a member of the class Pisces or of the class Agnatha, and includes a shark, a skate and a ray.

frisk search means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

holder means:

- (a) in relation to a permit—the person who has been granted that permit; or
- (b) in relation to an authority—the person who has been given that authority; or
- (c) in relation to a registration certificate—the person who, or the partnership that, has been granted that certificate.

import means import (including import by way of introduction from the sea) into Australia or into an external Territory, but does not include:

- (a) import into Australia from a prescribed Territory;
- (b) import into a prescribed Territory from Australia; and
- (c) import into a prescribed Territory from the other prescribed Territory.

inspector means:

- (a) a person appointed as an inspector under section 58;
- (b) a person who is an inspector by virtue of section 59; or
- (c) a person who is an inspector by virtue of an arrangement entered into under subsection 60(1), (2) or (3).

inter zoological gardens transfer has the meaning given by section 13.

live animal includes animal reproductive material.

live plant includes plant reproductive material.

Magistrate means a Magistrate who is remunerated by salary or otherwise.

management program means a program for the protection, conservation or management of animals or of plants, or of both.

marine environment means the sea, and includes:

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

native Australian animal means:

- (a) an animal of a species that is indigenous to Australia or to an external Territory;
- (b) an animal of a species that is indigenous to the coastal sea of Australia or of an external Territory or to the sea-bed or subsoil beneath that sea;
- (c) an animal of a species that is indigenous to the continental shelf of Australia or of an external Territory or to the superjacent waters;

Section 4

- (d) a migratory animal of a species that periodically or occasionally visits Australia or an external Territory, the coastal sea of Australia or of an external Territory, or the sea over the continental shelf of Australia or of an external Territory; or
- (e) an animal of a species that is not indigenous to Australia but was present in Australia before the year 1788.

native Australian plant means:

- (a) a plant of a species that is indigenous to Australia or to an external Territory;
- (b) a plant of a species that is indigenous to the coastal sea of Australia or of an external Territory or to the sea-bed or subsoil beneath that sea;
- (c) a plant of a species that is indigenous to the continental shelf of Australia or of an external Territory or to the superjacent waters; or
- (d) a plant of a species that is not indigenous to Australia but was present in Australia before the year 1788.

occupier, in relation to a conveyance, means the person apparently in charge of the conveyance.

offence against this Act includes an offence against:

- (a) section 6 of the *Crimes Act 1914*; or
 - (b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
- that relates to an offence against a provision of this Act.

officer assisting, in relation to a warrant, means:

- (a) a person who is an inspector and who is assisting in executing the warrant; or
- (b) a person who is not an inspector and who has been authorised by the relevant executing inspector to assist in executing the warrant.

officer of Customs has the same meaning as it has in the *Customs Act 1901*.

ordinary search means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
- (b) an examination of those items.

permit means a permit to export or to import a specimen granted under section 24.

plant means a member, alive or dead, of the plant kingdom, and includes fungi.

plant reproductive material means:

- (a) a seed or spore of a plant;
- (b) a cutting from a plant; or
- (c) any other part, or product, of a plant from which another plant can be produced.

plant specimen means:

- (a) a plant;
- (b) plant reproductive material;
- (c) any part of a plant; or
- (d) any article wholly produced by or from, or otherwise wholly derived from, a single plant;

but does not include:

- (e) a fossil; or
- (f) a mineralised deposit.

premises includes a place and a conveyance.

prescribed scientific organization means a scientific organization included in a class of scientific organizations declared by the regulations to be a prescribed class of scientific organizations for the purposes of this Act.

prescribed scientific research means scientific research engaged in by a prescribed scientific organization.

prescribed Territory means:

- (a) the Coral Sea Islands Territory; or
-

Section 4

- (b) the Territory of Ashmore and Cartier Islands.

progeny includes:

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

recently used conveyance, in relation to a search of a person, means a conveyance that the person had operated or occupied at any time within 24 hours before the search began.

recipient means:

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

registration certificate means a registration certificate granted under section 57H.

relevant authority, in relation to a country, means:

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

scientific organization means an organization engaged in scientific research.

Section 4

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

specimen means:

- (a) an animal specimen; or
- (b) a plant specimen.

take includes:

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

territorial sea, in relation to Australia or to an external Territory, has the same meaning as it has for the purposes of the *Seas and Submerged Lands Act 1973*.

thing relevant to an offence against this Act means:

- (a) anything with respect to which an offence against this Act has been committed or is suspected, on reasonable grounds, to have been committed; or
- (b) anything as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of an offence against this Act; or
- (c) anything as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing an offence against this Act.

vessel means a vessel or boat of any description, and includes:

- (a) an air-cushion vehicle or other similar craft; and
- (b) any floating structure.

warrant (except in Part IIA) means a warrant under Part III.

Note: Division 7 of Part IIA provides for monitoring warrants in relation to classified exotic birds.

warrant premises means premises in relation to which a warrant is in force.

Section 4

zoological organization means an organization engaged in the exhibition or breeding of wild animals.

- (2) In any other provision of this Act references to a specimen shall be read as including references to an article that consists of, or is derived from:
- (a) a specimen and material other than a specimen;
 - (b) 2 or more specimens; or
 - (c) 2 or more specimens and material other than a specimen.
- (2A) Where an article consists of, or is derived from 2 or more specimens, either with or without any material other than a specimen, then this Act applies to and in relation to that article separately in so far as it consists of, or is derived from, each of those specimens.
- (2B) For the purposes of this Act, if a thing is represented by an accompanying document, the package or a mark or label, or from any other circumstances, to be:
- (a) the skin, feathers, horns, shell or any other part of a Convention listed animal; or
 - (b) part of a Convention listed plant; or
 - (c) reproductive material from a Convention listed animal or a Convention listed plant; or
 - (d) an article produced by or from, or derived from, one or more Convention listed animals or one or more Convention listed plants, whether with or without any other material;
- then the thing is taken to be a specimen derived from the Convention listed animal or the Convention listed plant, or from each Convention listed animal or Convention listed plant, as the case requires.
- Note: This subsection has the effect (among other things) of widening the scope of sections 21, 22 and 53, which are offence provisions relating to the export, import and possession of specimens.
- (2C) However, the import or export of a thing that is taken under subsection (2B) to be a specimen derived from an animal or plant of a particular kind is not to be taken to be in accordance with a

Section 4

permit or authority only because of the operation of that subsection.

Example: A person labels tiger bone as the bone of a Convention listed animal that the person is authorised by a permit to import, and imports the tiger bone. The mere fact that the tiger bone is labelled in that way does not mean that its import is in accordance with a permit.

- (3) A reference in this Act to a country shall be read as including a reference to a place that is a territory, dependency or colony (however described) of another country.
- (4) For the purposes of this Act, a specimen shall be taken to have been imported into Australia or into an external Territory by way of introduction from the sea if, and only if, the specimen was taken in the marine environment not under the jurisdiction of any country and then imported into Australia or the external Territory, as the case may be, without having been imported into any other country.
- (5) For the purposes of this Act:
 - (a) where a live animal (other than animal reproductive material) that was bred in captivity dies, the dead animal and specimens derived from the dead animal shall be taken to be specimens derived from that live animal; and
 - (b) where a live plant (other than plant reproductive material) that was artificially propagated dies, the dead plant and specimens derived from the dead plant shall be taken to be specimens derived from that live plant.
- (6) A reference in this Act to a member of the Australian Federal Police or to a member of a police force shall be read as including a reference to a special member of the Australian Federal Police.
- (7) Except so far as the contrary intention appears, an expression that is used in this Act without being defined in, or having a particular meaning assigned to it by, this Act and is used in the Convention (whether or not it is defined in, or a particular meaning is assigned to it by, the Convention) has, in this Act, the same meaning as it has in the Convention.

Section 5

- (8) For the purposes of this Act, the doing of any thing to, or with, a live animal or a live plant (including killing the animal or plant or doing, or failing to do, any thing in relation to the housing of the animal or plant) for the purposes of scientific research shall not be taken to be failure to provide suitable care for the animal or plant.
- (9) For the purposes of this Act, where the common name of a kind of animal or plant is set out in a Schedule next to or under a taxon, that common name does not affect the meaning of that taxon.
- (10) For the purposes of this Act, a genus, species or sub-species referred to in a description set out in a Part of a Schedule shall not be taken to be specified in that Part.

5 Saving of other laws

- (1) This Act and the regulations shall be read and construed as being in addition to, and not in derogation of or in substitution for:
 - (a) the *Customs Act 1901*;
 - (b) the *Quarantine Act 1908*; or
 - (c) any other law of the Commonwealth or of an external Territory, whether passed or made before or after the commencement of this Act.
- (2) A person who is the holder of a permit or an authority to export or to import a specimen is not, by reason only of being the holder of the permit or authority, exempt from compliance with any law referred to in paragraph (1)(a), (b) or (c) that applies in relation to that specimen.
- (3) Without limiting the generality of subsection (1), this Act and the regulations shall not be read or construed as authorizing or permitting the doing of any act in contravention of the *Quarantine Act 1908* or of a law of an external Territory relating to quarantine.

6 Application of Act

This Act applies both within and outside Australia and extends to every external Territory.

7 Act to bind Crown

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

7A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

8 Act not to apply to certain specimens

- (1) For the purposes of this Act, where a specimen is brought into Australia from a country (other than a prescribed Territory):
 - (a) for the purpose of transshipment to another country; or
 - (b) as part of an aircraft's stores or ship's stores;that specimen:
 - (c) shall be taken not to have been imported into Australia; and
 - (d) when it leaves Australia, shall be taken not to be exported from Australia.
- (2) For the purposes of this Act, where a specimen is brought into an external Territory (other than a prescribed Territory):
 - (a) for the purpose of transshipment to another country; or
 - (b) as part of an aircraft's stores or ship's stores;that specimen:
 - (c) shall be taken not to have been imported into that Territory; and
 - (d) when it leaves that Territory, shall be taken not to be exported from that Territory.
- (3) For the purposes of this Act, where a prescribed organization sends a specimen out of, or brings a specimen into, Australia or an external Territory for the purpose of using the specimen in a diagnostic test that is to be carried out in an endeavour to identify

Section 8

a disease of humans, animals or plants, that specimen shall be taken not to have been exported or imported, as the case may be.

- (4) For the purposes of this Act, where:
- (a) a prescribed person or a prescribed organization is satisfied that, in order to meet an emergency involving danger to the life or health of a human or an animal, it is necessary or desirable that a specimen that could be used in treating that person or animal should be sent out of, or brought into, Australia or an external Territory; and
 - (b) that specimen is sent out of, or brought into, Australia or that Territory, as the case requires, to meet that emergency;
- that specimen shall be taken not to have been exported or imported, as the case may be.
- (5) Subject to subsections (1), (2), (3) and (4), where, in accordance with the *Quarantine Act 1908* or a law of an external Territory relating to quarantine, a person exercising powers under that Act or law imports a specimen that is subject to quarantine, then, for the purposes of this Act, that specimen shall be deemed to have been imported by:
- (a) where a person holds a permit or an authority to import that specimen—the holder of that permit or authority; or
 - (b) in any other case—a person whose identity is not known;
- but this subsection shall not affect the commission of any offence committed before the importation of that specimen.
- (5A) For the purposes of subsection (1), a specimen is to be taken to be brought into Australia for the purpose of transshipment to another country if, and only if:
- (a) the specimen is brought into Australia in the course of being transported to an identified person in the other country; and
 - (b) any delay in its leaving Australia will be due solely to the arrangements for its transport; and
 - (c) it will be under the control of the Customs all the time that it is in Australia.

Section 8A

- (5B) For the purposes of subsection (2), a specimen is to be taken to be brought into an external Territory for the purpose of transshipment to another country if, and only if:
- (a) the specimen is brought into that Territory in the course of being transported to an identified person in the other country; and
 - (b) any delay in its leaving that Territory will be due solely to the arrangements for its transport; and
 - (c) it will be under the control of an inspector all the time that it is in that Territory.
- (6) In this section, *aircraft's stores* and *ship's stores* have the same meanings respectively as they have in Part VII of the *Customs Act 1901*.

8A Act not to apply to certain specimens used by traditional inhabitants

- (1) In this section:

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

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

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

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

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

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

Section 8A

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

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

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

(b) that prescribed specimen is brought to a place in Australia that is not in the Protected Zone or in an area in the vicinity of the Protected Zone;

the prescribed specimen shall be taken to have been imported into Australia upon being brought to the place referred to in paragraph (b).

9 Variation of Schedules [see Note 2]

- (1) The Minister may, by instrument under the Minister's hand published in the *Gazette*, declare that a Schedule, not being Schedule 5 or 8, specified in the instrument shall be deemed to be amended in a manner specified in the instrument, and that declaration shall have effect accordingly.
- (1A) A declaration under subsection (1) that relates to Schedule 6 may be made:
 - (a) on the Minister's own initiative; or
 - (b) on written application being made to the Minister.
- (2) Sections 48 (other than paragraph (1)(a)), 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to declarations under subsection (1) as if, in those sections, references to regulations were references to declarations.
- (3) For the purposes of section 8 of the *Acts Interpretation Act 1901*, a declaration under subsection (1) that is deemed to amend a Schedule by way of repealing part of that Schedule shall be deemed to be an Act that repeals that part of that Schedule.
- (4) The Minister will take all necessary action to ensure that, where a Schedule is deemed to be amended by virtue of a declaration in force under subsection (1), a copy of that Schedule as deemed to be amended is readily available, on the payment of such fee (if any) as is prescribed, to any member of the public who might wish to export or to import, or is otherwise concerned with the export or import of, specimens.

Note: See section 9B for requirements about comments on proposed declarations relating to the amendment of Schedule 6.

Section 9A

9A Register of persons concerned about amendments of Schedule 6 or declarations of management programs or controlled specimens

- (1) The Designated Authority must maintain a register containing a list of the names and postal addresses of persons and organisations who are to be notified of:
 - (aa) proposals for declarations under section 9, where the declarations relate to the amendment of Schedule 6; and
 - (a) proposals for declarations of approved management programs under section 10; and
 - (b) proposals for declarations of controlled specimens under section 10A.
- (2) As soon as practicable after the commencement of this section and on each anniversary of that commencement, the Designated Authority must give public notice:
 - (a) inviting persons and organisations to have their names and postal addresses entered on the register; and
 - (b) in the case of the second or a later notice given when there is a person or organisation on the register—inviting persons and organisations on the register to have their names and postal addresses left on the register.
- (3) A notice must state that the acceptance of an invitation:
 - (a) is to be in writing sent to the Designated Authority at a place specified in the notice accompanied, except in the case of an invitation under paragraph (2)(b), by particulars of the name and postal address of the acceptor; and
 - (b) is to be given:
 - (i) in the case of a person, or organisation, in existence on the publication of the notice—within one month after that publication; and
 - (ii) in any other case—within 12 months after that publication.
- (4) Where a person or organisation accepts an invitation in the way required by the notice, the Designated Authority is to enter, or

Section 9B

retain, the name and postal address of the person or organisation on the register.

- (5) The Designated Authority may vary the address on the register of a person or organisation at the written request of the person or organisation.
- (6) The Designated Authority must remove the name and address of a person or organisation from the register if:
 - (a) in the case of a name and address that was on the register before the most recent notice under subsection (2)—the invitation to keep that name and address on the register was not accepted within one month after the publication of that notice; or
 - (b) the person or organisation makes a written request for the removal; or
 - (c) the Designated Authority becomes satisfied that:
 - (i) in the case of a natural person—the person has died; or
 - (ii) in any other case—the person or organisation has ceased to exist.
- (7) In subsection (2), a reference to public notice is a reference to a notice published:
 - (a) in the *Gazette*; and
 - (b) in each State and internal Territory in a newspaper circulating generally in that State or Territory; and
 - (c) in each external Territory that the Minister considers appropriate (if any) in a newspaper circulating generally in that external Territory.

9B Views of concerned persons to be considered before making declarations

- (1) Where the Minister proposes to:
 - (aa) make a declaration under section 9, where the declaration relates to the amendment of Schedule 6; or
 - (a) declare an approved management program under section 10; or
-

Section 10

- (b) declare a controlled specimen under section 10A;
the Designated Authority must send each person and organisation on the register maintained under section 9A written notice of the proposal and, without contravening the *Privacy Act 1986*, sufficient information to enable the person or organisation to consider adequately the merits of the proposal.
- (2) A person or organisation on the register may give the Designated Authority written comments on the proposal within one month after its receipt of the notice or such longer period as the Designated Authority determines.
- (3) The Minister is not to make the proposed declaration unless the Minister has considered all comments on the proposal given under subsection (2).

10 Approved management programs

- (1) Subject to subsection (1B) and to any regulations referred to in subsection (2), the Minister may, by instrument under the Minister's hand published in the *Gazette*, declare a management program that is being, is proposed to be, or has been, carried out, in Australia, in an external Territory or in another country to be an approved management program for the purposes of this Act.
- (1A) A declaration under subsection (1) may be made:
- (a) on the Minister's own initiative; or
 - (b) on written application being made to the Minister.
- (1B) If:
- (a) a management program has been, is being, or is proposed to be, carried out in a State or Territory; and
 - (b) the management program relates to the protection, conservation or management of particular animals or of particular plants, or of both;
- the Minister must not make a declaration about the management program unless:

Section 10

- (c) legislation relating to the protection, conservation or management of the animals or plants is in force in the State or Territory; and
 - (d) the legislation applies throughout the State or Territory; and
 - (e) in the opinion of the Minister, the legislation is effective.
- (2) The regulations may provide that the Minister must not declare a management program to be an approved management program unless the Minister is satisfied of certain matters in relation to the program.
- (2A) A declaration under subsection (1) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection (3).
- (2B) If a declaration ceases to be in force because of subsection (2A), this Act does not prevent the Minister from making a fresh declaration under subsection (1).
- (2C) A fresh declaration under subsection (1) may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (2D) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.
- (3) The Minister may make a declaration about a management program even though he or she considers that the program should be an approved management program only:
- (a) during a particular period; or
 - (b) while certain circumstances exist; or
 - (c) while a certain condition is complied with;
- but, in such a case, the instrument of declaration is to specify the period, circumstances or condition.
- (4) If a declaration specifies circumstances as mentioned in subsection (3), the Minister must revoke the declaration if he or she is satisfied that those circumstances have ceased to exist.
-

Section 10A

- (5) The Minister may vary a declaration by:
 - (a) specifying one or more conditions (or further conditions) to which the declaration is subject; or
 - (b) revoking or varying a condition:
 - (i) specified in the instrument of declaration; or
 - (ii) specified under paragraph (a).
- (6) The Minister must revoke a declaration if he or she is satisfied that a condition of the declaration has been contravened.
- (7) The Minister may revoke a declaration at any time.

10A Controlled specimens

- (1) In this section:

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

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

ordinary specimen means a specimen other than:

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

- (2) Where the Minister decides that it would be consistent with the object of this Act for ordinary Australian specimens of a particular kind to be taken from a particular place in Australia or an external Territory otherwise than in accordance with an approved management program and exported, he or she may, by signed instrument published in the *Gazette*, declare those specimens so taken to be controlled specimens for the purposes of this Act.
- (2A) Except in special circumstances, the Minister must not make a declaration under subsection (2) about specimens of a particular kind unless:

Section 10A

- (a) legislation relating to the protection, conservation or management of the specimens is in force in each State and Territory from which the specimens are to be taken; and
 - (b) the legislation applies throughout each State and Territory from which the specimens are to be taken; and
 - (c) in the opinion of the Minister, the legislation is effective.
- (3) Where the Minister decides that it would be consistent with the object of this Act for ordinary specimens of a particular kind to be taken in a particular place in a foreign country otherwise than in accordance with an approved management program and imported, he or she may, by signed instrument published in the *Gazette*, declare those specimens so taken to be controlled specimens for the purposes of this Act.
- (3A) A declaration under subsection (2) or (3) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection (4).
- (3B) If a declaration ceases to be in force because of subsection (3A), this Act does not prevent the Minister from making a fresh declaration under subsection (2) or (3).
- (3C) A fresh declaration under subsection (2) or (3) may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (3D) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.
- (4) The Minister may make a decision under subsection (2) or (3) about specimens of a particular kind even though the decision is:
- (a) limited to specimens taken during a particular period; or
 - (b) limited to a particular number or other quantity of the specimens; or
 - (c) subject to the existence of particular circumstances; or

Section 11

- (d) subject to compliance with a particular condition; but, in such a case, the instrument of declaration is to specify the period, quantity, circumstances or condition.
- (4A) If a declaration specifies circumstances as mentioned in subsection (4), the Minister must revoke the declaration if he or she becomes satisfied that those circumstances have ceased to exist.
- (4B) The Minister may vary a declaration by:
 - (a) specifying one or more conditions (or further conditions) to which the declaration is subject; or
 - (b) revoking or varying any condition:
 - (i) specified in the instrument of declaration; or
 - (ii) specified under paragraph (a).
- (4C) The Minister must revoke a declaration if he or she becomes satisfied that a condition of the declaration has been contravened.
- (4D) The Minister may revoke a declaration at any time.
- (5) The regulations may prescribe matters that are to be taken into account by the Minister when deciding whether or not to declare specimens to be controlled specimens under subsection (2) or (3).
- (5A) A declaration under subsection (2) or (3) may be made:
 - (a) on the Minister's own initiative; or
 - (b) on written application being made to the Minister.
- (6) The Designated Authority must maintain a register containing descriptions of the controlled specimens.
- (7) The register is to set out opposite to each description of controlled specimens the date of the declaration of the specimens.

11 Approved institutions

- (1) Subject to any regulations referred to in subsection (2), the Designated Authority may, by instrument under the Designated Authority's hand published in the *Gazette*, declare an organization in Australia, in an external Territory or in another country, being

Section 12

an organization that is engaged in activities relating to live animals or live plants, to be an approved institution in relation to a class, or classes, of specimens specified in the instrument.

- (2) The regulations:
- (a) may provide that the Designated Authority shall not declare an organization referred to in subsection (1) to be an approved institution in relation to any class, a particular class, or particular classes, of specimens unless the Designated Authority is satisfied of certain matters in relation to the organization; or
 - (b) may prescribe matters that are to be taken into account by the Designated Authority when determining whether the Designated Authority will declare an organization referred to in subsection (1) to be an approved institution in relation to any class, a particular class, or particular classes, of specimens.
- (3) An organization referred to in subsection (1) may apply, in writing, to the Designated Authority to be declared to be an approved institution in relation to a class, or classes, of specimens specified in the application.

12 Approved zoological organizations

- (1) Subject to any regulations referred to in subsection (2), the Designated Authority may, by instrument under the Designated Authority's hand published in the *Gazette*, declare a zoological organization in Australia, in an external Territory or in another country to be an approved zoological organization in relation to a class, or classes, of specimens specified in the instrument.
- (2) The regulations:
- (a) may provide that the Designated Authority shall not declare a zoological organization to be an approved zoological organization in relation to any class, a particular class, or particular classes, of specimens unless the Designated Authority is satisfied of certain matters in relation to the organization; or

Section 13

- (b) may prescribe matters that are to be taken into account by the Designated Authority when determining whether the Designated Authority will declare a zoological organization to be an approved zoological organization in relation to any class, a particular class, or particular classes, of specimens.
- (3) A zoological organization may apply, in writing, to the Designated Authority to be declared to be an approved zoological organization in relation to a class, or classes, of specimens specified in the application.

13 Inter zoological gardens transfer

- (1) For the purposes of this Act, the export or the import of an animal specimen shall be taken to be an inter zoological gardens transfer if, and only if:
 - (a) the exporter or the sender, as the case may be, is an approved zoological organization, or a relevant approved institution, in relation to a class of specimens that includes that specimen; and
 - (b) in the case of a specimen that is a live animal:
 - (i) in all cases—the animal is not required by the exporter or the sender, as the case may be, for the purposes of breeding, exhibition or research; and
 - (ii) if the animal was bred in captivity—the animal was bred in captivity by the exporter or the sender, as the case may be; and
 - (c) in the case of a specimen, other than a specimen that is, or is derived from, a live animal that was bred in captivity—the specimen was not purchased or otherwise obtained for the purposes of trade; and
 - (d) the recipient is:
 - (i) where the exporter or the sender is an approved zoological organisation, either:
 - (A) an approved zoological organisation; or
 - (B) a relevant approved institution; or

Section 14

-
- (ii) where the exporter or the sender is a relevant approved institution—an approved zoological organisation; in relation to a class of specimens that includes that specimen; and
 - (e) in the case of the export of a live native Australian animal:
 - (i) the animal belongs to a species that can readily be bred in captivity; and
 - (ii) the animal is for use in a breeding program specified in the regulations; and
 - (f) in the case of a live animal specified in Part I of Schedule 1:
 - (i) the animal belongs to a species that can be bred in captivity; and
 - (ii) the animal is for use in a breeding program specified in the regulations.
- (2) In this section, *relevant approved institution* means an approved institution that is also a prescribed scientific organisation.

14 Breeding in captivity

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

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

15 Artificial propagation

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

- (a) any live plant;

Section 16

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

16 Export of household pets—native Australian animals

- (1) The export of a live native Australian animal from Australia or from an external Territory is an export of a household pet in accordance with this section if:
 - (a) the animal is an animal of a species specified in Schedule 7, other than the species *Melopsittacus undulatus* (common name budgerigar);
 - (b) the exporter kept the animal as a household pet immediately before the export;
 - (c) the exporter has been ordinarily resident in Australia or that Territory, as the case may be, for not less than 4 years immediately preceding the export;
 - (d) the exporter is leaving Australia or that Territory, as the case may be, with the intention of taking up permanent residence in another country;
 - (e) it is not proposed to export (whether by virtue of this subsection or otherwise) more than one other animal of a species specified in Schedule 7 (other than a budgerigar), where that other animal has been kept as a household pet by the exporter or the members of the household of the exporter.
- (2) The export of a live native Australian animal of the species *Melopsittacus undulatus* (common name budgerigar) from Australia or from an external Territory is an export of a household pet in accordance with this section if:
 - (a) the animal was bred in captivity;
 - (b) the exporter has owned and kept the animal as a household pet;
 - (c) the exporter is leaving Australia or that Territory, as the case may be, with the intention of taking up permanent residence in another country; and

Section 16A

- (d) it is not proposed to export (whether by virtue of this subsection or otherwise) any animal of that species that has been kept as a household pet by the exporter or the members of the household of the exporter other than that animal or that animal and one other animal of that species.
- (3) The export before 1 May 1987 of a live native Australian animal from Australia or from an external Territory is an export of a household pet in accordance with this section if:
- (a) the animal is an animal of a species specified in Schedule 7;
 - (b) the exporter has owned and kept the animal as a household pet:
 - (i) for not less than 2 years immediately preceding the export; and
 - (ii) since a day on or before 1 May 1984;
 - (c) the exporter has been ordinarily resident in Australia or that Territory, as the case may be:
 - (i) for not less than 3 years immediately preceding the export; and
 - (ii) since a day on or before 1 May 1984; and
 - (d) it is not proposed to export (whether by virtue of this subsection or otherwise) any animal of that species that has been kept as a household pet by the exporter or the members of the household of the exporter other than that animal or that animal and one other animal of that species.

16A Export of household pets—other animals

The export of a live animal, other than a native Australian animal, from Australia or from an external Territory is an export of a household pet in accordance with this section if:

- (a) the exporter has owned and kept the animal as a household pet; and
- (b) the exporter is leaving Australia or that Territory, as the case may be, with the intention of taking up residence in another country.

Section 17

17 Designated Authority

There shall be a Designated Authority for the purposes of this Act.

18 Constitution of Designated Authority

- (1) The Secretary to the Department is the Designated Authority until:
 - (a) an appointment is made under subsection (2); or
 - (b) the Secretary resigns the office of Designated Authority under subsection (5).
- (2) Subject to subsection (1), the Designated Authority:
 - (a) shall be a person appointed by the Minister;
 - (b) shall be appointed on a part-time basis;
 - (c) holds office at the pleasure of the Minister; and
 - (d) may be a person who is engaged under the *Public Service Act 1999*.
- (3) A person shall not be appointed to be the Designated Authority unless the person has such qualifications and experience in connection with the conservation or management of wild animals and wild plants as, in the opinion of the Minister, render the person suitable for the appointment.
- (4) The Designated Authority holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister.
- (5) The Designated Authority may resign his or her office by writing signed by the Designated Authority and delivered to the Minister.

19 Remuneration and allowances of Designated Authority

- (1) The Designated Authority shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, the Designated Authority shall be paid such remuneration as is prescribed.

- (2) The Designated Authority shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

20 Acting Designated Authority

- (1) The Minister may appoint a person to act as the Designated Authority:
 - (a) during a vacancy in the office of Designated Authority; or
 - (b) during any period, or during all periods, when the Designated Authority is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office;but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) The Minister may:
 - (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as the Designated Authority; and
 - (b) terminate such an appointment at any time.
- (4) Where a person is acting as Designated Authority in accordance with paragraph (1)(b) and the office of Designated Authority becomes vacant while that person is so acting, then, subject to subsection (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (5) The appointment of a person to act as the Designated Authority ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

Section 20

- (6) Where a person is acting as Designated Authority, the person has and may exercise all the powers, and may perform all the functions, of the Designated Authority under this Act.
- (7) The validity of anything done by a person purporting to act under subsection (1) shall not be called in question on the ground that the occasion for the appointment or acting had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

Part II—Regulation of export and import of specimens

Division 1—Prohibition of certain exports and imports

21 Certain exports prohibited

- (1) A person shall not export:
- (a) a specimen specified in Part I of Schedule 1, Part I of Schedule 2 or Part I of Schedule 3; or
 - (b) a specimen that is, or is derived from, a native Australian animal or a native Australian plant and is not specified in Part I of Schedule 4.

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

Note: Because of the operation of subsection 4(2B), it may be an offence under this section to export a thing that is represented to be a Convention listed animal or plant (including an article, such as medicine, produced or derived from such an animal or plant).

- (2) Subsection (1) does not apply if the specimen is exported in accordance with a permit or an authority.

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

22 Certain imports prohibited

- (1) A person shall not import:
- (a) a specimen specified in Part I of Schedule 1, Part I of Schedule 2 or Part I of Schedule 3; or
 - (aa) a specimen specified in Part I of Schedule 2A; or
 - (b) a specimen, being a live animal or a live plant (whether or not it is a specimen referred to in paragraph (a)) other than a live animal, or live plant, specified in Part I of Schedule 5 or Part I of Schedule 6.

Part II Regulation of export and import of specimens

Division 1 Prohibition of certain exports and imports

Section 22

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

Note: Because of the operation of subsection 4(2B), it may be an offence under this section to import a thing that is represented to be a Convention listed animal or plant (including an article, such as medicine, produced or derived from such an animal or plant).

(2) Subsection (1) does not apply if the specimen is imported in accordance with a permit or an authority.

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

Division 2—Permits to export or to import specimens

23 Application for permit

- (1) A person may make an application to the Minister for the grant of:
 - (a) a permit to export a specimen the export of which, otherwise than in accordance with a permit or an authority, is prohibited by section 21; or
 - (b) a permit to import a specimen the import of which, otherwise than in accordance with a permit or an authority, is prohibited by section 22.
- (2) An application for a permit shall be made in accordance with the prescribed form or, if no form is prescribed, a form approved by the Minister.
- (3) An application for a permit to export or to import a specimen for the purposes of scientific research shall contain particulars of the nature and purpose of that research.
- (4) Where an application is made for the grant of a permit and the Minister requires further information for the purpose of enabling the Minister to deal with the application, the Minister may, by notice in writing served on the applicant not later than 60 days after the application is made, require the applicant to furnish to the Minister, as specified in the notice, a statement in writing setting out that further information and, if a notice is so served, the application shall be deemed, for the purposes of section 24, not to have been duly made until the statement is furnished.
- (5) Where an application is made for the grant of a permit and the Minister requires a test to be carried out for the purpose of enabling the Minister to deal with the application, the Minister may, by notice in writing served on the applicant not later than 60 days after the application is made:
 - (a) inform the applicant of the nature of, the reason for, and the estimated cost of, that test and of the estimated time within which the result of that test would be obtained by the Minister; and

Part II Regulation of export and import of specimens

Division 2 Permits to export or to import specimens

Section 24

(b) require the applicant to pay to the Commonwealth, as specified in the notice, the amount of that estimated cost; and, if a notice is so served, the application shall be deemed, for the purposes of section 24, not to have been duly made until the amount of that estimated cost is paid and the result of that test is obtained by the Minister.

24 Grant of permit

- (1) Subject to this Act, the Minister may, in the Minister's discretion, grant, or refuse to grant, a permit to a person who has made an application for the permit in accordance with section 23.
- (2) The Minister must either grant or refuse to grant the permit within 90 days after the application is made.
- (3) However, if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of the permit, the Minister must grant or refuse to grant the permit within 30 days after the day on which the Minister receives advice given under that Subdivision on the proposed grant.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

- (4) A permit shall be in writing in the prescribed form, or, if no form is prescribed, a form approved by the Minister.
- (5) A permit:
 - (a) comes into force on the date on which it is granted; and
 - (b) subject to section 46, remains in force:
 - (i) in the case of a permit to export or import a specimen (other than a specimen specified in Part I of Schedule 1, Part I of Schedule 2 or Part I of Schedule 3) for the purposes of scientific research—for a period of 2 years beginning on the date on which it is granted or, if a lesser period is specified in the permit, that lesser period; or

- (ii) in any other case—for a period of 6 months beginning on the date on which it is granted or, if a lesser period is specified in the permit, that lesser period.

Division 3—Requirements for permits to export specimens

25 Permits to export not to be granted if detrimental to survival of kind of animals or plants

The Minister shall not grant a permit to export a specimen unless the Minister is satisfied that the export of the specimen will not be detrimental to, or contribute to trade which is detrimental to, the survival of:

- (a) any species or sub-species; or
- (b) any population specified in Schedule 1, 2 or 3.

26 Permits to export not to be granted in respect of specimens unlawfully obtained etc.

The Minister shall not grant a permit to export a specimen unless the Minister is satisfied that the specimen was not obtained in contravention of, and the export would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory.

27 Requirements for permits to export live animals and live plants

- (1) The Minister shall not grant a permit to export a live animal unless the Minister is satisfied that:
 - (a) the proposed recipient of the animal is equipped to provide, and will provide, suitable care for the animal; and
 - (b) the animal will be prepared and shipped so that the risk of:
 - (i) injury to the animal;
 - (ii) adverse effect on the health of the animal; and
 - (iii) cruel treatment of the animal;is minimised.
- (2) The Minister shall not grant a permit to export a live plant unless the Minister is satisfied that the plant will be prepared and shipped so that the risk of:
 - (a) injury to the plant; and

(b) adverse effect on the health of the plant;
is minimised.

28 Requirements for permits to export—Schedule 1

Subject to section 32, the Minister shall not grant a permit to export a specimen specified in Part I of Schedule 1 unless the Minister is satisfied:

- (a) that:
 - (i) the country to which the specimen is proposed to be exported has a relevant authority; and
 - (ii) permission to import that specimen into that country has been given by a relevant authority of that country;
- (b) where the specimen is a live animal, that:
 - (i) the proposed exporter and the proposed recipient are approved institutions in relation to a class of specimens that includes that live animal;
 - (ii) the proposed export would be an inter zoological gardens transfer; or
 - (iii) in the case of a live animal, other than a native Australian animal, the proposed export would be an export of a household pet in accordance with section 16A;
- (c) where the specimen is a live native Australian animal of a species included in the sub-phylum VERTEBRATA, that the proposed export:
 - (i) would be an inter zoological gardens transfer; or
 - (ii) is for the purposes of prescribed scientific research;
- (d) where the specimen is an animal specimen, other than a live native Australian animal of a species included in the sub-phylum VERTEBRATA, that:
 - (i) the proposed export would be an inter zoological gardens transfer;
 - (ii) the proposed export is for the purposes of prescribed scientific research; or
 - (iii) the specimen is, or is derived from, a live animal that was bred in captivity; and

Part II Regulation of export and import of specimens

Division 3 Requirements for permits to export specimens

Section 29

- (e) where the specimen is a plant specimen, that:
 - (i) the proposed export is for the purposes of prescribed scientific research; or
 - (ii) the specimen is, or is derived from, a live plant that was artificially propagated.

29 Requirements for permits to export—Schedule 2

Subject to section 32, the Minister shall not grant a permit to export a specimen specified in Part I of Schedule 2 unless the Minister is satisfied:

- (b) where the specimen is a live animal, that:
 - (i) the proposed exporter and the proposed recipient are approved institutions in relation to a class of specimens that includes that live animal;
 - (ia) the proposed export would be an inter zoological gardens transfer;
 - (ii) in the case of a live native Australian animal, the proposed export would be an export of a household pet in accordance with section 16; or
 - (iii) in the case of a live animal, other than a live native Australian animal, the proposed export would be an export of a household pet in accordance with section 16A;
- (c) where the specimen is a live native Australian animal of a species included in the sub-phylum VERTEBRATA, that the proposed export:
 - (i) would be an inter zoological gardens transfer;
 - (ii) is for the purposes of prescribed scientific research; or
 - (iii) would be an export of a household pet in accordance with section 16;
- (d) where the specimen is an animal specimen, other than a live native Australian animal of a species included in the sub-phylum VERTEBRATA, that:
 - (i) the proposed export would be an inter zoological gardens transfer;
 - (ii) the proposed export is for the purposes of prescribed scientific research;

- (iii) the specimen is, or is derived from, a live animal that was bred in captivity;
 - (iv) in the case of a specimen that is, or is derived from, a native Australian animal, the specimen is, or is derived from, an animal specimen that was taken in accordance with an approved management program; or
 - (v) in the case of a specimen that is, or is derived from, a native Australian animal, the specimen is, or is derived from, a controlled specimen; and
- (e) where the specimen is a plant specimen, that:
- (i) the proposed export is for the purposes of prescribed scientific research;
 - (ii) the specimen is, or is derived from, a live plant that was artificially propagated;
 - (iii) the specimen is, or is derived from, a plant specimen that was taken in accordance with an approved management program; or
 - (iv) the specimen is, or is derived from, a plant specimen that is a controlled specimen.

30 Requirements for permits to export—Schedule 3

Subject to section 32, the Minister shall not grant a permit to export a specimen specified in Part I of Schedule 3 unless it appears to the Minister, after consultation with the Designated Authority, that there are exceptional circumstances justifying the grant of the permit and the Minister is satisfied:

- (a) in the case of an animal specimen, that the proposed export:
 - (i) would be an inter zoological gardens transfer; or
 - (ii) is for the purposes of prescribed scientific research; or
- (b) in the case of a plant specimen, that the proposed export is for the purposes of prescribed scientific research.

31 Requirements for permits to export—native Australian animals and plants

Subject to section 32, the Minister shall not grant a permit to export a specimen that is, or is derived from, a native Australian

Part II Regulation of export and import of specimens

Division 3 Requirements for permits to export specimens

Section 31

animal or a native Australian plant, being a specimen that is not specified in Part I of Schedule 1, Part I of Schedule 2 or Part I of Schedule 3, unless the Minister is satisfied:

- (a) where the specimen is a live animal, that the proposed export:
 - (i) would be an inter zoological gardens transfer;
 - (ii) is for the purposes of prescribed scientific research; or
 - (iii) would be an export of a household pet in accordance with section 16;
- (b) where the specimen is, or is derived from, a fish or from an animal of a species which is not included in the sub-phylum VERTEBRATA, that:
 - (i) the specimen is, or is derived from, a live animal that was bred in captivity;
 - (ii) the specimen is, or is derived from, an animal specimen that was taken in accordance with an approved management program; or
 - (iii) the specimen is, or is derived from, an animal specimen that is a controlled specimen;
- (c) where the specimen is an animal specimen, other than a live animal, that:
 - (i) the proposed export would be an inter zoological gardens transfer;
 - (ii) the proposed export is for the purposes of prescribed scientific research;
 - (iii) the specimen is derived from a live animal that was bred in captivity;
 - (iv) the specimen is, or is derived from, an animal specimen that was taken in accordance with an approved management program; or
 - (v) the specimen is, or is derived from, an animal specimen that is a controlled specimen; or
- (d) where the specimen is a plant specimen, that:
 - (i) the proposed export is for the purposes of prescribed scientific research;
 - (ii) the specimen is, or is derived from, a live plant that was artificially propagated;

- (iii) the specimen is, or is derived from, a plant specimen that was taken in accordance with an approved management program; or
- (iv) the specimen is, or is derived from, a plant specimen that is a controlled specimen.

32 Permits to re-export

- (1) Sections 28, 29, 30 and 31 do not apply in relation to a permit to export from Australia or an external Territory a specimen, other than a live animal, that has been imported into Australia or that Territory, as the case may be.
- (2) The Minister shall not grant a permit to export from Australia a specimen that has been imported into Australia, unless the Minister is satisfied:
 - (a) that:
 - (i) in the case of a specimen that was imported before the commencement of this Act, the specimen was not imported in contravention of:
 - (A) the Customs (Endangered Species) Regulations; or
 - (B) the Customs (Prohibited Imports) Regulations; or
 - (ii) in the case of a specimen that was imported after the commencement of this Act, the specimen was not imported in contravention of this Act; and
 - (b) that, in the case of a specimen specified in Part I of Schedule 1 or Part I of Schedule 3:
 - (i) the country to which the specimen is proposed to be exported has a relevant authority; and
 - (ii) permission to import that specimen into that country has been given by a relevant authority of that country.
- (3) The Minister shall not grant a permit to export from an external Territory a specimen that has been imported into that Territory, unless the Minister is satisfied:
 - (a) that:

Part II Regulation of export and import of specimens

Division 3 Requirements for permits to export specimens

Section 32

- (i) in the case of a specimen that was imported before the commencement of this Act, the specimen was not imported in contravention of a law of that Territory relating to the import of specimens that was designed to comply with the obligations of Australia under the Convention; or
 - (ii) in the case of a specimen that was imported after the commencement of this Act, the specimen was not imported in contravention of this Act; and
- (b) that, in the case of a specimen specified in Part I of Schedule 1 or Part I of Schedule 3:
- (i) the country to which the specimen is proposed to be exported has a relevant authority; and
 - (ii) permission to import that specimen into that country has been given by a relevant authority of that country.

Division 4—Requirements for permits to import specimens

33 Permits to import not to be granted if detrimental to survival of kind of animals or plants

The Minister shall not grant a permit to import a specimen specified in Part I of Schedule 1, Part I of Schedule 2 or Part I of Schedule 3 unless the Minister is satisfied that the import of the specimen will not be detrimental to, or contribute to trade that is detrimental to, the survival of:

- (a) any species or sub-species; or
- (b) any population specified in Schedule 1, 2 or 3.

34 Requirements for permits to import live animals and live plants

The Minister shall not grant a permit to import a live animal or a live plant unless the Minister is satisfied that:

- (a) the proposed recipient of the animal or plant:
 - (i) is equipped to confine, and will confine, the animal or plant; and
 - (ii) is equipped to provide, and will provide, suitable care for the animal or plant; and
- (b) the animal or plant will be prepared and shipped so that the risk of:
 - (i) injury to the animal or plant;
 - (ii) adverse effect on the health of the animal or plant; and
 - (iii) in the case of an animal—cruel treatment of the animal; is minimized.

35 Requirements for permits to import certain live animals and live plants

- (1) The Minister shall not grant a permit to import a live animal, including a live animal that is a specimen specified in Part I of Schedule 1, Part I of Schedule 2, Part I of Schedule 2A or Part I of Schedule 3, unless the Minister is satisfied:
 - (a) that:
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Part II Regulation of export and import of specimens

Division 4 Requirements for permits to import specimens

Section 36

- (i) the proposed recipient is an approved institution in relation to a class of specimens that includes that live animal; or
 - (ii) the proposed import would be an inter zoological gardens transfer; and
 - (b) that, if the live animal were imported, it would not be kept, or dealt with, in contravention of any law of the Commonwealth, of a State or of a Territory.
- (2) The Minister shall not grant a permit to import a live plant that is not specified in Schedule 5 or 6 unless the Minister is satisfied that the proposed recipient is an approved institution in relation to a class of specimens that includes that live plant.
- (3) The Minister shall not grant a permit to import a live plant, including a live plant that is a specimen specified in Part I of Schedule 1, Part I of Schedule 2 or Part I of Schedule 3, unless the Minister is satisfied that, if the live plant were imported, it would not be kept, or dealt with, in contravention of any law of the Commonwealth, of a State or of a Territory.

36 Requirements for permits to import—Schedule 1

- (1) Subject to subsection (2), the Minister shall not grant a permit to import a specimen specified in Part I of Schedule 1 unless the Minister is satisfied:
- (a) where the import is not by way of introduction from the sea, that:
 - (i) the country from which the specimen is proposed to be imported has a relevant authority; and
 - (ii) permission to export that specimen from that country has been given by a relevant authority of that country;
 - (b) where the specimen is a live animal, that:
 - (i) the proposed sender is an approved institution in relation to a class of specimens that includes that live animal; or
 - (ii) the proposed import would be an inter zoological gardens transfer;
 - (c) where the specimen is an animal specimen, that:

- (i) the proposed import would be an inter zoological gardens transfer; or
 - (ii) the proposed import is for the purposes of prescribed scientific research; or
 - (iii) the specimen is, or is derived from, a live animal that was bred in captivity; and
 - (d) where the specimen is a plant specimen, that:
 - (i) the proposed import is for the purposes of prescribed scientific research; or
 - (ii) the specimen is, or is derived from, a live plant that was artificially propagated.
- (2) The Minister may grant a permit to import a specimen specified in Part I of Schedule 1, other than a live animal, if the Minister is satisfied that:
- (a) the country from which the specimen is proposed to be imported has a relevant authority;
 - (b) a relevant authority of that country has issued a certificate under paragraph 2 of Article VII of the Convention in respect of the specimen; and
 - (c) the specimen is not an object of trade.

37 Requirements for permits to import—Schedule 2

- (1) Subject to subsections (2) and (3), the Minister shall not grant a permit to import a specimen specified in Part I of Schedule 2 unless the Minister is satisfied:
- (a) where the import is not by way of introduction from the sea, that:
 - (i) the country from which the specimen is proposed to be imported has a relevant authority; and
 - (ii) permission to export that specimen from that country has been given by a relevant authority of that country;
 - (b) where the specimen is a live animal, that:
 - (i) the proposed sender is an approved institution in relation to a class of specimens that includes that live animal; or

Part II Regulation of export and import of specimens

Division 4 Requirements for permits to import specimens

Section 37

- (ii) the proposed import would be an inter zoological gardens transfer;
 - (c) where the specimen is an animal specimen, that:
 - (i) the proposed import would be an inter zoological gardens transfer;
 - (ii) the proposed import is for the purposes of prescribed scientific research;
 - (iii) the specimen is, or is derived from, a live animal that was bred in captivity;
 - (iv) the specimen is, or is derived from, an animal specimen that was taken in accordance with an approved management program; or
 - (v) the specimen is, or is derived from, an animal specimen that is a controlled specimen; and
 - (d) where the specimen is a plant specimen, that:
 - (i) the proposed import is for the purposes of prescribed scientific research;
 - (ii) the specimen is, or is derived from, a live plant that was artificially propagated;
 - (iii) the specimen is, or is derived from, a plant specimen that was taken in accordance with an approved management program; or
 - (iv) the specimen is, or is derived from, a plant specimen, that is a controlled specimen.
- (2) The Minister may grant a permit to import a specimen specified in Part I of Schedule 2, other than a live animal, if the Minister is satisfied that:
- (a) the country from which the specimen is proposed to be imported has a relevant authority;
 - (b) a relevant authority of the country from which the specimen is proposed to be imported has issued a certificate under paragraph 2 of Article VII of the Convention in respect of the specimen; and
 - (c) the specimen is not an object of trade.
- (3) The Minister may grant a permit to import a specimen specified in Part I of Schedule 2, other than a live animal, if the Minister is satisfied that:
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- (a) the country from which the specimen is proposed to be imported has a relevant authority; and
- (b) permission to export that specimen from that country has been given by a relevant authority of that country; and
- (c) the specimen is not an object of trade.

38 Requirements for permits to import—Schedule 3

The Minister shall not grant a permit to import a specimen specified in Part I of Schedule 3 unless it appears to the Minister, after consultation with the Designated Authority, that there are exceptional circumstances justifying the grant of the permit and the Minister is satisfied:

- (a) in the case of an animal specimen, that:
 - (i) the proposed import would be an inter zoological gardens transfer;
 - (ii) the proposed import is for the purposes of prescribed scientific research; or
 - (iii) the specimen is, or is derived from, a live animal that was bred in captivity; or
- (b) in the case of a plant specimen, that:
 - (i) the proposed import is for the purposes of prescribed scientific research; or
 - (ii) the specimen is, or is derived from, a live plant that was artificially propagated.

38A Requirements for permits to import—Schedule 2A

The Minister must not grant a permit to import a specimen specified in Part I of Schedule 2A unless the Minister is satisfied:

- (a) in a case where the import is not by way of introduction from the sea and the country from which the specimen is imported is specified in a column of Part II or III of that Schedule opposite the name of the species to which the specimen belongs—that:
 - (i) the country from which the specimen is proposed to be imported has a relevant authority; and

Part II Regulation of export and import of specimens

Division 4 Requirements for permits to import specimens

Section 38A

- (ii) permission to export that specimen from that country has been given by a relevant authority of that country; and
- (b) in a case where the import is not by way of introduction from the sea and the country from which the specimen is imported is not specified in a column of Part II or III of that Schedule opposite the name of the species to which the specimen belongs—that the proposed sender holds a certificate of origin, or an equivalent document or notation, in relation to the specimen; and
- (c) in a case where the specimen is a live animal—that:
 - (i) the proposed sender is an approved institution in relation to a class of specimens that includes that live animal; or
 - (ii) the proposed import would be an inter zoological gardens transfer.

Division 5—Authorities to export or to import specimens

39 Application for authority

Subsections 23(4) and (5) and 24(2) and (3) apply in relation to an application for an authority under this Division in like manner as they apply in relation to an application for a permit under section 23 and, for the purposes of those subsections as so applying, the references in those subsections to a permit shall be read as references to an authority.

40 Register of scientific organizations

- (1) The Designated Authority shall maintain a register containing a list of the names of scientific organizations that are registered scientific institutions for the purposes of section 41.
- (2) The register maintained under subsection (1) shall set out opposite to the name of a scientific organization entered in the register:
 - (a) the address of that organization;
 - (b) the date on which the name of the organization was entered in the register; and
 - (c) such other particulars as the Designated Authority considers appropriate.
- (3) Subject to any regulations referred to in subsection (4), the Designated Authority may, in the Designated Authority's discretion, enter in the register maintained under subsection (1) the name of a scientific organization in Australia, in an external Territory or in another country.
- (4) The regulation:
 - (a) may provide that the Designated Authority shall not enter the name of a scientific organization in the register maintained under subsection (1) unless the Designated Authority is satisfied of certain matters in relation to the organization;
 - (b) may prescribe matters that are to be taken into account by the Designated Authority when determining whether the

Section 41

Designated Authority will enter the name of a scientific organization in that register; or

- (c) may provide that the name of a scientific organization may be entered in that register if the name of the organization is set out in, or in a specified part of, the latest edition of a publication specified in the regulations.
- (5) A scientific organization in Australia, in an external territory or in another country may apply to the Designated Authority to have its name entered in the register maintained under subsection (1).
- (6) An application under subsection (5) shall be made in accordance with the prescribed form or, if no form is prescribed, a form approved by the Designated Authority.
- (7) Subject to any regulations referred to in subsection (8), the Designated Authority may, in the Designated Authority's discretion, remove the name of a scientific organization from the register maintained under subsection (1).
- (8) The regulations:
- (a) may provide that the Designated Authority shall not remove the name of a scientific organization from the register maintained under subsection (1) unless the Designated Authority is satisfied of certain matters in relation to the organization;
 - (b) may prescribe matters that are to be taken into account by the Designated Authority when determining whether the Designated Authority will remove the name of a scientific organization from that register; or
 - (c) may provide that the name of a scientific organization may be removed from that register if the name of the organization ceases to be set out in, or in a specified part of, the latest edition of a publication specified in the regulations.

41 Authority to export or import scientific specimens

- (1) In this section:

prescribed specimen means a specimen other than a live animal.

registered scientific institution means a scientific organization the name of which is entered in the register maintained under subsection 40(1).

- (2) A registered scientific institution may make an application, in writing, to the Minister for an authority under this section to:
- (a) export prescribed specimens, or specimens included in a class of prescribed specimens, being specimens the export of which, otherwise than in accordance with a permit or an authority, is prohibited by section 21, in pursuance of:
 - (i) arrangements for the non-commercial loan of prescribed specimens by the registered scientific institution to other registered scientific institutions;
 - (ii) arrangements for the donation of prescribed specimens by the registered scientific institution to other registered scientific institutions; or
 - (iii) arrangements for the exchange of prescribed specimens between the registered scientific institution and other registered scientific institutions;being arrangements for the purposes of scientific research;
 - (b) import prescribed specimens, or specimens included in a class of prescribed specimens, being specimens the import of which, otherwise than in accordance with a permit or an authority, is prohibited by section 22, in pursuance of:
 - (i) arrangements for the non-commercial loan of prescribed specimens to the registered scientific institution by other registered scientific institutions;
 - (ii) arrangements for the donation of prescribed specimens to the registered scientific institution by other registered scientific institutions; or
 - (iii) arrangements for the exchange of prescribed specimens between the registered scientific institution and other registered scientific institutions;being arrangements for the purposes of scientific research;
 - (c) re-import prescribed specimens exported in pursuance of arrangements referred to in subparagraph (a)(i); and
 - (d) re-export prescribed specimens imported in pursuance of arrangements referred to in subparagraph (b)(i).
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Part II Regulation of export and import of specimens

Division 5 Authorities to export or to import specimens

Section 41

- (3) Subject to subsection (4), the Minister shall give an authority under this section to a registered scientific institution that has made an application for the authority under subsection (2).
- (4) The Minister shall not give an authority under this section unless the Minister is satisfied that:
 - (a) the recipient of any live plant that is not specified in Schedule 5 or 6 imported by virtue of the authority will be an approved institution in relation to a class of specimens that includes that live plant; and
 - (b) specimens exported or imported by virtue of the authority will be exported or imported in pursuance of arrangements specified in paragraph (2)(a) or (2)(b).
- (5) An authority under this section:
 - (a) shall be in writing;
 - (b) comes into force on the date on which it is given; and
 - (c) subject to section 46, remains in force while the scientific organization to which the authority was given remains a registered scientific institution.
- (6) An authority under this section to export or to import specimens shall set out particulars of a kind of label to be borne by the containers in which the specimens are to be exported or imported, as the case may be, and the authority shall be taken to be only an authority to export or to import the specimens, as the case may be, while they are in containers that bear labels of that kind.
- (7) Subject to subsection (8), where a registered scientific institution that holds an authority under this section wishes to foster scientific research by an individual, that institution may, by instrument in writing, declare that individual to be an affiliate of that institution and, while the declaration is in force:
 - (a) arrangements for the loan of prescribed specimens by or to that individual shall, for the purposes of this section, be taken to be arrangements for the loan of prescribed specimens by or to, as the case may be, that institution;
 - (b) arrangements for the donation of prescribed specimens by or to that individual shall, for the purposes of this section, be

- taken to be arrangements for the donation of prescribed specimens by or to, as the case may be, that institution;
- (c) arrangements for the exchange of prescribed specimens between that individual and another registered scientific institution shall, for the purposes of this section, be taken to be arrangements for the exchange of prescribed specimens between the first-mentioned institution and that other institution; and
 - (d) arrangements for the exchange of prescribed specimens between that individual and another individual in respect of whom another declaration under this subsection is in force shall, for the purposes of this section, be taken to be arrangements for the exchange of prescribed specimens between the first-mentioned institution and the registered scientific institution that made that other declaration.
- (8) A registered scientific institution shall not make a declaration under subsection (7) in relation to an individual without the consent in writing of the Designated Authority and shall revoke such a declaration if requested by the Designated Authority in writing to do so.

42 Authority to export or import artificially propagated plants

- (1) A person may make an application to the Minister for:
 - (a) an authority under this section to export artificially propagated plants that are specimens specified in Part I of Schedule 2 or Part I of Schedule 3;
 - (b) an authority under this section to export artificially propagated native Australian plants that are specimens not specified in Part I of Schedule 1, Part I of Schedule 2 or Part I of Schedule 3; or
 - (c) an authority under this section to import artificially propagated plants that are specimens specified in Part I of Schedule 2 or Part I of Schedule 3.
- (2) An application under subsection (1) shall be made in accordance with the prescribed form, or, if no form is prescribed, a form approved by the Minister.

Part II Regulation of export and import of specimens

Division 5 Authorities to export or to import specimens

Section 42A

- (3) Subject to subsections (4) and (5), the Minister may, in the Minister's discretion, give, or refuse to give, an authority under this section to a person who has made an application for the authority under subsection (1).
- (4) The Minister shall not give an authority under subsection (3) to export or to import plants unless the Minister is satisfied that plants that would be exported or imported by virtue of the authority will have been artificially propagated.
- (5) The Minister shall not give an authority under subsection (3) to import live plants that are not specified in Schedule 5 or 6 unless the Minister is satisfied that the recipient of any live plant imported in accordance with the authority will be an approved institution in relation to a class of specimens that includes that live plant.
- (6) An authority under this section:
 - (a) shall be in writing;
 - (b) comes into force on the date on which it is given; and
 - (c) subject to section 46, remains in force for a period of 12 months commencing on the date on which it is given or, if a lesser period is specified in the authority, that lesser period.
- (7) A person who has been given an authority under this section shall:
 - (a) as soon as practicable after the end of each period specified for the purposes of this paragraph in the authority, give the Designated Authority particulars of any exports or imports made by virtue of the authority during that period; and
 - (b) comply, as soon as practicable, with any request by the Designated Authority for information relating to plants exported or imported by virtue of the authority.

42A Authority to export certain specimens

- (1) In this section, *prescribed class* means a class of specimens the description of which is entered in the register maintained under subsection (3).

Section 42A

- (2) The Minister may, on the recommendation of the Designated Authority, give the Designated Authority notice, in writing, that a class of specimens described in the notice, not being a class of:
 - (a) specimens specified in Part I of Schedule 1;
 - (b) specimens specified in Part I of Schedule 2 that are not, or are not derived from, live plants that were artificially propagated;
 - (c) specimens specified in Part I of Schedule 3; or
 - (d) specimens that are live native Australian animals of a species included in the sub-phylum VERTEBRATA, other than fish;is to be a prescribed class for the purposes of this section.
- (3) The Designated Authority shall maintain a register containing a description of each class of specimens described in a notice which has been given to the Designated Authority under subsection (2).
- (4) A person may make an application to the Minister for an authority under this section to export specimens included in a specified prescribed class.
- (5) An application under subsection (4) shall be made in accordance with the prescribed form, or, if no form is prescribed, a form approved by the Minister.
- (6) Subject to subsection (7), the Minister may, in the discretion of the Minister, give or refuse to give, an authority under this section to export specimens included in a particular prescribed class to a person who has made an application for the authority under subsection (4).
- (7) The Minister shall not give an authority under subsection (6) to export specimens unless the Minister is satisfied that the specimens that would be exported by virtue of the authority would be:
 - (a) in the case of animal specimens:
 - (i) specimens that are, or are derived from, live animals that were bred in captivity;
 - (ii) specimens that are, or are derived from, animal specimens that were taken in accordance with an approved management program; or

Part II Regulation of export and import of specimens

Division 5 Authorities to export or to import specimens

Section 42B

- (iii) specimens that are, or are derived from, animal specimens that are controlled specimens; or
- (b) in the case of plant specimens:
 - (i) specimens that are, or are derived from, live plants that were artificially propagated;
 - (ii) specimens that are, or are derived from, plant specimens that were taken in accordance with an approved management program; or
 - (iii) specimens that are, or are derived from, plant specimens that are controlled specimens.
- (8) An authority under this section:
 - (a) shall be in writing;
 - (b) comes into force on the day on which it is given; and
 - (c) subject to section 46, remains in force for a period of 12 months commencing on the day on which it is given or, if a lesser period is specified in the authority, that lesser period.
- (9) A person who has been given an authority under this section shall, when the authority is produced to an officer of Customs or an inspector in accordance with subsection 45(1) in relation to the export of specimens to which the authority applies, give the officer or inspector, or cause the officer or inspector to be given, particulars in writing of those specimens in accordance with a form approved by the Designated Authority.

42B Authority to import certain specimens

- (1) In this section:

prescribed class means a class of specimens the description of which is entered in the register maintained under subsection (3).

prescribed research means scientific research the description of which is entered in the register maintained under subsection (5).

- (2) The Minister may, on the recommendation of the Designated Authority, give the Designated Authority notice, in writing, that a class of specimens described in the notice, not being a class of specimens in Part I of Schedule 1, Part I of Schedule 2 or Part I of

Section 42B

Schedule 3, is to be a prescribed class for the purposes of this section.

- (3) The Designated Authority shall maintain a register containing a description of each class of specimens described in a notice which has been given to the Designated Authority under subsection (2).
- (4) The Minister may inform the Designated Authority, by notice in writing, that scientific research described in the notice is to be prescribed research for the purposes of this section.
- (5) The Designated Authority shall maintain a register containing descriptions of the scientific research notice of which has been given to the Designated Authority under subsection (4).
- (6) A person may make an application to the Minister for an authority under this section to import specimens included in a specified prescribed class.
- (7) An application under subsection (6) shall be made in accordance with the prescribed form, or, if no form is prescribed, a form approved by the Minister.
- (8) Subject to subsection (9), the Minister may, in the discretion of the Minister, give or refuse to give, an authority under this section to import specimens included in a particular prescribed class to a person who has made an application for the authority under subsection (6).
- (9) The Minister shall not give an authority under subsection (8) to import specimens unless the Minister is satisfied that:
 - (a) the recipient of any specimens imported in accordance with the authority will be an approved institution in relation to a class of specimens that includes those specimens; and
 - (b) the specimens will be used for the purpose of prescribed research.
- (10) An authority under this section:
 - (a) shall be in writing;
 - (b) comes into force on the day on which it is given; and

Section 43

- (c) subject to section 46, remains in force for a period of 12 months commencing on the day on which it is given or, if a lesser period is specified in the authority, that lesser period.
- (11) Where a specimen to which an authority under this section applies is imported, the holder of the authority shall, within 7 days after the importation of the specimen, give the Designated Authority, or cause to be given to the Designated Authority, particulars in writing of that specimen.

43 Authority to export or import for the purposes of travelling circuses etc.

- (1) In this section, *exhibition* includes a zoo or menagerie.
- (2) Where a person wishes to export a specimen, other than a live native Australian animal, the export of which, otherwise than in accordance with a permit or an authority, is prohibited by section 21, from Australia or from an external Territory for the purpose of the use of the specimen in a circus or an exhibition that is proposed to be, or has been, temporarily taken out of Australia or that Territory, as the case may be, that person may make an application to the Minister for an authority under this section to export that specimen for that purpose.
- (3) Where a person wishes to import a specimen, other than a live native Australian animal, the import of which, otherwise than in accordance with a permit or an authority, is prohibited by section 22, into Australia or into an external Territory for the purpose of the use of the specimen in a circus or an exhibition that is proposed to be, or has been, temporarily brought into Australia or that Territory, as the case may be, that person may make an application to the Minister for an authority under this section to import that specimen for that purpose.
- (4) An application under subsection (2) or (3) shall:
 - (a) be in writing;
 - (b) contain particulars of the specimen to which the application relates; and
 - (c) contain particulars of the purpose of the export or import of the specimen, as the case requires.

- (5) Subject to subsection (6), the Minister may, in the Minister's discretion, give, or refuse to give, an authority under this section to a person who has made an application for the authority under subsection (2) or (3).
- (6) The Minister shall not give an authority under this section to export or to import a specimen unless the Minister is satisfied:
- (a) that the specimen will be exported or imported, as the case may be, for the purpose specified in subsection (2) or (3), as the case may be;
 - (b) where the specimen is a live animal or a live plant, that:
 - (i) in the case of an authority to import—the proposed recipient of the animal or plant is equipped to confine, and will confine, the animal or plant;
 - (ii) the proposed recipient of the animal or plant is equipped to provide, and will provide, suitable care for the animal or plant; and
 - (iii) the animal or plant will be prepared and shipped (including prepared and shipped for the subsequent re-importation or re-exportation, as the case may be) so that the risk of:
 - (A) injury to the animal or plant;
 - (B) adverse effect on the health of the animal or plant; and
 - (C) in the case of an animal—cruel treatment of the animal;is minimized; and
 - (c) except in the case of an authority to import a specimen not referred to in paragraph 22(a), that:
 - (i) the specimen:
 - (A) in the case of an animal specimen—is, or is derived from, a live animal that was bred in captivity; or
 - (B) in the case of a plant specimen—is, or is derived from, a live plant that was artificially propagated; or
 - (ii) the specimen was acquired by the applicant:

Section 43

- (A) where the specimen is of a species that was included in an Appendix to the Convention when the Convention entered into force—before the Convention entered into force;
 - (B) where the specimen is of a species that was first included in an Appendix to the Convention after the Convention came into force and before the commencement of this Act—before the species was so included;
 - (C) where a preceding provision of this subparagraph does not apply to the specimen and the specimen is of a kind to which section 21 or 22, as the case may be, applied on the commencement of this Act—before that commencement; or
 - (D) in any other case—before section 21 or 22, as the case may be, commenced to apply to specimens of the kind of which the specimen is a kind.
- (7) An authority under this section shall be in writing in the prescribed form or, if no form is prescribed, a form approved by the Minister.
- (8) Without limiting the powers of the Minister under subsection 47(1), an authority under this section to export or to import a specimen is subject to the condition that the holder of the authority will not, without reasonable excuse, fail to re-import or re-export the specimen, as the case may be, before the authority expires.
- (9) An authority under this section:
- (a) comes into force on the date on which it is given; and
 - (b) subject to section 46, remains in force for a period of 12 months commencing on the date on which it is given or, if another period is specified in the authority, that other period.
- (10) For the purposes of this Act:
- (a) an authority in force under this section to export a specimen from Australia or an external Territory is also an authority to re-import the specimen into Australia or that Territory, as the

case may be, after its export in accordance with the authority; and

- (b) an authority in force under this section to import a specimen into Australia or an external Territory is also an authority to re-export that specimen from Australia or that Territory, as the case may be, after its import in accordance with the authority.

43A Authority for Designated Authority to export or import specimens

- (1) The Designated Authority may make an application, in writing, to the Minister for an authority under this section to export or import a specimen.
- (2) Subject to subsections (3) and (4), the Minister may give an authority under this section to the Designated Authority to export or import a specimen when the Designated Authority has made an application for the authority under subsection (1).
- (3) The Minister shall not give an authority under this section to export a specimen unless the Minister is satisfied:
- (a) that:
 - (i) the recipient of the specimen will be a relevant authority of a country; and
 - (ii) the specimen will be used by that relevant authority for the purpose of:
 - (A) the identification of a specimen; or
 - (B) education or training; or
 - (b) that:
 - (i) the specimen has been seized under this Act; and
 - (ii) the specimen will be used to facilitate investigations outside Australia in relation to trade relating to wildlife.
- (4) The Minister shall not give an authority under this section to import a specimen unless the Minister is satisfied that:
- (a) the specimen will be used by the Designated Authority for the purposes of the identification of a specimen;

Part II Regulation of export and import of specimens

Division 5 Authorities to export or to import specimens

Section 44

- (b) that:
 - (i) the sender of the specimen will be a relevant authority of a country; and
 - (ii) the specimen will be used for the purpose of education or training;
 - (c) that the specimen was exported from Australia in contravention of this Act; or
 - (d) that the specimen will be used to facilitate investigations in Australia in relation to trade relating to wildlife.
- (5) An authority under this section:
- (a) shall be in writing;
 - (b) comes into force on the day on which it is given; and
 - (c) subject to section 46, remains in force for a period of 12 months commencing on the day on which it is given or, if a lesser period is specified in the authority, that lesser period.

44 Authority to export or import in exceptional circumstances

- (1) Where:
- (a) the Minister is considering an application by a person for a permit or an authority to export or to import a specimen;
 - (b) under this Act, the Minister is precluded from granting that permit or giving that authority unless the Minister is satisfied in relation to a matter; and
 - (c) even though the Minister is not satisfied in relation to that matter, the Minister is satisfied that:
 - (i) the export or import of the specimen, as the case may be, would not be contrary to the object of this Act; and
 - (ii) exceptional circumstances exist that justify the proposed export or import of the specimen;
- the Minister may, in the Minister's discretion, give public notice:
- (d) that the Minister is considering giving the person authority under this section to export or to import the specimen, as the case may be;
 - (e) setting out the conditions (if any) that the Minister would impose in accordance with section 47 in respect of that authority; and

- (f) inviting interested persons to lodge with the Minister, not later than a date specified in the notice (not being a date earlier than 5 days after the last date of publication of the notice) and at a place specified in the notice, comments in writing on the desirability of the Minister giving that authority.
- (2) Where:
- (a) the Minister has given public notice under subsection (1) that the Minister is considering giving a person an authority under this section to export or to import a specimen; and
 - (b) the Minister has considered, and discussed with the Designated Authority, any comments lodged in response to that notice;
- the Minister may, in the Minister's discretion, give, or refuse to give, an authority under this section to that person to export or to import the specimen, as the case may be.
- (3) An authority under this section:
- (a) shall be in writing;
 - (b) comes into force on the date on which it is given; and
 - (c) subject to section 46, remains in force for a period of 6 months commencing on the date on which it is given or, if a lesser period is specified in the authority, that lesser period.
- (4) In subsection (1), a reference to public notice is a reference to a notice published:
- (a) in the *Gazette*;
 - (b) in each State and internal Territory in a newspaper circulating generally in that State or Territory; and
 - (c) in each external Territory that the Minister considers appropriate (if any) in a newspaper circulating generally in that external Territory.

Division 6—Permits and authorities

45 Permit or authority to be produced

- (1) For the purposes of this Act, where the holder of a permit or an authority (other than an authority under section 41) to export a specimen exports that specimen, he or she shall not be taken to have exported that specimen in accordance with that permit or authority unless, before exporting the specimen, he or she:
 - (a) produced the permit or authority, or caused the permit or authority to be produced, to:
 - (i) where the export is from Australia—an officer of Customs; or
 - (ii) where the export is from an external Territory—an inspector;
doing duty in relation to the export of the specimen; or
 - (b) received written notice from the Designated Authority authorising the export of the specimen without the production of the permit or authority.
- (1A) The Designated Authority must not give the notice referred to in paragraph (1)(b) unless he or she:
 - (a) is satisfied that the production of the permit or authority is impracticable; and
 - (b) endorses a copy of the permit or authority to show that the notice is being given; and
 - (c) makes that copy available to an officer of Customs, or an inspector, doing duty in relation to the export of the specimen.
- (2) For the purposes of this Act, where the holder of a permit or an authority (other than an authority under section 41) to import a specimen imports that specimen, he or she shall not be taken to have imported that specimen in accordance with that permit or authority unless, before, or within a reasonable time after, importing the specimen, he or she produced the permit or authority, or caused the permit or authority to be produced, to:
 - (a) where the import is into Australia—an officer of Customs; or

(b) where the import is into an external Territory—an inspector; doing duty in relation to the import of the specimen.

46 Revocation etc. of permits and authorities

- (1) The Minister may, at any time, by notice in writing served on the holder of a permit or an authority, vary or revoke the permit or authority where, after consultation with the Designated Authority, the Minister is satisfied that:
 - (a) a provision of this Act relating to the permit or authority, or a condition imposed in respect of the permit or authority, has been contravened; or
 - (b) it is necessary or expedient to do so for the furtherance of the object of this Act.
- (2) The Minister may, at any time, by notice in writing served on the holder of a permit or an authority, suspend the permit or authority where, after consultation with the Designated Authority, the Minister believes on reasonable grounds that:
 - (a) a provision of this Act relating to the permit or authority, or a condition imposed in respect of the permit or authority, has been contravened; or
 - (b) it is necessary or expedient to do so for the furtherance of the object of this Act.
- (3) A suspension of a permit or an authority may be of indefinite duration or for a period specified in the notice.
- (4) The suspension of a permit or an authority is not affected by any proceedings for an offence in relation to the permit or authority (including any appeal) or by the termination of any such proceedings.
- (5) During the period of suspension of a permit or an authority, the permit or authority has no force or effect, but the period of currency of the permit or authority continues to run.
- (6) The suspension of a permit or an authority does not prevent its revocation.

Section 47

- (7) The variation, revocation or suspension of a permit or an authority takes effect when notice of the variation, revocation or suspension, as the case may be, is served on the holder of the permit or authority or on such later date (if any) as is specified in the notice.

47 Conditions in respect of permits and authorities

- (1) The Minister may, when granting a permit or giving an authority or at any time while a permit or an authority is in force, impose conditions in respect of the permit or authority and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.
- (2) A condition imposed in respect of a permit or an authority, or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition, takes effect when notice of the condition or of the revocation, suspension or variation or of the cancellation of the suspension is served on the holder of the permit or authority or on such later date (if any) as is specified in the notice.

47A Export of live native Australian animals by way of inter zoological gardens transfer—special conditions in respect of permits or authorities

When section applies

- (1) This section applies to a permit granted, or an authority given, to export a live native Australian animal by way of an inter zoological gardens transfer.

Conditions relating to agreements

- (2) Without limiting the conditions that may be imposed under subsection 47(1) in respect of the permit or authority, a condition so imposed may:
- (a) require the exporter of the animal to enter into a specified kind of legally enforceable agreement about the treatment or disposal of the animal and any progeny of the animal; and
 - (b) require the exporter of the animal to take reasonable steps to enforce the agreement.

Duration of permit or authority

- (3) For the purposes of section 48, the permit or authority is taken to be in force:
- (a) throughout the life of the animal; and
 - (b) throughout the life, or lives, of any progeny of the animal; or for such lesser period as the Designated Authority determines in writing.

Meaning of progeny

- (4) In this section:

progeny does not include animal reproductive material.

48 Compliance with conditions of permit or authority

- (1) A person is guilty of an offence if:
- (a) the person holds a permit or authority; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes a condition imposed under subsection 47(1) in respect of the permit or authority or, in the case of an authority under section 43, the condition to which the authority is subject under subsection 43(8).

Penalty: 120 penalty units.

- (2) In this section:

engage in conduct means:

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

49 Applications to Minister to vary operation of permits or authorities

- (1) The holder of a permit or an authority may make application to the Minister for the revocation or variation of a condition imposed under subsection 47(1) in respect of the permit or authority.

Section 50

- (2) The holder of a permit or an authority that is suspended may make application to the Minister for the cancellation of that suspension.
- (3) The Minister shall, within 60 days after the receipt of an application under subsection (1) or (2):
 - (a) if, after consultation with the Designated Authority, the Minister is satisfied that the application should be granted:
 - (i) revoke the condition;
 - (ii) vary the condition in accordance with the application;or
 - (iii) cancel the suspension of the permit or authority;
as the case may be; or
 - (b) if, after consultation with the Designated Authority, the Minister is not so satisfied—refuse to grant the application.

50 Conditions relating to imported animals

- (1) Without limiting the powers of the Minister under subsection 47(1), a permit or an authority to import a live animal is subject to the condition that the holder of the permit or authority will not, without the approval in writing of the Designated Authority:
 - (a) sell or otherwise dispose of that animal, or any progeny of that animal, to another person;
 - (b) release that animal, or any progeny of that animal, from captivity; or
 - (c) where that animal, or any progeny of that animal, dies—bury, cremate, sell or otherwise dispose of the body, or any part of the body, of the dead animal.
- (2) The Designated Authority shall not, for the purposes of subsection (1), approve of the sale or other disposal of a live animal to a person if the keeping of the animal by that person would be contrary to a law of a State or of a Territory.
- (3) Without limiting the generality of subsection (1), a person shall, for the purposes of that subsection, be taken to have released an animal from captivity if that animal has escaped from captivity and that person allowed the animal so to escape or failed to take all reasonable measures to prevent the animal from so escaping.

- (4) A person is guilty of an offence if:
- (a) the person holds a permit or an authority; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes a condition to which the permit or authority is subject by virtue of this section.

Penalty: 600 penalty units.

- (5) In subsection (4):

engage in conduct means:

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

51 Conditions relating to imported plants

- (1) Without limiting the powers of the Minister under subsection 47(1), a permit or an authority to import a live plant that is not specified in Schedule 5 or 6 is subject to the condition that the holder of the permit or authority will not, without the approval in writing of the Designated Authority:
 - (a) sell or otherwise dispose of that plant, or any progeny of that plant, to another person;
 - (b) plant or sow that plant, or any progeny of that plant, so that that plant or any progeny of that plant would be in, or could spread to, a place that is not under the control of the holder; or
 - (c) where that plant, or any progeny of that plant, dies—bury, burn, sell or otherwise dispose of the plant or any part of the plant.
- (2) The Designated Authority shall not, for the purposes of subsection (1), approve of the sale or other disposal of a live plant to a person if the keeping of the plant by that person would be contrary to a law of a State or of a Territory.
- (3) Without limiting the generality of subsection (1), a person shall, for the purposes of that subsection, be taken to have planted or sown a plant if that plant was planted or sown (including sown without human intervention) and that person allowed the plant to

Part II Regulation of export and import of specimens

Division 6 Permits and authorities

Section 51

be so planted or sown or failed to take all reasonable measures to prevent the plant from being so planted or sown.

- (4) A person is guilty of an offence if:
- (a) the person holds a permit or an authority; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes a condition to which the permit or authority is subject by virtue of this section.

Penalty: 600 penalty units.

- (5) In subsection (4):

engage in conduct means:

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

Division 6A—Marking of certain specimens for the purposes of identification

51A Object

The object of this Division is:

- (a) to comply with Australia's obligations under:
 - (i) the Convention on Biological Diversity; and
 - (ii) the Convention (as defined by subsection 4(1)); and
- (b) otherwise to further the protection and conservation of the wild fauna and flora of Australia and of other countries;

by requiring the marking of certain live specimens for the purposes of identification.

Note: Article 8 of the Convention on Biological Diversity requires each Contracting Party to, among other things, as far as possible and as appropriate:

- promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings; and
- prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species; and
- develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations.

51B Specimens to which Division applies

This Division applies to a live specimen belonging to a species specified in the regulations if:

- (a) the specimen has been imported in accordance with a permit or authority; or
- (b) the specimen is the progeny of a specimen referred to in paragraph (a).

51C Extended meaning of *marking*

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

Part II Regulation of export and import of specimens

Division 6A Marking of certain specimens for the purposes of identification

Section 51D

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

51D Designated Authority may make determinations about marking of specimens

Determinations

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

Matters that may be covered by determination

- (2) Without limiting subsection (1), a determination by the Designated Authority under that subsection may:
 - (a) require specimens to be marked; and
 - (b) deal with the manner in which specimens are to be marked; and
 - (c) deal with the times at which marking is to occur; and
 - (d) deal with the removal or destruction of marks; and
 - (e) deal with the replacement or modification of marks; and
 - (f) require that marking be carried out by persons approved in writing by the Designated Authority under that determination; and
 - (g) deal with the circumstances in which marks may be, or are required to be, rendered useless; and

Section 51E

- (h) in the case of a mark that consists of a label, tag, band or device:
 - (i) set out specifications relating to the label, tag, band or device; and
 - (ii) require that any destruction or removal of the label, tag, band or device be carried out by a person approved in writing by the Designated Authority under that determination.

Marking of animals not to involve undue pain etc.

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

Marking of plants not to involve undue risk of death

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

Disallowable instrument

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

51E Offences

Owner to ensure specimens marked etc.

- (1) If a determination under section 51D applies to a specimen, the owner of the specimen must comply with the determination.

Person not to remove or interfere with mark etc.

- (2) A person contravenes this subsection if:
 - (a) a specimen is marked in accordance with a determination under section 51D; and
 - (b) the person engages in conduct; and
-

Part II Regulation of export and import of specimens

Division 6A Marking of certain specimens for the purposes of identification

Section 51F

- (c) the conduct causes the removal of the mark or interference with the mark, or renders the mark unusable.

Offence

- (3) A person who contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding 120 penalty units.

Defence

- (4) Subsection (2) does not apply if the person engages in the conduct in accordance with a determination under section 51D.

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

Definition

- (5) In this section:

engage in conduct means:

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

51F Concurrent operation of State and Territory laws

This Division is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Division.

Division 7—Miscellaneous

52 Matters published in *Gazette*

- (1) The Designated Authority must, from time to time, but not less frequently than every 12 months, prepare a document setting out particulars of:
 - (a) permits granted or authorities given; and
 - (b) refusals to grant permits or to give authorities; and
 - (c) specimens exported or imported in accordance with permits or authorities.
 - (1A) The Designated Authority must:
 - (a) give a free copy of the document to any person who asks for a copy; and
 - (b) make the document available for inspection at each office of the Designated Authority.
 - (1B) As soon as practicable after the Designated Authority prepares a document under subsection (1), the Designated Authority must publish a notice in the *Gazette*:
 - (a) stating that the document has been prepared; and
 - (b) setting out the effect of subsection (1A).
 - (2) Where, in accordance with subsection (1), particulars of permits granted, or of refusals to grant permits, are set out in a document, those particulars shall, unless all the permits, or, in the case of refusals, the relevant applications, relate to specimens specified in Part I of Schedule 3, be accompanied by a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for the review of a decision of the Minister to grant, or refuse to grant, a permit, other than a permit to export, or a permit to import, a specimen specified in Part I of Schedule 3, by or on behalf of the person or persons whose interests are affected by the decision.
 - (3) Where, in accordance with subsection (1), particulars of authorities given, or of refusals to give authorities, under
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Section 53

section 42 or 43 are set out in a document, those particulars shall be accompanied by a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for the review of a decision of the Minister to give, or refuse to give, an authority under section 42 or 43 by or on behalf of the person or persons whose interests are affected by the decision.

53 Possession of illegally imported specimens

(1A) The object of this section is:

- (a) to comply with Australia's obligations under:
 - (i) the Convention on Biological Diversity; and
 - (ii) the Convention (as defined by subsection 4(1)); and
- (b) otherwise to further the protection and conservation of the wild fauna and flora of Australia and of other countries;

by prohibiting the possession of illegally imported specimens and the progeny of such specimens.

Note: Article 8 of the Convention on Biological Diversity requires each Contracting Party to, among other things, as far as possible and as appropriate:

- promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings; and
- prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species; and
- develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations.

(1) A person who:

- (a) has in his or her possession, whether on board any vessel or aircraft or otherwise, any specimen that has been imported in contravention of this Act or any progeny of such a specimen; or
 - (b) has in his or her possession any specimen that he knows, or has reasonable grounds for suspecting, has been imported in contravention of this Act or any progeny of such a specimen;
- is guilty of an offence.

Section 53A

Note: Because of the operation of subsection 4(2B), the import of a thing represented to be a Convention listed animal or plant (including an article, such as medicine, produced or derived from such an animal or plant) may have been in contravention of this Act.

- (1B) Subsection (1) does not apply if the person proves that the person has a reasonable excuse.

Note: The defendant bears a legal burden in relation to the matter in subsection (1B). See section 13.4 of the *Criminal Code*.

- (2) On the prosecution of a person for an offence against subsection (1), being an offence to which paragraph (1)(a) applies, it is a defence if the person proves that he or she did not know, and had no reasonable grounds for knowing or suspecting, that the specimen had been imported in contravention of this Act.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

- (3) On the prosecution of a person for an offence against subsection (1), being an offence to which paragraph (1)(b) applies, it is a defence if the person proves that the specimen was not imported in contravention of this Act.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (4) Any defence for which provision is made under this section in relation to an offence does not limit any defence otherwise available to the person charged.

- (5) A person who is guilty of an offence against subsection (1) is punishable upon conviction by imprisonment for a term not exceeding 5 years.

- (6) This section does not prevent any person from being proceeded against for an offence against any other section of this Act, but the person is not liable to be punished twice in respect of any one offence.

53A Cruelty—import or export of animals

- (1) This section applies to:
- (a) a live animal specified in Part I of Schedule 1, Part I of Schedule 2 or Part I of Schedule 3; or
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Part II Regulation of export and import of specimens

Division 7 Miscellaneous

Section 53B

- (b) a live native Australian animal; or
- (c) a live animal other than an animal specified in Part I of Schedule 5 or Part I of Schedule 6.

(2) If:

- (a) a person exports an animal in a manner that subjects the animal to cruel treatment; and
- (b) the person knows that, or is reckless as to whether, the export subjects the animal to cruel treatment; and
- (c) the person contravenes section 21 in relation to the export of the animal;

the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

(3) If:

- (a) a person imports an animal in a manner that subjects the animal to cruel treatment; and
- (b) the person knows that, or is reckless as to whether, the import subjects the animal to cruel treatment; and
- (c) the person contravenes section 22 in relation to the import of the animal;

the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

53B Imports of specimens contrary to the laws of a foreign country

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

Penalty: Imprisonment for 5 years.

- (2) A prosecution must not be instituted for an offence against this section unless the relevant authority of the foreign country has requested:

Section 53B

- (a) the investigation of the offence; or
- (b) assistance in relation to a class of offences in which the offence is included.

Part IIA Regulation of the possession of classified exotic birds

Division 1 Object

Section 57A

**Part IIA—Regulation of the possession of classified
exotic birds**

Division 1—Object

57A Object

The object of this Part is:

- (a) to comply with Australia's obligations under:
 - (i) the Convention on Biological Diversity; and
 - (ii) the Convention (as defined by subsection 4(1)); and
- (b) otherwise to further the protection and conservation of the wild fauna and flora of Australia and of other countries;

by regulating the possession of certain exotic birds.

Note: Article 8 of the Convention on Biological Diversity requires each Contracting Party to, among other things, as far as possible and as appropriate:

- promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings; and
- prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species; and
- develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations.

**Division 2—Prohibition of the unregistered possession of
classified exotic birds etc.**

57B Unregistered possession of classified exotic birds

Possession of classified exotic birds

- (1) Subject to this section, a person must not, after the end of the transitional period, intentionally possess a classified exotic bird if the person knows that, or is reckless as to whether, the bird is a classified exotic bird.

Penalty: Imprisonment for 5 years.

Possession in accordance with a registration certificate

- (2) Subsection (1) does not apply to the possession of a bird if the possession is in accordance with a registration certificate.

Possession by veterinary practitioners

- (3) Subsection (1) does not apply to the possession by a person of a bird if:
- (a) the person is registered as a veterinary practitioner (however described) under a law of a State or Territory; and
 - (b) the possession is of a kind specified in the regulations.
- This subsection does not, by implication, limit subsection (5).

Possession notified to Designated Authority during transitional period

- (4) Subsection (1) does not apply to the possession by a person of a bird if all of the following conditions are satisfied:
- (a) the bird does not belong to a species specified in the regulations;
 - (b) the possession is at a time during the period of 90 days beginning at the end of the transitional period;
 - (c) the bird was in the possession of the person at any time during the transitional period;

Part IIA Regulation of the possession of classified exotic birds

Division 2 Prohibition of the unregistered possession of classified exotic birds etc.

Section 57C

- (d) the person notified the Designated Authority in writing of the possession referred to in paragraph (c) before the end of the transitional period.

This subsection does not, by implication, limit subsection (5).

Possession of a kind specified in the regulations

- (5) Subsection (1) does not apply to the possession of a bird if the possession is of a kind specified in the regulations.

Definition

- (6) In this section:

transitional period means the period ending 30 days after the commencement of this section.

Note: Under section 57S, a partnership is treated as a person for the purposes of this Division.

57C Unlawful transfers of possession of classified exotic birds

Offence

- (1) A person must not intentionally transfer to another person (the ***recipient***) possession of a classified exotic bird if:
- (a) the person knows that, or is reckless as to whether, the bird is a classified exotic bird; and
 - (b) the recipient's possession would contravene section 57B; and
 - (c) the person knows that, or is negligent as to whether, the recipient's possession would contravene section 57B.

Penalty: 120 penalty units.

Negligence

- (2) For the purposes of this section, a person is taken to be negligent as to whether the recipient's possession would contravene section 57B if, and only if, the person's conduct involves:
- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and

Section 57C

(b) such a high risk that the recipient's possession would
contravene section 57B;
that the conduct merits criminal punishment.

Section 57D

Division 3—Registration certificates

57D Application for registration certificate

A person may apply to the Designated Authority for a registration certificate authorising the applicant to possess birds belonging to one or more species of classified exotic bird specified in the application.

Note: This means that the application does not have to identify individual birds—it only needs to specify the species.

57E Joint applications

- (1) 2 or more persons may make a joint application under section 57D.
- (2) If a joint application is made, then, unless the contrary intention appears, a reference in this Division to the applicant is a reference to the joint applicants.

57F Form of application etc.

The application must be:

- (a) in writing; and
- (b) in accordance with the prescribed form or, if no form is prescribed, a form approved by the Minister.

57G Further information

The Designated Authority may refuse to consider the application unless the applicant gives the Designated Authority such further information about the application as the Designated Authority requires.

57H Grant of registration certificate

- (1) After considering the application, the Designated Authority must grant a registration certificate in accordance with the application.

- (2) This section has effect subject to section 57J (which deals with refusals).

57J Refusal of registration certificate

Designated Authority to refuse certificate if applicant disqualified

- (1) Except in special circumstances, the Designated Authority must refuse to grant a registration certificate to an applicant or to joint applicants if, at the time the application is made, the applicant, or any of the joint applicants, as the case requires, is:
- (a) a disqualified individual; or
 - (b) a disqualified body corporate; or
 - (c) a disqualified partnership.

Note: Subsections (2), (3) and (4) define *disqualified individual*, *disqualified body corporate* and *disqualified partnership* respectively.

Disqualified individual

- (2) For the purposes of this section, an individual is a ***disqualified individual*** at a particular time if the individual has been convicted of an offence against this Act during the 5-year period ending at that time.

Disqualified body corporate

- (3) For the purposes of this section, a body corporate is a ***disqualified body corporate*** at a particular time if:
- (a) the body corporate has been convicted of an offence against this Act during the 5-year period ending at that time; or
 - (b) at that time, any of the following individuals is a disqualified individual:
 - (i) a director of the body corporate;
 - (ii) the secretary of the body corporate;
 - (iii) a person (by whatever name called and whether or not a director of the body corporate) who is concerned in, or takes part in, the management of the body corporate.

Section 57K

Disqualified partnership

- (4) For the purposes of this section, a partnership is a ***disqualified partnership*** at a particular time if, at that time:
- (a) in a case where a partner is an individual—the partner is a disqualified individual; or
 - (b) in a case where a partner is a body corporate—the partner is a disqualified body corporate.

Extended meaning of conviction—orders under section 19B of the Crimes Act 1914

- (5) A reference in this section to a conviction of a person of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to a person in respect of an offence.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

Quashed convictions

- (6) A reference in this section to a conviction does not include a reference to a conviction that has been quashed.

57K Notification of refusal of application

If the Designated Authority refuses an application, the Designated Authority must give written notice of the refusal to the applicant.

57L Duration of registration certificate

When certificate comes into force

- (1) A registration certificate (the ***new certificate***) comes, or is taken to have come, into force:
- (a) if:
 - (i) the applicant for the new certificate already holds a registration certificate (the ***previous certificate***); and
 - (ii) the new certificate is granted by way of the renewal of the previous certificate; and

Section 57M

- (iii) the application for the new certificate was made at least 14 days before the expiry of the previous certificate; immediately after the expiry of the previous certificate; or
- (b) in any other case:
 - (i) on the day on which the new certificate is granted; or
 - (ii) if the new certificate is granted during the period ending 30 days after the commencement of this section—at the end of that period.

Period for which certificate remains in force

- (2) A registration certificate remains in force for such period, not exceeding 12 months, as the Designated Authority determines.

57M Conditions of registration certificate

- (1) A registration certificate is subject to such conditions as are specified in the certificate.
- (2) The Designated Authority may, by written notice given to the holder or holders of a registration certificate:
 - (a) impose one or more further conditions to which the certificate is subject; or
 - (b) revoke or vary any condition:
 - (i) imposed under paragraph (a); or
 - (ii) specified in the certificate.
- (3) Without limiting the kinds of conditions to which a registration certificate may be subject, the conditions may relate to the following:
 - (a) the maximum number of classified exotic birds of a particular species that may be in the possession of the holder or holders of the certificate in accordance with the certificate;
 - (b) the keeping of records by the holder or holders of the certificate, where the records relate to classified exotic birds;
 - (c) the giving of information to the Designated Authority by the holder or holders of the certificate, where the information relates to classified exotic birds;

Section 57N

- (d) if the registration certificate is held by a partnership—the giving of information to the Designated Authority about any change in the composition of the partnership;
- (e) the care of classified exotic birds.

57N Offence of contravening conditions

- (1) A person is guilty of an offence if:
 - (a) the person is the holder, or one of the holders, of a registration certificate; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes a condition of the certificate.

Penalty: 120 penalty units.

- (2) In this section:

engage in conduct means:

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

57P Surrender of registration certificate

The holder, or any of the holders, of a registration certificate may, at any time, surrender the certificate by:

- (a) returning the certificate to the Designated Authority; and
- (b) giving the Designated Authority written notice that the certificate is surrendered.

57Q Cancellation of registration certificate

- (1) Except in special circumstances, the Designated Authority must cancel a registration certificate at a particular time if, at that time, the holder, or any of the holders, of the certificate is:
 - (a) a disqualified individual (within the meaning of section 57J); or
 - (b) a disqualified body corporate (within the meaning of section 57J); or
 - (c) a disqualified partnership (within the meaning of section 57J).

Section 57Q

- (2) Except in special circumstances, the Designated Authority must cancel a registration certificate if the holder, or any of the holders, of the certificate has contravened any of the conditions to which the certificate is subject.
- (3) If the Designated Authority cancels a registration certificate, the Designated Authority must give written notice of the cancellation to the holder or holders of the certificate.

Part IIA Regulation of the possession of classified exotic birds

Division 4 Operation of State and Territory laws

Section 57R

Division 4—Operation of State and Territory laws

57R Concurrent operation of State and Territory laws

Divisions 2 and 3 are not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with those Divisions.

Division 5—Partnerships

57S Treatment of partnerships

Divisions 2 and 3 apply to a partnership as if the partnership were a person, except that obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners.

57T Giving of documents to partnerships

For the purposes of Divisions 2 and 3, if a document is given to a partner of a partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.

Division 6—Exotic Birds Committee

Subdivision A—Establishment of Committee etc.

57U Exotic Birds Committee

Committee

- (1) There is to be an Exotic Birds Committee.

Composition of Committee

- (2) The Exotic Birds Committee consists of the following members:
 - (a) a Chairperson;
 - (b) at least 12 other members.

Vacancy not to affect performance of functions etc.

- (3) The performance of the functions, or the exercise of the powers, of the Exotic Birds Committee is not affected only because of there being a vacancy or vacancies in the membership of the Committee.

57V Functions of Committee

General functions

- (1) The functions of the Exotic Birds Committee are as follows:
 - (a) when requested to do so by the Minister, to advise the Minister about a matter relating to the operation of the exotic birds provisions;
 - (b) when requested to do so by the Minister, to review and report to the Minister about a matter relating to the operation of the exotic birds provisions;
 - (c) when requested to do so by the Designated Authority, to advise the Designated Authority about a matter relating to the operation of the exotic birds provisions.

Functions relating to birds notified under subsection 57B(4)

- (2) If:
- (a) the Designated Authority is notified of the possession of a bird under subsection 57B(4); and
 - (b) the Designated Authority has not previously been given a notification under that subsection about a bird of the same species;
- the Designated Authority must request the Exotic Birds Committee to advise the Minister about whether or not birds of that species should be specified in Schedule 9.

Definition

- (3) In this section:
- exotic birds provisions*** means the provisions of this Act and the regulations, to the extent to which they relate to classified exotic birds.

57W Appointment of members

Appointment by Minister

- (1) A member of the Exotic Birds Committee is to be appointed by the Minister by written instrument.

Qualifications of Chairperson of Committee

- (2) The Minister may only appoint a person as the Chairperson of the Exotic Birds Committee if:
- (a) in the opinion of the Minister, the person possesses qualifications and/or expertise relevant to the regulation of classified exotic birds; and
 - (b) the person is not an employee of the Commonwealth or of an authority of the Commonwealth; and
 - (c) the person does not hold a full-time office under a law of the Commonwealth.

Section 57X

Qualifications of other members of Committee

- (3) The Minister must ensure that each of the other members of the Exotic Birds Committee possesses such qualifications, experience or expertise as the Minister thinks relevant to the performance of the Committee's functions.

Majority of members not to be Commonwealth employees

- (4) The Minister must ensure that persons employed by the Commonwealth or authorities of the Commonwealth do not constitute a majority of the members of the Exotic Birds Committee.

Majority of members not to represent any one body or group

- (5) The Minister must ensure that persons representing any one interest body or group do not constitute a majority of the members of the Exotic Birds Committee.

Subdivision B—Administrative provisions

57X Period of appointment

Term of office of Chairperson

- (1) The Chairperson of the Exotic Birds Committee holds office for such term as is specified in the instrument of appointment. The term must not exceed 3 years.

Term of office of other members

- (2) The other members of the Exotic Birds Committee hold office at the pleasure of the Minister.

57Y Basis on which members hold office

A member of the Exotic Birds Committee holds office on a part-time basis.

57Z Remuneration and allowances

Remuneration to be determined by Remuneration Tribunal

- (1) A member of the Exotic Birds Committee is to be paid such remuneration as is determined by the Remuneration Tribunal.

Remuneration to be prescribed if no determination in operation

- (2) If no determination of that remuneration is in operation, a member of the Exotic Birds Committee is to be paid such remuneration as is prescribed.

Allowances

- (3) A member of the Exotic Birds Committee is to be paid such allowances as are prescribed.

Section has effect subject to the Remuneration Tribunal Act 1973

- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

57ZA Leave of absence

Leave for Chairperson

- (1) The Minister may, by writing, grant leave of absence to the Chairperson of the Exotic Birds Committee from a meeting of the Committee.

Leave for other members

- (2) The Chairperson of the Exotic Birds Committee may, by writing, grant leave of absence to another member of the Committee from a meeting of the Committee.

Section 57ZB

57ZB Acting appointments

Acting Chairperson

- (1) The Minister may appoint a member of the Exotic Birds Committee to act as the Chairperson of the Committee:
- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office;
- but a person appointed to act during the vacancy is not to continue so to act for more than 6 months.

Acting member

- (2) The Minister may appoint a person to act as a member of the Exotic Birds Committee (other than as the Chairperson of the Committee):
- (a) during a vacancy in an office of member, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office;
- but a person appointed to act during the vacancy is not to continue so to act for more than 6 months.

Validation

- (3) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

57ZC Disclosure of interests

Disclosure

- (1) A member of the Exotic Birds Committee who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Committee must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Committee.

Participation

- (2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting of the Exotic Birds Committee and the member must not:
 - (a) be present during any deliberation of the Committee in relation to that matter; or
 - (b) take part in any decision of the Committee in relation to that matter.

57ZD Resignation

A member of the Exotic Birds Committee may resign by writing signed by him or her and sent to the Minister.

57ZE Termination of appointment

Misbehaviour or incapacity

- (1) The Minister may terminate the appointment of a member of the Exotic Birds Committee because of misbehaviour or physical or mental incapacity.

Bankruptcy, conflict of interest etc.

- (2) If a member of the Exotic Birds Committee:
 - (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with his or her creditors; or

Section 57ZF

- (d) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (e) fails, without reasonable excuse, to comply with his or her obligations under section 57ZC or 57ZJ;
- the Minister must terminate the appointment of the member.

Unauthorised absence

- (3) If a member of the Exotic Birds Committee is absent, except on leave granted under section 57ZA, from 3 consecutive meetings of the Committee, the Minister must terminate the appointment of the member.

Unsatisfactory performance of individual member

- (4) The Minister may terminate the appointment of a member of the Exotic Birds Committee if the Minister is of the opinion that the performance of the member has been unsatisfactory for a significant period of time.

57ZF Other terms and conditions

A member of the Exotic Birds Committee holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice published in the *Gazette*.

Subdivision C—Operations of the Exotic Birds Committee

57ZG Meetings of the Exotic Birds Committee

Chairperson may convene meetings

- (1) The Chairperson of the Exotic Birds Committee may convene a meeting of the Committee at any time.

When Chairperson must convene meeting

- (2) The Chairperson of the Exotic Birds Committee must convene a meeting of the Committee:
 - (a) at least once in each financial year; or

Section 57ZG

- (b) whenever the greater of:
 - (i) 9 other members of the Committee; or
 - (ii) the number of members that constitutes a majority of the members for the time being holding office;request in writing that a meeting be held.

Minister may convene meeting

- (3) The Minister may convene a meeting of the Exotic Birds Committee at any time.

Quorum

- (4) At a meeting of the Exotic Birds Committee, a quorum is constituted by the greater of:
 - (a) 9 members; or
 - (b) the number of members that constitutes a majority of the members for the time being holding office.

Quorum if member excluded under section 57ZC

- (5) If:
 - (a) a member of the Exotic Birds Committee who is present at a meeting is required by section 57ZC not to be present during the deliberations, or to take part in any decision, of the Committee with respect to a particular matter; and
 - (b) when the member leaves the meeting, there is no longer a quorum present;the members remaining at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

Chairperson to preside at meetings

- (6) The Chairperson of the Exotic Birds Committee is to preside at all meetings of the Committee at which he or she is present.

Section 57ZH

Arrangements if Chairperson is not present at a meeting

- (7) If the Chairperson of the Exotic Birds Committee is not present at a meeting of the Committee, the Committee members present must elect one of their number to preside at the meeting.

Voting

- (8) Questions arising at a meeting of the Exotic Birds Committee are to be determined by a majority of the votes of the Committee members present and voting.

Vote of person presiding

- (9) The person presiding at a meeting of the Exotic Birds Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Proceedings and minutes

- (10) The Exotic Birds Committee:
- (a) may regulate the conduct of proceedings at its meetings as it thinks fit; and
 - (b) must cause minutes of those proceedings to be kept.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for the participation in a meeting by telephone etc.

57ZH Resolutions without meetings

Agreement with resolution

- (1) A resolution is taken to have been passed at a meeting of the Exotic Birds Committee if, without meeting, a sufficient number of Committee members indicate agreement with a resolution in accordance with a method determined by the Committee under subsection (2).

Note: *Sufficient number of Committee members* is defined by subsection (3).

Determinations

- (2) Subsection (1) applies only if the Exotic Birds Committee:
- (a) determines that it applies; and
 - (b) determines the method by which Committee members are to indicate agreement with a resolution.

Sufficient number of Committee members

- (3) In this section:

sufficient number of Committee members, in relation to a resolution, means a majority of the number of members of the Exotic Birds Committee who would have been entitled to vote on the resolution at a meeting of the Committee if they had been present at the meeting.

Subdivision D—Other committees

57ZI Committees established by the Exotic Birds Committee

Other committees

- (1) The Exotic Birds Committee may establish such other committees as it considers necessary to assist it in the performance of its functions.

Other committee to include at least one member of Exotic Birds Committee

- (2) A committee established under subsection (1) must include at least one member of the Exotic Birds Committee.

Exotic Birds Committee may determine procedures etc.

- (3) The Exotic Birds Committee may determine, in relation to a committee established under subsection (1):
- (a) the manner in which the committee is to perform its functions; and
 - (b) the procedure to be followed at or in relation to meetings of the committee, including matters with respect to:

Section 57ZJ

- (i) the convening of meetings of the committee; and
- (ii) the number of members of the committee that constitutes a quorum; and
- (iii) the selection of a member of the committee to preside at meetings of the committee at which the chairperson of the committee is not present; and
- (iv) the manner in which questions arising at a meeting of the committee are to be decided.

Minutes

- (4) A committee established under subsection (1) is to keep minutes of its proceedings.

57ZJ Disclosure of interests

Disclosure

- (1) A member of a committee established under section 57ZI who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the committee must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the committee.

Participation

- (2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting and the member must not:
 - (a) be present during any deliberation of the committee in relation to that matter; or
 - (b) take part in any decision of the committee in relation to that matter.

**57ZK Committee established by Exotic Birds Committee—
member's appointment to be terminated for
non-disclosure of interests**

When section applies

- (1) This section applies to a member of a committee established under section 57ZL.

Appointment of member to be terminated for non-disclosure of interests

- (2) The Exotic Birds Committee must terminate the appointment of the member if the member fails, without reasonable excuse, to comply with section 57ZJ.

Power of termination not limited

- (3) Subsection (2) does not, by implication, limit the Exotic Birds Committee's power to terminate the appointment of the member.

Division 7—Monitoring of compliance

57ZL Monitoring powers

For the purposes of this Division, each of the following powers is a *monitoring power* in relation to particular premises:

- (a) the power to search the premises;
- (b) the power to take photographs (including a video recording), or to make sketches, of the premises or of any substance or thing at the premises;
- (c) the power to inspect, examine and take samples of, any substance or thing on or in the premises;
- (d) the power to take extracts from, or make copies of, any document, book or record on the premises;
- (e) the power to take onto the premises any equipment or material reasonably necessary for the purpose of exercising a power referred to in paragraph (a), (b), (c) or (d).

57ZM Monitoring searches—occupier gives consent

Entry by consent

- (1) An inspector may, with the consent of the occupier of any premises, enter the premises for the purpose of finding out whether any or all of sections 57B, 57C and 57N are being complied with.

Entry for monitoring purposes

- (2) An inspector may only enter premises under subsection (1) to the extent that it is reasonably necessary for the purpose of finding out whether any or all of sections 57B, 57C and 57N are being complied with.

Exercise of monitoring powers

- (3) If an inspector enters premises under subsection (1), the inspector may exercise monitoring powers in relation to those premises.

Exercise of seizure powers

- (4) If an inspector enters premises under subsection (1), the inspector may exercise powers of seizure conferred on the inspector by section 69B or 69M.

Right to refuse to give consent

- (5) Before obtaining the consent of a person for the purposes of this section, an inspector must tell the person that the person may refuse to give consent.

Consent must be voluntary

- (6) An entry by an inspector in consequence of the consent of a person is not lawful unless the person voluntarily consented to the entry.

Production of identity card etc.

- (7) An inspector is not entitled to:
- (a) enter premises under subsection (1); or
 - (b) exercise any powers referred to in subsection (3) or (4) in relation to premises;
- if the occupier of the premises has required the inspector to produce written identification for inspection by the occupier and:
- (c) if the inspector is a member of a police force—the inspector fails to produce, for inspection by the occupier, written evidence of the fact that the inspector is a member of that police force; or
 - (d) if the inspector is an officer of Customs—the inspector fails to produce, for inspection by the occupier, written evidence of the fact that the inspector is an officer of Customs; or
 - (e) if the inspector is neither a member of a police force nor an officer of Customs—the inspector fails to produce the inspector's identity card for inspection by the occupier.

Section 57ZN

57ZN Monitoring warrants

Application for monitoring warrant

- (1) An inspector may apply to a Magistrate for a warrant under this section in relation to particular premises. The warrant is to be known as a *monitoring warrant*.

Issue of monitoring warrant

- (2) Subject to subsection (3), the Magistrate may issue the monitoring warrant if he or she is satisfied, by information on oath or affirmation, that it is reasonably necessary that the inspector should have access to the premises for the purpose of finding out whether any or all of sections 57B, 57C and 57N are being complied with.

Information about grounds for issue of monitoring warrant

- (3) The Magistrate must not issue the monitoring warrant unless the inspector or another person has given the Magistrate, either orally (on oath or affirmation) or by affidavit, such further information as the Magistrate requires about the grounds on which the issue of the monitoring warrant is being sought.

Terms of warrant

- (4) The monitoring warrant must:
 - (a) authorise an inspector named in the monitoring warrant, with such assistance and by such force as is necessary and reasonable, from time to time while the monitoring warrant remains in force, to enter the premises and exercise monitoring powers; and
 - (b) state whether an entry under the monitoring warrant is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than 6 months after the issue of the monitoring warrant) on which the monitoring warrant ceases to have effect; and
 - (d) state the purpose for which the monitoring warrant is issued.

Seizure powers

- (5) If an inspector enters premises under a monitoring warrant, the inspector may exercise powers of seizure conferred on the inspector by section 69B or 69M.

57ZO Details of monitoring warrant to be given to occupier etc.

- (1) If a monitoring warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the inspector named in the monitoring warrant must make available to that person a copy of the monitoring warrant.

Note: *Monitoring warrant* is defined by subsection 57ZN(1).

- (2) The inspector named in the monitoring warrant must identify himself or herself to that person at the premises.
- (3) The copy of the monitoring warrant referred to in subsection (1) need not include the signature of the Magistrate or the seal of the relevant court.

57ZP Occupier entitled to be present during search

- (1) If a monitoring warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to Part 1C of the *Crimes Act 1914*, entitled to observe the search being conducted.

Note: *Monitoring warrant* is defined by subsection 57ZN(1).

- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

57ZQ Announcement before entry

- (1) The inspector named in a monitoring warrant must, before any person enters premises under the monitoring warrant:

Part IIA Regulation of the possession of classified exotic birds

Division 7 Monitoring of compliance

Section 57ZQ

- (a) announce that he or she is authorised to enter the premises;
and
- (b) give any person at the premises an opportunity to allow entry to the premises.

Note: *Monitoring warrant* is defined by subsection 57ZN(1).

- (2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
 - (a) the safety of a person (including an inspector); or
 - (b) that the effective execution of the monitoring warrant is not frustrated.

Part III—Enforcement

Division 1—Inspectors

58 Appointment of inspectors

- (1) The Minister may, by instrument in writing, appoint a person as an inspector.
- (2) The Minister may make a written determination that a specified person, or a person included in a specified class of persons, does not have such of the powers conferred on an inspector by this Act as are specified in the determination. The determination has effect accordingly.
- (3) If the Minister makes a determination under subsection (2) about a named individual, the Minister must give the individual a copy of the determination.

59 Inspectors *ex officio*

By force of this section:

- (a) any officer of Customs;
 - (b) any member of the Australian Federal Police; and
 - (c) any member of the police force of an external Territory;
- is an inspector.

60 Arrangements for State and Territory officers to be inspectors

- (1) The Minister may enter into an arrangement with the appropriate Minister of the Crown of a State for:
 - (a) officers or employees of the Public Service of the State or of an authority of the State (including a local government body); or
 - (b) members of the police force of the State;to be inspectors, and that arrangement has effect accordingly.

Section 61

- (2) The Minister may enter into an arrangement with the appropriate person holding an office referred to in section 34 of the *Northern Territory (Self-Government) Act 1978* for:
 - (a) officers or employees of the Public Service of the Northern Territory or of an authority of the Northern Territory (including a local government body); or
 - (b) members of the police force of the Northern Territory;to be inspectors, and that arrangement has effect accordingly.
- (3) The Minister may enter into an arrangement with the appropriate person holding an office under section 13 of the *Norfolk Island Act 1979* for persons appointed or employed under an enactment referred to in section 61 of that Act to be inspectors, and that arrangement has effect accordingly.
- (4) The Minister may make a written determination that a specified person, or a person included in a specified class of persons, who is an inspector because of this section does not have such of the powers conferred on an inspector by this Act as are specified in the determination. The determination has effect accordingly.
- (5) If the Minister makes a determination under subsection (4) about a named individual, the Minister must give the individual a copy of the determination.

61 Identity cards

- (1) The Minister may cause to be issued to an inspector, other than a member of a police force or an officer of Customs, an identity card in a form approved by the Minister.
- (2) Where a person in possession of an identity card issued to him or her under subsection (1) ceases to be an inspector, that person shall forthwith return the identity card to the Minister.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding one penalty unit.
- (4) An offence under subsection (3) is an offence of strict liability.

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

Section 61

- (5) Subsection (3) does not apply if the person has a reasonable excuse.

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

Division 2—Boarding of vessels etc. and access to premises by consent

62 Boarding of vessels etc. by inspectors

- (1) This section applies to:
 - (a) any Australian vessel, Australian aircraft or Australian platform;
 - (b) any vehicle, vessel or aircraft that is in Australia or an external Territory;
 - (c) any vessel, or any aircraft capable of landing on water, that is in Australian waters; and
 - (d) any aircraft that is over Australia, an external Territory or Australian waters.
- (2) An inspector may, with such assistance as he or she thinks necessary, board any vehicle, vessel, aircraft or platform to which this section applies for the purpose of exercising, and may exercise, the functions of an inspector in accordance with section 64 if he or she believes on reasonable grounds that there is in, or on, that vehicle, vessel, aircraft or platform:
 - (a) any specimen that has been, or is proposed to be, exported or imported in contravention of this Act; or
 - (b) any goods that may afford evidence as to the commission of an offence against this Act;and, in the case of a vehicle, vessel or aircraft, may, for that purpose, stop and detain that vehicle, vessel or aircraft.
- (3) An inspector may require any person on board a vehicle, vessel, aircraft or platform to which this section applies whom the inspector finds committing, or whom the inspector suspects on reasonable grounds of having committed, an offence against this Act to state that person's full name and usual place of residence.
- (4) Where an inspector or the person in command of a Commonwealth ship or of a Commonwealth aircraft believes on reasonable grounds that a vessel to which this section applies and which is in Australian waters has been used or otherwise involved

in the commission of an offence against this Act, he or she may bring, or, by means of an international signal code or other internationally recognized means of communication with a vessel, require the person in charge of the vessel to bring, the vessel to the nearest port in Australia or an external Territory to which it is safe and practicable to bring the vessel.

- (5) Where an inspector or the person in command of a Commonwealth ship or of a Commonwealth aircraft believes on reasonable grounds that an aircraft to which this section applies and which is over Australia or over or in Australian waters has been used or otherwise involved in the commission of an offence against this Act, he or she may, by means of an international signal code or other internationally recognized means of communication with an aircraft, require the person in charge of the aircraft to bring the aircraft to the nearest airport in Australia or an external Territory to which it is safe and practicable to bring the aircraft.
- (6) An inspector may, for the purposes of this Act, require the person in charge of a vehicle, vessel, aircraft or platform to which this section applies to give information concerning the vehicle, vessel, aircraft or platform and its crew and any other person on board the vehicle, vessel, aircraft or platform.
- (7) Where an inspector (other than a member of a police force, or an officer of Customs, who is in uniform) boards a vehicle, vessel, aircraft or platform to which this section applies, the inspector shall:
 - (a) in the case of a member of a police force—produce, for inspection by the person in charge of that vehicle, vessel, aircraft or platform, written evidence of the fact that he or she is a member of that police force;
 - (b) in the case of an officer of Customs—produce, for inspection by the person in charge of that vehicle, vessel, aircraft or platform, written evidence of the fact that he or she is an officer of Customs; or
 - (c) in any other case—produce his or her identity card for inspection by that person;

and, if he fails to do so, the inspector is not authorized to remain, or to require any person assisting the inspector to remain, on board

Part III Enforcement

Division 2 Boarding of vessels etc. and access to premises by consent

Section 62

that vehicle, vessel, aircraft or platform or to detain that vehicle, vessel or aircraft.

- (8) Where an inspector (other than a member of a police force, or an officer of Customs, who is in uniform) makes a requirement of a person under this section, the inspector, unless it is impracticable to do so, shall:
- (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force;
 - (b) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or
 - (c) in any other case—produce his or her identity card for inspection by that person;

and, if the inspector fails to do so, that person is not obliged to comply with the requirement.

- (9) A person who intentionally fails to comply with a requirement made of the person by an inspector under this section or by the person in command of a Commonwealth ship or a Commonwealth aircraft under subsection (4) or (5) is guilty of an offence punishable on conviction by a fine not exceeding 60 penalty units.
- (9A) Subsection (9) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (9A). See subsection 13.3(3) of the *Criminal Code*.

- (10) In this section, unless the contrary intention appears:

Australian aircraft means an aircraft that:

- (a) is owned by:
 - (i) the Commonwealth or an authority of the Commonwealth;
 - (ii) a State or an authority of a State;
 - (iii) the Northern Territory or an authority of the Northern Territory; or
 - (iv) the Administration of Norfolk Island; or
- (b) is registered in Australia.

Australian platform means a platform that:

- (a) is fixed to the continental shelf of Australia or of an external Territory or to the sea-bed beneath Australian waters; or
- (b) is otherwise operating in that part of the sea above the continental shelf of Australia or of an external Territory or in Australian waters.

Australian vessel means a vessel that:

- (a) is owned by:
 - (i) the Commonwealth or an authority of the Commonwealth;
 - (ii) a State or an Authority of a State;
 - (iii) the Northern Territory or an authority of the Northern Territory; or
 - (iv) the Administration of Norfolk Island; or
- (b) is registered in Australia or flying the Australian flag.

Australian waters means:

- (a) the waters adjacent to Australia and having as their inner limits the baselines by reference to which the territorial limits of Australia are defined for the purposes of international law and as their outer limits lines seaward from those inner limits every point on each of which is distant 12 nautical miles from the point on one of those baselines that is nearest to the first-mentioned point; and
- (b) the waters adjacent to each external Territory and having as their inner limits the baselines by reference to which the territorial limits of that Territory are defined for the purposes of international law and as their outer limits lines seaward from those inner limits every point on each of which is distant 12 nautical miles from the point on one of those baselines that is nearest to the first-mentioned point.

Commonwealth aircraft means an aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is or are displayed.

Part III Enforcement

Division 2 Boarding of vessels etc. and access to premises by consent

Section 63

Commonwealth ship means a ship in the service of the Commonwealth on which the prescribed ensign of the ship is flying.

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

63 Access to premises by consent

- (1) An inspector may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an inspector in accordance with section 64.
- (5) Where an inspector has entered any premises in pursuance of subsection (1), he or she may exercise the functions of an inspector in accordance with section 64.

64 Functions of inspectors—sections 62 and 63

- (1) The functions of an inspector who boards a vehicle, vessel, aircraft or platform under section 62 or enters premises under section 63 are:
 - (a) to search the vehicle, vessel, aircraft, platform or premises, as the case may be; and
 - (b) to inspect, take extracts from, and make copies of, any document that relates to the export or import of any prescribed specimen; and
 - (c) to inspect, and take samples of, any prescribed specimen; and
 - (d) to exercise powers of seizure conferred on the inspector by section 69B or 69M.
- (2) For the purposes of carrying out any functions under subsection (1), an inspector may break open any hold or compartment, or any container or other receptacle (including any place that could be used as a receptacle), on a vehicle, vessel, aircraft or platform or on any premises.

- (3) In this section, *prescribed specimen* means a specimen that is, or that an inspector believes on reasonable grounds is, a specimen the export or the import of which, otherwise than in accordance with a permit or an authority, is prohibited by this Act.

Division 3—Search warrants

64A When search warrants can be issued

Search of premises

- (1) A Magistrate may issue a warrant authorising an inspector to search premises if the Magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises.

Search of a person

- (2) A Magistrate may issue a warrant authorising an inspector to carry out an ordinary search or a frisk search of a person if the Magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that the person has in his or her possession, or will within the next 72 hours have in his or her possession, any evidential material.

Use of firearms

- (3) If the inspector applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the inspector must state that suspicion, and the grounds for that suspicion, in the information.

Statements in warrant—general

- (4) If a Magistrate issues a warrant, the Magistrate is to state in the warrant:
 - (a) the offence to which the warrant relates; and
 - (b) a description of the premises to which the warrant relates or the name or description of the person to whom it relates; and
 - (c) the kinds of evidential material that are to be searched for under the warrant; and
 - (d) the name of the inspector who is to be responsible for executing the warrant; and

Section 64A

- (e) the period for which the warrant remains in force, which must not be more than 7 days; and
- (f) whether the warrant may be executed at any time or only during particular hours.

Statements in warrant—search of premises

- (5) The Magistrate is also to state, in a warrant in relation to premises:
 - (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (4)(c)) found at the premises in the course of the search that the executing inspector or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) a thing relevant to another offence against this Act, where the other offence is an indictable offence;if the executing inspector or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act; and
 - (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing inspector or an officer assisting suspects on reasonable grounds that the person has any evidential material or eligible seizable items in his or her possession.

Statements in warrant—search of a person

- (6) The Magistrate is also to state, in a warrant in relation to a person:
 - (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (4)(c)) found, in the course of the search, on or in the possession of the person or in a recently used conveyance, being a thing that the executing inspector or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence to which the warrant relates; or

Section 64A

- (ii) a thing relevant to another offence against this Act, where the other offence is an indictable offence; if the executing inspector or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act; and
- (b) the kind of search of a person that the warrant authorises.

Successive warrants

- (7) Paragraph (4)(e) does not prevent the issue of successive warrants in relation to the same premises or person.

Emergency searches

- (8) If the application for the warrant is made under section 64M, this section applies as if:
 - (a) subsections (1) and (2) refer to 48 hours rather than 72 hours; and
 - (b) paragraph (4)(e) refer to 48 hours rather than 7 days.

Powers of Magistrate—Jervis Bay Territory

- (9) A Magistrate in New South Wales or the Australian Capital Territory may issue a warrant in relation to premises or a person in the Jervis Bay Territory.

Powers of Magistrate—general

- (10) A Magistrate in a State or internal Territory may:
 - (a) issue a warrant in relation to premises or a person in that State or Territory; or
 - (b) issue a warrant in relation to premises or a person in an external Territory; or
 - (c) issue a warrant in relation to premises or a person in another State or internal Territory (including the Jervis Bay Territory) if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate; or

Section 64B

- (d) issue a warrant in relation to a person wherever the person is in Australia or in an external Territory if he or she is satisfied that it is not possible to predict where the person may be.

Previous applications by member or special member of the Australian Federal Police

- (11) If the applicant for a warrant is a member or special member of the Australian Federal Police and has, at any time previously, applied for a warrant relating to the same person or premises, the person must state particulars of those applications and their outcome in the information.

64B The things that are authorised by a search warrant

Search of premises

- (1) A warrant that is in force in relation to premises authorises the executing inspector or an officer assisting:
 - (a) to enter the warrant premises and, if the premises are a conveyance, to enter the conveyance, wherever it is; and
 - (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
 - (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and
 - (d) to seize other things found at the premises in the course of the search that the executing inspector or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) evidential material in relation to another offence against this Act, where the other offence is an indictable offence;if the executing inspector or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to

Section 64B

prevent its concealment, loss or destruction or its use in committing an offence against this Act; and

- (e) to seize other things found at the premises in the course of the search that the executing inspector or an officer assisting believes on reasonable grounds to be eligible seizable items; and
- (f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing inspector or an officer assisting suspects on reasonable grounds that the person has any evidential material or eligible seizable items in his or her possession.

Search of a person

- (2) A warrant that is in force in relation to a person authorises the executing inspector or an officer assisting:
 - (a) to search the person as specified in the warrant and things found in the possession of the person and any recently used conveyance for things of the kind specified in the warrant; and
 - (b) to:
 - (i) seize things of that kind; or
 - (ii) record fingerprints from things; or
 - (iii) take forensic samples from things; found in the course of the search; and
 - (c) to seize other things found on or in the possession of the person or in the conveyance in the course of the search that the executing inspector or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) a thing relevant to another offence against this Act, where the other offence is an indictable offence; if the executing inspector or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act; and

Section 64C

- (d) to seize other things found in the course of the search that the executing inspector or an officer assisting believes on reasonable grounds to be eligible seizable items.

Hours when search warrant may be executed

- (3) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

Ordinary searches or frisk searches

- (4) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

Seized items may be made available to other agencies

- (5) If things are seized under a warrant, the warrant authorises the executing inspector to make the things available to officers of other agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

64C Availability of assistance, and use of force, in executing a warrant

- (1) In executing a warrant:
- (a) the executing inspector may obtain such assistance; and
 - (b) the executing inspector, or a person who is an inspector and who is assisting in executing the warrant, may use such force against persons and things; and
 - (c) a person who is not an inspector and who has been authorised to assist in executing the warrant may use such force against things;
- as is necessary and reasonable in the circumstances.
- (2) A person who is not an inspector must not take part in searching or arresting a person.

Section 64D

64D Details of warrant to be given to occupier etc.

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing inspector or an officer assisting must make available to that person a copy of the warrant.
- (2) If a warrant in relation to a person is being executed, the executing inspector or an officer assisting must make available to that person a copy of the warrant.
- (3) If a person is searched under a warrant in relation to premises, the executing inspector or an officer assisting must show the person a copy of the warrant.
- (4) The executing inspector must identify himself or herself to the person at the premises or the person being searched, as the case may be.
- (5) The copy of the warrant referred to in subsections (1) and (2) need not include the signature of the Magistrate or the seal of the relevant court.

64E Specific powers available to inspectors executing warrant

- (1) In executing a warrant in relation to premises, the executing inspector or an officer assisting may:
 - (a) for a purpose incidental to the execution of the warrant; or
 - (b) if the occupier of the premises consents in writing;take photographs (including video recordings) of the premises or of things at the premises.
- (2) If a warrant in relation to premises is being executed, the executing inspector and all officers assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises:
 - (a) for not more than one hour; or
 - (b) for a longer period if the occupier of the premises consents in writing.
- (3) If:

Section 64F

- (a) the execution of a warrant is stopped by an order of a court;
and
 - (b) the order is later revoked or reversed on appeal; and
 - (c) the warrant is still in force;
- the execution of the warrant may be completed.

64F Use of equipment to examine or process things

- (1) The executing inspector or an officer assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.
- (2) If:
 - (a) it is not practicable to examine or process the things at the warrant premises; or
 - (b) the occupier of the premises consents in writing;the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.
- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing inspector must, if it is practicable to do so:
 - (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out;
and
 - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The executing inspector or an officer assisting may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant if the executing inspector or an officer assisting believes on reasonable grounds that:
 - (a) the equipment is suitable for the examination or processing;
and

Section 64G

- (b) the examination or processing can be carried out without damage to the equipment or the thing.

64G Use of electronic equipment at premises

Operation of equipment

- (1) The executing inspector or an officer assisting may operate electronic equipment at the premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Seizure etc.

- (2) If the executing inspector or an officer assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
 - (c) if the material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

Limitation on seizure

- (3) A person may seize equipment under paragraph (2)(a) only if:
 - (a) it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or

Section 64G

- (b) possession of the equipment by the occupier could constitute an offence.

Securing equipment

- (4) If the executing inspector or an officer assisting believes on reasonable grounds that:
- (a) evidential material may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;
- he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

Notice about securing equipment

- (5) The executing inspector or an officer assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

Period for which equipment may be secured

- (6) The equipment may be secured:
- (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert;
- whichever happens first.

Extension of period

- (7) If the executing inspector or an officer assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a Magistrate for an extension of that period.

Notice to occupier

- (8) The executing inspector or an officer assisting must give notice to the occupier of the premises of his or her intention to apply for an
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Section 64H

extension, and the occupier is entitled to be heard in relation to the application.

Provisions relating to extensions

- (9) The provisions of this Part relating to the issue of warrants apply, with such modifications as are necessary, to the issuing of an extension.

64H Compensation for damage to electronic equipment

- (1) If:
- (a) damage is caused to equipment as a result of it being operated as mentioned in section 64F or 64G; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;
- compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

64J Copies of seized things to be provided

- (1) Subject to subsection (2), if an inspector seizes, under a warrant relating to premises:
- (a) a document, film, computer file or other thing that can be readily copied; or

Section 64K

- (b) a storage device the information in which can be readily copied;
- the inspector must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if:
- (a) the thing that has been seized was seized under paragraph 64G(2)(b) or (c); or
 - (b) possession of the document, film, computer file, thing or information by the occupier could constitute an offence.

64K Occupier entitled to be present during search

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to Part 1C of the *Crimes Act 1914*, entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

64L Receipts for things seized under warrant

- (1) If a thing is seized under a warrant or moved under subsection 64F(2), the executing inspector or an officer assisting must provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered in the one receipt.

Section 64M

64M Warrants by telephone or other electronic means

Application

- (1) An inspector may make an application to a Magistrate for a warrant by telephone, telex, facsimile or other electronic means:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

Voice communication

- (2) The Magistrate may require communication by voice to the extent that is practicable in the circumstances.

Information

- (3) An application under this section must include all information required to be provided in an ordinary application for a warrant, but the application may, if necessary, be made before the information is sworn.

Issue of warrant

- (4) If an application is made to a Magistrate under this section and the Magistrate, after considering the information and having received and considered such further information (if any) as the Magistrate required, is satisfied that:
 - (a) a warrant in the terms of the application should be issued urgently; or
 - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;the Magistrate may complete and sign the same form of warrant that would be issued under section 64A.

Notification

- (5) If the Magistrate decides to issue the warrant, the Magistrate is to inform the applicant, by telephone, telex, facsimile or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

Section 64N

Form of warrant

- (6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the Magistrate, stating on the form the name of the Magistrate and the day on which and the time at which the warrant was signed.

Completed form of warrant to be given to Magistrate

- (7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the Magistrate the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.

Attachment

- (8) The Magistrate is to attach to the documents provided under subsection (7) the form of warrant completed by the Magistrate.

Presumption

- (9) If:
- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
 - (b) the form of warrant signed by the Magistrate is not produced in evidence;
- the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

64N Restrictions on personal searches

A warrant can not authorise a strip search or a search of a person's body cavities.

64P When a thing is in the possession of a person

A reference in this Division to a person who has a thing in his or her possession includes a reference to a person who has a thing

Part III Enforcement

Division 3 Search warrants

Section 64P

under his or her control in any place (whether for the use or benefit of the person or of another person), even if another person has the actual possession or custody of the thing.

Division 4—Stopping and searching conveyances

64Q Searches of conveyances without warrant in emergency situations

- (1) This section applies if an inspector suspects, on reasonable grounds, that:
 - (a) a thing relevant to an indictable offence against this Act is in or on a conveyance; and
 - (b) it is necessary to exercise a power under subsection (2) in order to prevent the thing from being concealed, lost or destroyed; and
 - (c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.
- (2) The inspector may:
 - (a) stop and detain the conveyance; and
 - (b) search the conveyance and any container in or on the conveyance, for the thing; and
 - (c) seize the thing if he or she finds it there.
- (3) If, in the course of searching for the thing, the inspector finds another thing relevant to an offence against this Act, the inspector may seize that thing if he or she suspects, on reasonable grounds, that:
 - (a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and
 - (b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.
- (4) The inspector must exercise his or her powers subject to section 64R.

64R How an inspector exercises a power under section 64Q

When an inspector exercises a power under section 64Q in relation to a conveyance, he or she:

Part III Enforcement

Division 4 Stopping and searching conveyances

Section 64R

- (a) may use such assistance as is necessary; and
- (b) must search the conveyance in a public place or in some other place to which members of the public have ready access; and
- (c) must not detain the conveyance for longer than is necessary and reasonable to search it and any container found in or on the conveyance; and
- (d) may use such force as is necessary and reasonable in the circumstances, but must not damage the conveyance or any container found in or on the conveyance by forcing open a part of the conveyance or container unless:
 - (i) the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part or container; or
 - (ii) it is not possible to give that person such an opportunity.

Division 5—Arrest and related matters

65 Powers of arrest of inspectors

- (1) An inspector may, without warrant, arrest any person, if the inspector believes on reasonable grounds that:
 - (a) the person is committing or has committed an offence against this Act; and
 - (b) proceedings against the person by summons would not be effective.
- (2) Where an inspector (other than a member of a police force, or an officer of Customs, who is in uniform) arrests a person under subsection (1), the inspector shall:
 - (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force;
 - (b) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or
 - (c) in any other case—produce his or her identity card for inspection by that person.
- (3) Where a person is arrested under subsection (1), an inspector shall without unreasonable delay bring the person, or cause the person to be brought, before a Justice of the Peace or other proper authority to be dealt with in accordance with law.

65A Power to conduct a frisk search of an arrested person

An inspector who arrests a person for an offence against this Act, or who is present at such an arrest, may, if the inspector suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any eligible seizable items:

- (a) conduct a frisk search of the person at or soon after the time of arrest; and

Section 65B

- (b) seize any eligible seizable items found as a result of the search.

65B Power to conduct an ordinary search of an arrested person

An inspector who arrests a person for an offence against this Act, or who is present at such an arrest, may, if the inspector suspects on reasonable grounds that the person is carrying:

- (a) evidential material in relation to that or another offence against this Act; or
- (b) an eligible seizable item;

conduct an ordinary search of the person at or soon after the time of arrest, and seize any such thing found as a result of the search.

65C Power to conduct search of arrested person's premises

An inspector who arrests a person at premises for an offence against this Act, or who is present at such an arrest, may seize things in plain view at those premises that the inspector believes on reasonable grounds to be:

- (a) evidential material in relation to that or another offence against this Act; or
- (b) eligible seizable items.

**Division 6—Miscellaneous provisions about searches,
entry to premises, warrants etc.****65D Conduct of ordinary searches and frisk searches**

An ordinary search or a frisk search of a person under this Part must, if practicable, be conducted by a person of the same sex as the person being searched.

65E Announcement before entry

- (1) An inspector must, before any person enters premises under a warrant or to arrest a person under this Act:
 - (a) announce that he or she is authorised to enter the premises;
and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
 - (a) the safety of a person (including an inspector); or
 - (b) that the effective execution of the warrant or the arrest is not frustrated.

65F Offence of making false statements in warrants

A person must not make, in an application for a warrant, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

65G Offences relating to telephone warrants

A person must not:

Part III Enforcement

Division 6 Miscellaneous provisions about searches, entry to premises, warrants etc.

Section 65H

- (a) state in a document that purports to be a form of warrant under section 64M the name of a Magistrate unless the Magistrate issued the warrant; or
- (b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the Magistrate; or
- (c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows:
 - (i) has not been approved by a Magistrate under that section; or
 - (ii) to depart in a material particular from the terms authorised by a Magistrate under that section; or
- (d) give to a Magistrate a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

65H Retention of things which are seized

- (1) Subject to any contrary order of a court, if a person seizes a thing under Division 3, 4 or 5, the person must return it if:
 - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
 - (b) if the thing was seized under section 64Q:
 - (i) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
 - (ii) the period of 60 days after its seizure ends;whichever first occurs;unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (2) If a thing is seized by an inspector under section 64Q, at the end of the 60 days specified in subsection (1), the inspector must take reasonable steps to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it) unless:

Section 65J

- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
- (b) the inspector may retain the thing because of an order under section 65J; or
- (c) the inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the thing.

65J Magistrate may permit a thing to be retained

- (1) If a thing is seized under section 64Q, and:
 - (a) before the end of 60 days after the seizure; or
 - (b) before the end of a period previously specified in an order of a Magistrate under this section;proceedings in respect of which the thing may afford evidence have not commenced, the inspector may apply to a Magistrate for an order that he or she may retain the thing for a further period.
- (2) If the Magistrate is satisfied that it is necessary for the inspector to continue to retain the thing:
 - (a) for the purposes of an investigation as to whether an offence against this Act has been committed; or
 - (b) to enable evidence of an offence against this Act to be secured for the purposes of a prosecution;the Magistrate may order that the inspector may retain the thing for a period specified in the order.
- (3) Before making the application, the inspector must:
 - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person who the inspector believes to have such an interest of the proposed application.
- (4) A function of making an order conferred on a Magistrate by this section is conferred on the Magistrate in a personal capacity and not as a court or a member of a court.

Part III Enforcement

Division 6 Miscellaneous provisions about searches, entry to premises, warrants etc.

Section 65K

- (5) Without limiting the generality of subsection (4), an order made by a Magistrate under this section has effect only by virtue of this Act and is not taken, by implication, to be made by a court.
- (6) A Magistrate performing a function of, or connected with, making an order under this section has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the Magistrate is a member).
- (7) The Governor-General may make arrangements with the Governor of a State, the Chief Minister of the Australian Capital Territory, the Administrator of the Northern Territory or the Administrator of Norfolk Island for the performance, by all or any of the persons who from time to time hold office as Magistrates in that State or Territory, of the function of making orders under this section.

65K Law relating to legal professional privilege not affected

This Part does not affect the law relating to legal professional privilege.

65L Other laws about search, arrest etc. not affected

- (1) This Part is not intended to limit or exclude the operation of another law of the Commonwealth relating to:
 - (a) the search of persons or premises; or
 - (b) arrest and related matters; or
 - (c) the stopping, detaining or searching of conveyances; or
 - (d) the seizure of things.
- (2) To avoid doubt, it is declared that even though another law of the Commonwealth provides power to do one or more of the things referred to in subsection (1), a similar power conferred by this Part may be used despite the existence of the power under the other law.

66 Persons to assist inspectors

- (1) Subject to subsection (2), the owner, or person in charge, of any vehicle, vessel, aircraft or platform boarded by an inspector under section 62, or of any premises entered by an inspector under

Section 66

section 63, shall, if requested by an inspector to do so, provide reasonable assistance to the inspector in the performance of the functions, or carrying out of the duties, or the exercise of the powers, of the inspector under this Act in relation to that vehicle, vessel, aircraft or platform or those premises.

(1A) A person who intentionally contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

(1B) Subject to subsection (2), the owner, or the person in charge, of:

- (a) premises entered under a warrant; or
- (b) a conveyance stopped under section 64Q;

must, if requested by an inspector to do so, provide reasonable assistance to the inspector in:

- (c) the performance of the functions; or
- (d) the carrying out of the duties; or
- (e) the exercise of the powers;

conferred on the inspector under this Act in relation to those premises or that conveyance.

(1C) A person who intentionally contravenes subsection (1B) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

(2) Where an inspector (other than a member of a police force, or an officer of Customs, who is in uniform) makes a request of a person under this section, the inspector shall:

- (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force;
- (b) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or
- (c) in any other case—produce his or her identity card for inspection by that person;

and, if the inspector fails to do so, that person is not obliged to comply with the request.

Division 7—Power to search baggage etc.

67 Power to search baggage etc.

- (1) An inspector may examine any goods that are to be, are being, or have been, taken on or off a prescribed vessel or any goods that the inspector believes, on reasonable grounds, to be such goods.
- (2) An inspector may ask a person who owns, is carrying or is otherwise associated with, or appears to the inspector to be associated with, goods that the inspector is examining or entitled to examine under subsection (1) any question in respect of the goods.
- (3) A person shall not intentionally refuse or intentionally fail to answer a question put to the person under subsection (2).

Penalty: 60 penalty units.

- (3A) Subsection (3) does not apply if the person has a reasonable excuse.

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

- (4) In this section:

baggage, in relation to a prescribed vessel, includes any parcel or other goods that a passenger or member of the crew of the vessel has had with him or her on the vessel.

examine includes:

- (a) in relation to goods that are baggage, open and search the baggage; and
- (b) in relation to goods in a container, open and search the container.

goods includes a specimen and baggage.

member of the crew includes:

- (a) in relation to a ship—the master, a mate or an engineer of the ship; and

(b) in relation to an aircraft—the pilot of the aircraft.

prescribed vessel means:

- (a) a ship that voyages between:
 - (i) a place in Australia and a place outside Australia; or
 - (ii) a place in an external Territory and a place outside that Territory; or
- (b) an aircraft that flies between:
 - (i) a place in Australia and a place outside Australia; or
 - (ii) a place in an external Territory and a place outside that Territory.

Division 8—Power to ask questions about specimens

69 Inspector may ask questions about the nature or origin of specimens

When section applies

- (1) This section applies to a specimen if an inspector has reasonable grounds to suspect that:
 - (a) the specimen has been exported, or is proposed to be exported, in contravention of section 21; or
 - (b) the specimen has been imported, or is proposed to be imported, in contravention of section 22.

Questions

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

Answers to questions

- (3) Subject to subsections (6), (7) and (8), if a person is asked a question under subsection (2), the person must not intentionally refuse or intentionally fail to answer the question.

False answers

- (4) If a person is asked a question under subsection (2), the person must not give an answer that is false or misleading in a material particular if:
 - (a) the person knows that the answer is false or misleading in a material particular; or
 - (b) the person is reckless as to whether the answer is false or misleading in a material particular.

Offence

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

No requirement to give incriminating answers

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

Note: The defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

Identity cards etc.

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

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

Capability to answer question

- (8) If a person is asked a question under subsection (2), the person is only required to answer the question to the extent that the person is capable of doing so.

Note: The defendant bears an evidential burden in relation to the matter in subsection (8). See subsection 13.3(3) of the *Criminal Code*.

Division 9—Power to ask for names and addresses

69A Inspector may ask a person to give the person's name and address

- (1) An inspector may ask an individual to tell the inspector the individual's name and address if the inspector has reasonable grounds to suspect that the individual has been involved in the commission of an offence against this Act or the regulations.
- (2) Subject to subsection (5), a person must not intentionally refuse or intentionally fail to comply with a request under subsection (1).
- (3) A person must not, in purported compliance with a request under subsection (1), give a name or address that the person knows is false or misleading.
- (4) A person who contravenes subsection (2) or (3) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.
- (5) If an inspector makes a request of a person under subsection (1), the person is not required to comply with the request unless:
 - (a) if the inspector is a member of a police force—the inspector produces, for inspection by the person, written evidence of the fact that the inspector is a member of that police force; or
 - (b) if the inspector is an officer of Customs—the inspector produces, for inspection by the person, written evidence of the fact that the inspector is an officer of Customs; or
 - (c) if the inspector is neither a member of a police force nor an officer of Customs—the inspector produces the inspector's identity card for inspection by the person.

Division 10—Seizure and forfeiture etc.

**Subdivision A—Seizure of specimens involved in a
contravention of this Act or the regulations**

**69B Seizure of specimens involved in a contravention of this Act or
the regulations**

An inspector may seize a specimen if the inspector has reasonable grounds to suspect that the specimen has been used or otherwise involved in the commission of an offence against this Act or the regulations.

69C Notice about seizure

- (1) Subject to subsection (2), if a specimen is seized by an inspector under section 69B, the inspector must give:
 - (a) the owner of the specimen; or
 - (b) the person who had possession, custody or control of the specimen immediately before it was seized;a written notice:
 - (c) identifying the specimen; and
 - (d) stating that it has been seized under section 69B and giving the reason for the seizure; and
 - (e) setting out the terms of sections 69D and 69E.The notice must be given as soon as practicable after the seizure.
- (2) An inspector is not required to give a notice under subsection (1) about a specimen if, after making such inquiries as the inspector thinks appropriate, the inspector does not, within 30 days after the seizure, have sufficient information to enable the inspector to give the notice. In that event, the inspector must keep a written record of the seizure.

Section 69D

69D Applications for return of specimen

- (1) If a specimen is seized under section 69B, the owner of the specimen may apply in writing to the Designated Authority for the delivery to the owner of the specimen.
- (2) The application must be made:
 - (a) within 30 days after the seizure; or
 - (b) if a notice is given under subsection 69C(1) in relation to the specimen—within 30 days after the giving of the notice.
- (3) The application must be made on the ground that the specimen was not used or otherwise involved in the commission of an offence against this Act or the regulations.
- (4) If the applicant satisfies the Designated Authority that that ground has been established, the Designated Authority must grant the application.

Note: Under section 69H, the Designated Authority may retain the specimen for up to 30 days after making a decision on the application.

69E Court action for return of specimen

- (1) If a specimen is seized under section 69B, the owner of the specimen may bring an action against the Commonwealth in a court of competent jurisdiction for the delivery of the specimen to the owner on the ground that the specimen was not used or otherwise involved in the commission of an offence against this Act or the regulations.
- (2) An action under subsection (1) must be brought:
 - (a) within 30 days after the seizure; or
 - (b) if a notice is given under subsection 69C(1) in relation to the specimen—within 30 days after the giving of the notice.
- (3) If:
 - (a) an action is brought under subsection (1); and
 - (b) the court finds that the specimen was used or otherwise involved in the commission of the offence concerned;the court must order the specimen to be forfeited to the Commonwealth.

Section 69F

- (4) If:
- (a) an action is brought under subsection (1); and
 - (b) the action is discontinued by the owner otherwise than because of:
 - (i) the delivery of the specimen to the owner; or
 - (ii) the forfeiture of the specimen to the Commonwealth; or
 - (iii) the disposal of the specimen under section 69R;
- the specimen is forfeited to the Commonwealth.

69F Consignment of specimen with consent of owner

- (1) If:
- (a) a specimen is seized under section 69B; and
 - (b) the specimen was imported from a particular foreign country; and
 - (c) the export of the specimen from the foreign country was not in contravention of a law of the foreign country that corresponds to this Act; and
 - (d) the specimen is not specified in Part I of Schedule 3; and
 - (e) if the importer had applied for a permit authorising the import of the specimen, it is not reasonably likely that the permit would have been granted; and
 - (f) the importer produces written evidence from the relevant authority of the foreign country that the specimen may be returned to the foreign country without contravening such a law;
- the Designated Authority may, with the consent of the owner of the specimen, consign the specimen to a place in the foreign country.
- (2) The consignment is to be at the expense of the owner of the specimen.

69G Release of specimen

If a specimen is seized under section 69B, the Designated Authority may release the specimen to the owner, or to the person from whose possession the specimen was seized, either:

Section 69H

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

69H Retention of specimen

If a specimen is seized under section 69B, the specimen may be retained until the end of 30 days after whichever is the latest of the following events:

- (a) the seizure;
- (b) if a notice is given under subsection 69C(1) in relation to the specimen—the giving of the notice;
- (c) if an application is made under subsection 69D(1) in relation to the specimen—the making of a decision on that application;
- (d) if:
 - (i) proceedings for an offence against this Act or the regulations are instituted during the period within which an application may be made under subsection 69D(1) in relation to the specimen; and
 - (ii) the specimen may have been used or otherwise involved in the commission of the offence or the specimen may afford evidence of the commission of the offence;

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

- (e) if proceedings under section 69L are instituted during the period within which an application may be made under subsection 69D(1) in relation to the specimen—the termination of the proceedings (including any appeal to any court in relation to those proceedings).

However, this rule does not authorise the retention of the specimen if the owner of the specimen succeeds in an action under subsection 69E(1) for the delivery of the specimen to the owner. Nor does this rule require the return of the specimen if proceedings under subsection 69E(1) relating to the specimen are pending.

69J Forfeiture of specimen after end of retention period

- (1) If:
- (a) a specimen is seized under section 69B; and
 - (b) none of the following happens before the end of the period for which the specimen may be retained:
 - (i) proceedings are instituted for an offence against this Act or the regulations, where the specimen is alleged to have been used or otherwise involved in the commission of the offence;
 - (ii) the specimen is delivered to the owner;
 - (iii) the owner of the specimen brings an action under subsection 69E(1) for the delivery of the specimen to the owner;
 - (iv) proceedings are instituted under section 69L in relation to the specimen;
 - (v) the specimen is disposed of under section 69R;
- the specimen is forfeited to the Commonwealth at the end of that period.
- (2) Subsection (1) has effect only to the extent (if any) to which it gives effect to paragraph 1(b) of Article VIII of the Convention.

69K Forfeiture of specimen by consent etc.

- (1) If:
- (a) a specimen is seized under section 69B; and
 - (b) the owner of the specimen agrees to transfer ownership of the specimen to the Commonwealth, either:
 - (i) unconditionally; or
 - (ii) in the event that a future contingency happens; and
 - (c) if subparagraph (b)(ii) applies—that contingency happens;
- then:
- (d) the specimen becomes the property of the Commonwealth; and
 - (e) the provisions of this Part relating to forfeiture apply as if the specimen had been forfeited to the Commonwealth under this Act.

Section 69L

- (2) If:
- (a) a specimen is seized under section 69B; and
 - (b) the owner of the specimen agrees to transfer ownership of the specimen to the Commonwealth in the event that a future contingency happens;
- the Designated Authority may retain the specimen:
- (c) until the specimen becomes the property of the Commonwealth; or
 - (d) if the specimen does not become the property of the Commonwealth—until the occurrence of the last day on which that contingency could have happened.
- (3) Subsection (2) has effect despite anything in section 69H.

69L Forfeiture of specimen by order of a civil court

- If:
- (a) a specimen is seized under section 69B; and
 - (b) the specimen has been used or otherwise involved in a contravention of this Act or the regulations;
- a court may, on the application of the Designated Authority, order the forfeiture to the Commonwealth of the specimen.

Subdivision B—Seizure of goods other than specimens

69M Seizure of goods other than specimens

- (1) This section applies to goods (including vehicles, vessels, aircraft, platforms and documents), but does not apply to a specimen.
- (2) An inspector may seize goods if the inspector has reasonable grounds to suspect that:
 - (a) the goods have been used or otherwise involved in the commission of an offence against this Act or the regulations;
 - or
 - (b) the goods will afford evidence of the commission of an offence against this Act or the regulations.

69N Retention of goods that have been seized

- (1) Goods seized under section 69M may be retained until:
 - (a) the end of the period of 60 days after the seizure or the end of such extended period as is, or such extended periods as are, determined under subsection (3); or
 - (b) if:
 - (i) proceedings for an offence against this Act or the regulations are instituted within that period; and
 - (ii) the goods may have been used or otherwise involved in the commission of the offence or the goods may afford evidence of the commission of the offence;the proceedings (including any appeal to a court in relation to those proceedings) are terminated.
 - (2) An inspector may apply to a Magistrate for an extension of the period during which the inspector is entitled to retain particular goods seized under section 69M.
 - (3) If the Magistrate is satisfied that the retention of the goods for an extended period is warranted, the Magistrate may make an order extending the period during which the goods may be retained. The maximum period of an individual extension is 30 days.
 - (4) Subsection (3) does not prevent a Magistrate from granting 2 or more successive extensions under that subsection of the period during which particular goods may be retained.
 - (5) A function of making an order conferred on a Magistrate by subsection (3) is conferred on the Magistrate in a personal capacity and not as a court or a member of a court.
 - (6) Without limiting the generality of subsection (5), an order made by a Magistrate under subsection (3) has effect only by virtue of this Act and is not taken, by implication, to be made by a court.
 - (7) A Magistrate performing a function of, or connected with, making an order under subsection (3) has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the Magistrate is a member).
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Part III Enforcement

Division 10 Seizure and forfeiture etc.

Section 69P

- (8) The Governor-General may make arrangements with the Governor of a State, the Chief Minister of the Australian Capital Territory, the Administrator of the Northern Territory or the Administrator of Norfolk Island for the performance, by all or any of the persons who from time to time hold office as Magistrates in that State or Territory, of the function of making orders under subsection (3).

69P Disposal of goods if owner cannot be located

If:

- (a) goods are seized under section 69M; and
- (b) apart from this section, the Commonwealth is required to return the goods to the owner; and
- (c) the Designated Authority cannot, despite making reasonable efforts, locate the owner;

the Designated Authority may dispose of the goods in such manner as the Designated Authority thinks appropriate.

69Q Release of goods that have been seized

The Designated Authority may authorise goods seized under section 69M or anything in, on or attached to such goods to be released to their owner, or to the person from whose possession they were seized, either:

- (a) unconditionally; or
- (b) on such conditions as the Designated Authority thinks fit (including conditions about the giving of security for giving payment of their value if they are forfeited).

Subdivision C—Immediate disposal of seized items

69R Immediate disposal of seized items

- (1) If:
- (a) a thing is seized under this Division; and
 - (b) it is reasonably likely that the retention of the thing would:
 - (i) constitute a serious threat to the environment; or

Section 69R

- (ii) constitute a serious threat to the continued existence, in the wild, of a particular species of animals or of a particular species of plants; or
- (iii) result in the introduction of an alien species that represents a threat to ecosystems, habitats or other species; or
- (iv) constitute a danger to public health; or
- (v) in the case of a live specimen—constitute a significant threat to the health of the specimen;

the Designated Authority may cause the thing to be dealt with in such manner as the Designated Authority considers appropriate (including the destruction of the thing).

- (2) Subject to subsection (3), if a thing is dealt with in accordance with subsection (1), the Designated Authority must give to:
- (a) the owner of the thing; or
 - (b) the person who had possession, custody or control of the thing immediately before it was seized;

a written notice:

- (c) identifying the thing; and
- (d) stating that the thing has been seized under this Division and giving the reason for the seizure; and
- (e) stating that the thing has been dealt with under subsection (1) and specifying the manner in which it has been so dealt with and the reason for doing so; and
- (f) setting out the terms of subsection (4).

The notice must be given as soon as practicable after the thing is so dealt with.

- (3) The Designated Authority is not required to give a notice under subsection (2) about a thing if, after making such inquiries as the Designated Authority thinks appropriate, the Designated Authority does not, within 20 days after dealing with the thing, have sufficient information to enable the notice to be given.
- (4) If a thing is dealt with in accordance with subsection (1), the owner of the thing may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the thing at the time it was so dealt with. The action must

Part III Enforcement

Division 10 Seizure and forfeiture etc.

Section 69S

be brought on the ground that the thing was not used or otherwise involved in the commission of an offence against this Act or the regulations.

Subdivision D—Court-ordered forfeiture

69S Court-ordered forfeiture

- (1) If a court convicts a person of an offence against this Act or the regulations, the court may order the forfeiture to the Commonwealth of any thing (other than a specimen) used or otherwise involved in the commission of the offence.
- (2) If a court convicts a person of an offence against this Act or the regulations, the court must order the forfeiture to the Commonwealth of any specimen used or otherwise involved in the commission of the offence.
- (3) A court may make an order under subsection (1) or (2) even if the thing or specimen has been seized under this Act.
- (4) A reference in this section to a conviction of a person of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

Subdivision E—Dealings in forfeited items

69T Dealings in forfeited items

- (1) A thing forfeited to the Commonwealth under this Act becomes the property of the Commonwealth.
- (2) A thing forfeited to the Commonwealth under this Act is to be dealt with in such manner as the Designated Authority considers appropriate.
- (3) Without limiting subsection (2), the Designated Authority may sell a thing forfeited to the Commonwealth under this Act.

Section 69U

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

Subdivision F—Delivery of forfeited items to the Commonwealth

69U Delivery of forfeited items to the Commonwealth

- (1) If:
- (a) a thing is forfeited to the Commonwealth under this Act; and
 - (b) the thing has not been dealt with under section 69T; and
 - (c) the thing is in the possession, custody or control of a person other than:
 - (i) the Commonwealth; or
 - (ii) an agency of the Commonwealth;
- the person must deliver the thing to the Designated Authority.
- (2) A person who intentionally contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

Subdivision G—Keeping of specimens that have been seized

69V Keeping of specimens retained under this Part

If a person is authorised under this Part to retain a specimen, the person may do so by causing the specimen to be taken to, and kept at, a place approved by the Designated Authority for the purpose of keeping specimens seized under this Division.

69W Recovery of costs of storing or keeping specimens

- (1) If a specimen is seized under this Part, the owner is liable to pay to the Commonwealth an amount equal to the sum of the following costs:
- (a) reasonable costs incurred by the Commonwealth in relation to the custody of the specimen;

Part III Enforcement

Division 10 Seizure and forfeiture etc.

Section 71A

- (b) reasonable costs incurred by the Commonwealth in transporting the specimen;
 - (c) in the case of a specimen that is a live animal or a live plant—reasonable costs incurred by the Commonwealth in maintaining the animal or plant.
- (2) If:
- (a) a specimen is seized under this Part; and
 - (b) the specimen is disposed of;
- the owner is liable to pay to the Commonwealth an amount equal to the reasonable costs incurred by the Commonwealth in disposing of the specimen.
- (3) An amount payable by a person under this section is a debt due by the person to the Commonwealth.
- (4) An amount payable by a person to the Commonwealth under this section may be recovered by action in a court of competent jurisdiction.
- (5) The Designated Authority may remit an amount payable by a person under this section.
- (6) In addition to its effect apart from this subsection, this section also has the effect it would have if a liability under this section were, by express provision, confined to the case of a specimen that:
- (a) is forfeited to the Commonwealth under this Act; or
 - (b) would have been forfeited to the Commonwealth under this Act if it had not been disposed of.

Subdivision H—Rescuing goods

71A Rescuing goods

- (1) If:
- (a) a person engages in conduct; and
 - (b) the conduct causes the rescue of any goods that have been, or are about to be, seized under this Act;
- the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

Section 71A

(1A) If:

- (a) a person engages in conduct; and
 - (b) the conduct causes any goods to be staved, broken or destroyed, or any documents relating to any goods to be destroyed; and
 - (c) the conduct hinders or prevents the seizure of goods, the securing of goods, or the proof of any offence under this Act;
- the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

(2) In this section, **goods** includes vehicles, vessels, aircraft, platforms, specimens and documents.

(3) In this section:

engage in conduct means:

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

Part IV—Miscellaneous

72 False statements

- (1) A person who, in, or in connection with, an application for a permit, an authority or a registration certificate:
 - (a) intentionally makes a statement that, to the person's knowledge, is false or misleading in a material particular; or
 - (b) intentionally furnishes to an inspector or other person doing duty in relation to this Act a document that, to the knowledge of the first-mentioned person, contains information that is false or misleading in a material particular;is guilty of an offence punishable, on conviction, by imprisonment for a term not exceeding 2 years.
- (2) A person who:
 - (a) intentionally makes to an inspector doing duty in relation to this Act a statement that, to the knowledge of the person, is false or misleading in a material particular; or
 - (b) intentionally furnishes to an inspector doing duty in relation to this Act a document that, to the knowledge of the person, contains information that is false or misleading in a material particular;is guilty of an offence punishable, on conviction, by a fine not exceeding 60 penalty units.
- (3) For the purposes of the application of subsections (1) and (2) in relation to a corporation but without prejudice to the liability of any person other than the corporation:
 - (a) a statement made, or a document furnished, by a person acting on behalf of the corporation shall be deemed to have been made or furnished by the corporation; and
 - (b) the knowledge of any person employed by, or concerned in the management of, the corporation shall be deemed to be knowledge of the corporation.

74 Evidence

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

75 Evidence of examiner

- (1) The Minister may appoint appropriately qualified persons to be examiners for the purposes of this Act.
 - (2) Subject to subsection (4), a certificate signed by an examiner appointed under subsection (1) setting out, in relation to a substance, matter or thing one or more of the following:
 - (a) that he or she is appointed as the examiner under subsection (1);
 - (b) when and from whom the substance, matter or thing was received;
 - (c) what labels or other means of identification accompanied the substance, matter or thing when it was received;
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Section 75A

- (d) what container held the substance, matter or thing when it was received;
 - (e) a description, including the weight, of the substance, matter or thing when it was received;
 - (f) the name of any method used to analyse the substance, matter or thing or any portion of it;
 - (g) the results of any such analysis;
 - (h) how the substance, matter or thing was dealt with after handling by the examiner, including details of:
 - (i) the quantity of the substance, matter or thing retained after analysis; and
 - (ii) names of any person to whom any of the substance, matter or thing was given after analysis; and
 - (iii) measures taken to secure any retained quantity of the substance, matter or thing after analysis;
- is admissible in any proceeding for an offence against this Act as *prima facie* evidence of the matters in the certificate and the correctness of the results of the analysis.
- (3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, unless the contrary is established, be deemed to be such a certificate.
 - (4) A certificate shall not be admitted in evidence in pursuance of subsection (2) in proceedings for an offence against this Act unless the person charged with the offence has been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

75A Protection of witness

- (1) A witness for the prosecution in any proceedings for an offence against this Act shall not be compelled to disclose:
 - (a) the fact that the witness received any information;
 - (b) the nature of any information received by the witness; or
 - (c) the name of the person who gave the witness any information.

- (2) An inspector who is a witness in any proceedings for an offence against this Act shall not be compelled to produce any report:
 - (a) that was made or received by the inspector in confidence in his or her capacity of an inspector; or
 - (b) that contains information received by the inspector in confidence.

76 Delegation by Minister

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to the Designated Authority or another person all or any of the Minister's powers under this Act, other than:
 - (a) the Minister's powers under section 9;
 - (b) the Minister's powers under section 24 in relation to an application for a permit to export a specimen specified in Part I of Schedule 3;
 - (c) the Minister's powers under section 24 in relation to an application for a permit to import a specimen specified in Part I of Schedule 3;
 - (ca) the powers of the Minister under section 43A; and
 - (e) this power of delegation.
- (2) A power so delegated, when exercised by the delegate shall, for the purposes of this Act, be deemed to have been exercised by the Minister.
- (3) A delegation under this section does not prevent the exercise of a power by the Minister.

76A Delegation by Designated Authority

- (1) The Designated Authority, with the approval, in writing, of the Minister, may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Designated Authority:
 - (a) delegate to an officer or employee of the Department that deals with Chapter 5 of the *Environment Protection and Biodiversity Conservation Act 1999* and is administered by

Section 77

the Minister administering that Chapter any or all of the powers of the Designated Authority under this Act, other than this power of delegation; or

- (b) delegate to a State/Territory officer any or all of the powers of the Designated Authority under Division 3 of Part IIA.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Designated Authority.
- (3) A delegation under this section does not prevent the exercise of the power by the Designated Authority.
- (4) If the Designated Authority delegates a power conferred on the Designated Authority by Division 3 of Part IIA to a State/Territory officer, the State/Territory officer may, by writing, sub-delegate the power to another State/Territory officer.
- (5) Section 34AA and paragraphs 34AB(a), (b) and (d) of the *Acts Interpretation Act 1901* apply in relation to a sub-delegation in a corresponding way to the way in which they apply to a delegation.
- (6) Section 34A and paragraphs 34AB(c) and (d) of the *Acts Interpretation Act 1901* apply to a sub-delegation as if it were a delegation.
- (7) In this section:
 - State/Territory officer*** means:
 - (a) a person who holds or performs the duties of an office or position under a law of a State or Territory; or
 - (b) a person who is employed by, or by an authority of, a State or Territory.

77 Arrangements by Minister and Designated Authority

- (1) The Minister may make arrangements to the extent necessary to achieve the object of this Act (including arrangements involving co-operation by the Commonwealth with the Government of another country, of a State or of the Northern Territory, the administration of an external Territory, an organization or a person) for:

- (a) the formulation or assessment of a management program for the purposes of this Act;
 - (b) the carrying out of research relating to native Australian animals and native Australian plants the species of which are, or are likely to become, threatened with extinction and the existence of the species of which is likely to be affected by trade in specimens of the species;
 - (c) the collection of statistics relating to the export and import of wild animals or wild plants, including statistics relating to the movement of such animals and plants within Australia before export or after import, as the case may be; or
 - (d) the dissemination of information relating to the export and import of wild animals or wild plants.
- (2) The Designated Authority may make arrangements with:
- (a) an authority, agency or instrumentality of the Commonwealth; or
 - (b) the Secretary to a Department; or
 - (c) an authority, agency or instrumentality of a State or internal Territory; or
 - (d) the administration of an external Territory; or
 - (e) an authority, agency or instrumentality of a foreign country; or
 - (f) an organisation specified in the regulations;
- about any matter in connection with:
- (g) the administration or enforcement of this Act; or
 - (h) the implementation of the Convention.

78 Co-operation with States and Territories

- (1) The Minister shall ensure that:
- (a) management programs for the purposes of this Act relating to the taking in or near Australia or in or near a prescribed Territory of specimens of native Australian animals or native Australian plants;
 - (b) proposed amendments to a Schedule, other than Schedule 8, (including amendments that would be deemed to be made by declarations under section 9) that would involve or affect
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Section 78

- native Australian animals or native Australian plants found in or near Australia or in or near a prescribed Territory;
- (c) conditions to which permits or authorities are subject, being conditions relating to the confinement of live animals or live plants imported into Australia or into a prescribed Territory; and
- (d) the requirements to be met by organizations that are to be entitled by virtue of this Act to receive live animals and live plants imported into Australia or into a prescribed Territory;
- are formulated or determined, as the case requires, in accordance with procedures that provide for the participation of a Minister of the Crown of each State and a Minister of the Northern Territory, being Ministers whom the first-mentioned Minister considers to be appropriate for the purpose.
- (2) A reference in subsection (1) to a Minister of the Northern Territory shall be read as a reference to a person holding an office referred to in section 34 of the *Northern Territory (Self-Government) Act 1978*.
- (3) The Minister shall ensure that:
- (a) management programs for the purposes of this Act relating to the taking in or near Norfolk Island of specimens of native Australian animals or native Australian plants;
- (b) proposed amendments to a Schedule, other than Schedule 8, (including amendments that would be deemed to be made by declarations under section 9) that would involve or affect native Australian animals or native Australian plants found in or near Norfolk Island;
- (c) conditions to which permits or authorities are subject, being conditions relating to the confinement of live animals and live plants imported into Norfolk Island; and
- (d) the requirements to be met by organizations that are to be entitled by virtue of this Act to receive live animals and live plants imported into Norfolk Island;
- are formulated or determined, as the case requires, in accordance with procedures that provide for the participation of a person holding an office under section 13 of the *Norfolk Island Act 1979* whom the Minister considers to be appropriate for the purpose.

79 Fees

- (1) The regulations may prescribe the fees to be paid in respect of the grant of a permit or the giving of an authority.
- (2) A fee prescribed in respect of the grant of a permit or the giving of an authority shall be paid before the permit is granted or the authority is given.
- (3) The regulations may prescribe the fees to be paid in respect of an application under this Act, other than an application for a permit or an authority.
- (4) A fee prescribed in respect of an application under this Act shall be paid when the application is made.

80 Review on decisions

- (1) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions:
 - (a) a declaration by the Minister under subsection 10(1);
 - (aa) a decision of the Minister under subsection 10(4), (6) or (7) to revoke a declaration;
 - (ab) a decision by the Minister under subsection 10(5) to vary a declaration;
 - (ac) a declaration by the Minister under subsection 10A(2) or (3);
 - (ad) a decision of the Minister under subsection 10A(4A), (4C) or (4D) to revoke a declaration;
 - (ae) a decision by the Minister under subsection 10A(4B) to vary a declaration;
 - (b) a declaration by the Designated Authority under subsection 11(1) or 12(1);
 - (c) a refusal by the Designated Authority of an application made under subsection 11(3) or 12(3);
 - (d) a requirement by the Minister under subsection 23(5);
 - (e) a decision of the Minister that the Minister is satisfied, or not satisfied, in relation to a matter for the purposes of section 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 or 38;

Section 80

- (f) a decision of the Minister to grant, or refuse to grant, a permit, other than a permit to export, or a permit to import, a specimen specified in Part I of Schedule 3;
- (g) a determination by the Minister for the purposes of paragraph 24(5)(b) of the period for which a permit is to remain in force;
- (h) a refusal by the Designated Authority of an application made under subsection 40(5);
- (j) a decision of the Designated Authority under subsection 40(7) to remove the name of a scientific organization from the register maintained under subsection 40(1);
- (k) a decision of the Minister that the Minister is satisfied, or not satisfied, in relation to a matter for the purposes of section 41 or 42, subsection 42A(7) or 42B(9) or section 43 or 44;
- (l) a decision of the Minister to give, or refuse to give, an authority under section 42, 42A, 42B or 43;
- (m) a determination by the Minister for the purposes of paragraph 42(6)(c) of the period for which an authority under section 42 is to remain in force;
- (ma) a determination by the Minister for the purposes of paragraph 42A(8)(c) of the period for which an authority under section 42A is to remain in force;
- (mb) a determination by the Minister for the purposes of paragraph 42B(10)(c) of the period for which an authority under section 42B is to remain in force;
- (n) a determination by the Minister for the purposes of paragraph 43(9)(b) of the period for which an authority under section 43 is to remain in force, being a period of less than 12 months;
- (o) a determination by the Minister for the purposes of paragraph 44(3)(c) of the period for which an authority under section 44 is to remain in force;
- (p) a decision of the Minister to vary, revoke or suspend a permit or authority under section 46;
- (q) a determination by the Minister of the period of suspension of a permit or authority for the purposes of subsection 46(3);

- (r) an imposition under subsection 47(1) of conditions in respect of a permit or an authority;
 - (s) a decision of the Minister to revoke, suspend, vary, or cancel a suspension of, a condition in respect of a permit or an authority under subsection 47(1);
 - (sa) a decision by the Designated Authority under subsection 47A(3);
 - (t) a refusal by the Minister of an application under subsection 49(1) or (2);
 - (u) a decision by the Designated Authority to give, or refuse to give, an approval under subsection 50(1) or 51(1);
 - (ua) a decision of the Designated Authority under a determination in force under section 51D;
 - (w) a decision of the Designated Authority under subsection 57J(1) to refuse to grant a registration certificate;
 - (x) a determination by the Designated Authority under subsection 57L(2) of the period for which a registration certificate is to remain in force;
 - (y) an imposition under subsection 57M(1) or (2) of conditions in respect of a registration certificate;
 - (z) a decision of the Designated Authority under subsection 57M(2) to vary or revoke a condition in respect of a registration certificate;
 - (za) a decision of the Designated Authority under subsection 57Q(1) or (2) to cancel a registration certificate.
- (2) In giving a direction as to the persons who are to constitute the Administrative Appeals Tribunal for the purposes of a review of a decision of the Minister that the Minister is satisfied, or not satisfied, in relation to a matter for the purposes of section 25, 27, 33 or 34 or paragraph 43(6)(b), the President of the Tribunal shall ensure that, for the purposes of the review, the Tribunal is constituted by, or includes, a member of the Tribunal who, in the opinion of the President, has special knowledge or skill in relation to environmental matters.
- (3) Where the Minister or the Designated Authority makes a decision of a kind referred to in subsection (1) and gives to the person or persons whose interests are affected by the decision notice in
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Section 81

writing of the making of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of the person or persons whose interests are affected by the decision.

- (4) Any failure to comply with the requirements of subsection (3) in relation to a decision shall not be taken to affect the validity of the decision.
- (5) In subsection (1), **decision** has the same meaning as it has in the *Administrative Appeals Tribunal Act 1975*.

81 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular:

- (c) providing for the manner of service of notices under this Act;
- (d) providing for forms to be completed, or declarations to be made, in relation to specimens by persons arriving in Australia or an external Territory; and
- (e) prescribing penalties not exceeding 10 penalty units for offences against the regulations.

82 Customs (Endangered Species) Regulations

- (1) The Customs (Endangered Species) Regulations made under the *Customs Act 1901* are repealed.
- (2) Notwithstanding the repeal by subsection (1) of the regulations referred to in that subsection, where an import permit, an export permit or a re-export certificate granted under those regulations was in force immediately before the commencement of this Act:
 - (a) that permit or certificate shall, subject to those regulations, continue in force; and

(b) those regulations shall continue to apply in relation to that permit or certificate;

as if those regulations had not been repealed.

(3) While an import permit, an export permit or a re-export certificate granted under the regulations referred to in subsection (1) in relation to a specimen continues in force by virtue of subsection (2), this Act shall not be taken to prohibit the import, export or re-export, as the case requires, of the specimen in accordance with those regulations.

Schedule 1 Specimens the export or import of which, otherwise than in accordance with a permit or an authority, is prohibited, and in relation to which sections 28 and 36 apply

Schedule 1—Specimens the export or import of which, otherwise than in accordance with a permit or an authority, is prohibited, and in relation to which sections 28 and 36 apply [see Note 2]

Schedule 2—Specimens the export or import of which, otherwise than in accordance with a permit or an authority, is prohibited, and in relation to which sections 29 and 37 apply [see Note 2]

Schedule 2A—Cites Appendix III specimens
[see Note 2]

Specimens the export or import of which, otherwise than in accordance with a permit or an authority, is prohibited, and in relation to which sections 30 and 38 apply **Schedule 3**
Specimens **Part I**

**Schedule 3—Specimens the export or import
of which, otherwise than in
accordance with a permit or an
authority, is prohibited, and in
relation to which sections 30 and 38
apply**

Sections 21, 22, 30 and 38

Part I—Specimens

A specimen of a genus, species or sub-species specified, or described, in Part II

Part II—Animals

All species of the Order CETACEA (whales, dolphins and porpoises)

Schedule 4 Specimens that are, or are derived from, native Australian animals or native Australian plants and the export of which is not prohibited by paragraph 21(b)

**Schedule 4—Specimens that are, or are
derived from, native Australian
animals or native Australian plants
and the export of which is not
prohibited by paragraph 21(b)** [see Note 2]

**Schedule 5—Live animals and live plants the
import of which is not prohibited by
paragraph 22(b) and in relation to
which section 9 does not apply**

Section 22

Part I—Live specimens

A live animal of a genus, species or sub-species specified in Part II.

A live mule.

A live hinny.

A live animal, or a live plant, that is a biological control agent of a kind that was approved for general release under the *Quarantine Act 1908* before the commencement of this Act.

Schedule 5 Live animals and live plants the import of which is not prohibited by paragraph 22(b) and in relation to which section 9 does not apply

Part II Animals

Division 1 Class Aves

Part II—Animals

Division 1—Class Aves

Order	Family	Genus, species or sub-species	Common name
ANSERIFORMES	Anatidae	<i>Anas platyrhynchos</i>	duck
	Anseridae	<i>Anser anser</i>	goose
COLUMBI-FORMES	Columbidae	<i>Columba livia</i>	pigeon
GALLIFORMES	Phasianidae	<i>Corturnix corturnix</i>	quail
		<i>Gallus gallus</i>	fowl
		<i>Meleagris gallopavo</i>	turkey
		<i>Phasianus calchicus</i>	pheasant

Division 2—Class Insecta

Order	Family	Genus, species or sub-species	Common name
HYMENOPTERA	Apidae	<i>Apis mellifera mellifera</i>	bee, apiary (honey)

Division 3—Class Mammalia

Order	Family	Genus, species or sub-species	Common name
ARTIODACTYLA	Bovidae	<i>Bos taurus</i>	cattle, domestic
		<i>Bos indicus</i>	ox, indian
		<i>Capra hircus</i>	goat, domestic
		<i>Ovis aries</i>	sheep, domestic
		Camelidae	<i>Camelus dromedarius</i>
	Suidae	<i>Sus scrofa</i>	pig, domestic
CARNIVORA	Canidae	<i>Canis familiaris</i>	dog, domestic
	Felidae	<i>Felis catus</i>	cat, domestic
PERISSODACTYLA	Equidae	<i>Equus asinus</i>	donkey, (ass)
		<i>Equus caballus</i>	horse, domestic
RODENTIA	Caviidae	<i>Cavia porcellus</i>	guinea pig, domestic
	Muridae	<i>Mus musculus</i>	house mouse
		<i>Rattus rattus</i>	Black rat

Live animals and live plants the import of which is not prohibited by paragraph 22(b)
and in relation to which section 9 does not apply **Schedule 5**

Animals **Part II**

Class Mammalia **Division 3**

Order	Family	Genus, species or sub-species	Common name
		<i>Rattus norvegicus</i>	Brown rat

Schedule 6 Live animals and live plants the import of which is not prohibited by paragraph 22(b) and in relation to which section 9 applies

Schedule 6—Live animals and live plants the import of which is not prohibited by paragraph 22(b) and in relation to which section 9 applies [see Note 2]

Schedule 7—Species of native Australian animals eligible to be treated as household pets [see Note 2]

Schedule 8—Convention on International Trade in Endangered Species of Wild Fauna and Flora

Subsection 4(1)
(Definition of “Convention”)

PREAMBLE

The Contracting States,

Recognizing that the wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

Conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

Recognizing that peoples and States are and should be the best protectors of their own wild fauna and flora;

Recognizing, in addition, that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

Convinced of the urgency of taking appropriate measures to this end;

Have agreed as follows:

ARTICLE I

Definitions

For the purpose of the present Convention, unless the context otherwise requires:

- (a) “Species” means any species, subspecies, or geographically separate population thereof;
- (b) “Specimen” means:
 - (i) any animal or plant, whether alive or dead;
 - (ii) in the case of an animal: for species included in Appendices I and II, any readily recognizable part or derivative thereof; and for species included in Appendix III, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species; and
 - (iii) in the case of a plant: for species included in Appendix I, any readily recognizable part or derivative thereof; and for species

included in Appendices II and III, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species;

- (c) "Trade" means export, re-export, import and introduction from the sea;
- (d) "Re-export" means export of any specimen that has previously been imported;
- (e) "Introduction from the sea" means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State;
- (f) "Scientific Authority" means a national scientific authority designated in accordance with Article IX;
- (g) "Management Authority" means a national management authority designated in accordance with Article IX;
- (h) "Party" means a State for which the present Convention has entered into force.

ARTICLE II

Fundamental Principles

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.
2. Appendix II shall include:
 - (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and
 - (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.
3. Appendix III shall include all species which any party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.
4. The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention.

ARTICLE III

Regulation of Trade in Specimens of Species included in Appendix I

1. All trade in specimens of species included in Appendix I shall be in accordance with the provisions of this Article.
2. The export of any specimen of a species included in Appendix I shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:
 - (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;
 - (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;
 - (c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment; and
 - (d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.
3. The import of any specimen of a species included in Appendix I shall require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. An import permit shall only be granted when the following conditions have been met:
 - (a) a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved;
 - (b) a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and
 - (c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.
4. The re-export of any specimen of a species included in Appendix I shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:
 - (a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention;

- (b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment; and
 - (c) a Management Authority of the State of re-export is satisfied that an import permit has been granted for any living specimen.
5. The introduction from the sea of any specimen of a species included in Appendix I shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:
- (a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved;
 - (b) a Management Authority of the State of introduction is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and
 - (c) a Management Authority of the State of introduction is satisfied that the specimen is not to be used for primarily commercial purposes.

ARTICLE IV

Regulation of Trade in Specimens of Species included in Appendix II

1. All trade in specimens of species included in Appendix II shall be in accordance with the provisions of this Article.
2. The export of any specimen of a species included in Appendix II shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:
 - (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;
 - (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and
 - (c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment.
3. A Scientific Authority in each Party shall monitor both the export permits granted by that State for specimens of species included in Appendix II and the actual exports of such specimens. Whenever a Scientific Authority determines that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in

the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, the Scientific Authority shall advise the appropriate Management Authority of suitable measures to be taken to limit the grant of export permits for specimens of that species.

4. The import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate.

5. The re-export of any specimen of a species included in Appendix II shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

- (a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention; and
- (b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment.

6. The introduction from the sea of any specimen of a species included in Appendix II shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

- (a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved; and
- (b) a Management Authority of the State of introduction is satisfied that any living specimen will be so handled as to minimise the risk of injury, damage to health or cruel treatment.

7. Certificates referred to in paragraph 6 of this Article may be granted on the advice of a Scientific Authority, in consultation with other national scientific authorities or, when appropriate, international scientific authorities, in respect of periods not exceeding one year for total numbers of specimens to be introduced in such periods.

ARTICLE V

Regulation of Trade in Specimens of Species included in Appendix III

1. All trade in specimens of species included in Appendix III shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III shall require the prior

grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

- (a) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and
 - (b) a Management Authority of the state of export is satisfied that any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment.
3. The import of any specimen of a species included in Appendix III shall require, except in circumstances to which paragraph 4 of this Article applies, the prior presentation of a certificate of origin and, where the import is from a State which has included that species in Appendix III, an export permit.
 4. In the case of re-export, a certificate granted by the Management Authority of the State of re-export that the specimen was processed in that State or is being re-exported shall be accepted by the State of import as evidence that the provisions of the present Convention have been complied with in respect of the specimen concerned.

ARTICLE VI

Permits and Certificates

1. Permits and certificates granted under the provisions of Articles III, IV and V shall be in accordance with the provisions of this Article.
2. An export permit shall contain the information specified in the model set forth in Appendix IV, and may only be used for export within a period of six months from the date on which it was granted.
3. Each permit or certificate shall contain the title of the present Convention, the name and any identifying stamp of the Management Authority granting it and a control number assigned by the Management Authority.
4. Any copies of a permit or certificate issued by a Management Authority shall be clearly marked as copies only and no such copy may be used in place of the original, except to the extent endorsed thereon.
5. A separate permit or certificate shall be required for each consignment of specimens.
6. A Management Authority of the State of import of any specimen shall cancel and retain the export permit or re-export certificate and any corresponding import permit presented in respect of the import of that specimen.

7. Where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. For these purposes “mark” means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.

ARTICLE VII

Exemptions and Other Special Provisions Relating to Trade

1. The provisions of Articles III, IV and V shall not apply to the transit or trans-shipment of specimens through or in the territory of a Party while the specimens remain in Customs control.
2. Where a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen, the provisions of Articles III, IV and V shall not apply to that specimen where the Management Authority issues a certificate to that effect.
3. The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where:
 - (a) in the case of specimens of a species included in Appendix I, they were acquired by the owner outside his State of usual residence, and are being imported into that State; or
 - (b) in the case of specimens of species included in Appendix II:
 - (i) they were acquired by the owner outside his State of usual residence and in a State where removal from the wild occurred;
 - (ii) they are being imported into the owner’s State of usual residence; and
 - (iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens;

unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.

4. Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.
5. Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant or

was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Articles III, IV or V.

6. The provisions of Articles III, IV and V shall not apply to the non-commercial loan, donation or exchange between scientists or scientific institutions registered by a Management Authority of their State, of herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material which carry a label issued or approved by a Management Authority.

7. A Management Authority of any State may waive the requirements of Articles III, IV and V and allow the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition provided that:

- (a) the exporter or importer registers full details of such specimens with that Management Authority;
- (b) the specimens are in either of the categories specified in paragraphs 2 or 5 of this Article; and
- (c) the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimise the risk of injury, damage to health or cruel treatment.

ARTICLE VIII

Measures to be Taken by the Parties

1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof.

These shall include measures:

- (a) to penalize trade in, or possession of, such specimens, or both; and
- (b) to provide for the confiscation or return to the State of export of such specimens.

2. In addition to the measures taken under paragraph 1 of this Article, a Party may, when it deems it necessary, provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention.

3. As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The parties shall ensure further that

all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimise the risk of injury, damage to health or cruel treatment.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

- (a) the specimen shall be entrusted to a Management Authority of the State of confiscation;
- (b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other places as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and
- (c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under sub-paragraph (b) of this paragraph, including the choice of a rescue centre or other place.

5. A rescue centre as referred to in paragraph 4 of this Article means an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated.

6. Each Party shall maintain records of trade in specimens of species included in Appendices I, II and III which shall cover:

- (a) the names and addresses of exporters and importers; and
- (b) the number and type of permits and certificates granted; the States with which such trade occurred; the numbers or quantities and types of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.

7. Each Party shall prepare periodic reports on its implementation of the Present Convention and shall transmit to the Secretariat:

- (a) an annual report containing a summary of the information specified in sub-paragraph (b) of paragraph 6 of this Article; and
- (b) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention.

8. The information referred to in paragraph 7 of this Article shall be available to the public where this is not inconsistent with the law of the Party concerned.

ARTICLE IX

Management and Scientific Authorities

1. Each Party shall designate for the purposes of the present Convention:
 - (a) one or more Management Authorities competent to grant permits or certificates on behalf of that party; and
 - (b) one or more Scientific Authorities.
2. A State depositing an instrument of ratification, acceptance, approval or accession shall at that time inform the Depository Government of the name and address of the Management Authority authorized to communicate with other Parties and with the Secretariat.
3. Any changes in the designations or authorizations under the provisions of this Article shall be communicated by the Party concerned to the Secretariat for transmission to all other Parties.
4. Any Management Authority referred to in paragraph 2 of this Article shall if so requested by the Secretariat or the Management Authority of another Party, communicate to it impressions of stamps, seals or other devices used to authenticate permits or certificates.

ARTICLE X

Trade with States not Party to the Convention

Where export or re-export is to, or import is from, a State not a Party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party.

ARTICLE XI

Conference of the Parties

1. The Secretariat shall call a meeting of the Conference of the Parties not later than two years after the entry into force of the present Convention.
2. Thereafter the Secretariat shall convene regular meetings at least once every two years, unless the Conference decides otherwise, and extraordinary meetings at any time on the written request of at least one-third of the parties.
3. At meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention and may:
 - (a) make such provisions as may be necessary to enable the Secretariat to carry out its duties;

- (b) consider and adopt amendments to Appendices I and II in accordance with Article XV;
 - (c) review the progress made towards the restoration and conservation of the species included in Appendices I, II and III;
 - (d) receive and consider any reports presented by the Secretariat or by any Party; and
 - (e) where appropriate, make recommendations for improving the effectiveness of the present Convention.
4. At each regular meeting, the Parties may determine the time and venue of the next regular meeting to be held in accordance with the provisions of paragraph 2 of this Article.
5. At any meeting, the Parties may determine and adopt rules of procedure for the meeting.
6. The United Nations, its Specialized Agencies and the International Atomic Energy Agency, as well as any State not a party to the present Convention, may be represented at meetings of the Conference by observers, who shall have the right to participate but not to vote.
7. Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:
- (a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and
 - (b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote.

ARTICLE XII

The Secretariat

1. Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment programme. To the extent and in the manner he considers appropriate, he may be assisted by suitable inter-government or non-governmental, international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.
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2. The Functions of the Secretariat shall be:

- (a) to arrange for and service meetings of the Parties;
- (b) to perform the functions entrusted to it under the provisions of Articles XV and XVI of the present Convention;
- (c) to undertake scientific and technical studies in accordance with programs authorized by the Conference of the Parties as will contribute to the implementation of the present Convention, including studies concerning standards for appropriate preparation and shipment of living specimens and the means of identifying specimens;
- (d) to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention;
- (e) to invite the attention of the Parties to any matter pertaining to the aims of the present Convention;
- (f) to publish periodically and distribute to the Parties current editions of Appendices I, II and III together with any information which will facilitate identification of specimens of species included in those Appendices.
- (g) to prepare annual reports to the Parties on its work and on the implementation of the present Convention and such other reports as meetings of the Parties may request;
- (h) to make recommendations for the implementation of the aims and provisions of the present Convention, including the exchange of information of a scientific or technical nature;
- (i) to perform any other function as may be entrusted to it by the Parties.

ARTICLE XIII

International Measures

1. When the Secretariat in the light of information received is satisfied that any species included in Appendices I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned.
 2. When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.
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3. The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.

ARTICLE XIV

Effect on Domestic Legislation and International Conventions

1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:

- (a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or
- (b) domestic measures restricting or prohibiting trade, taking, possession, or transport of species not included in Appendices I, II or III.

2. The provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade, taking, possession, or transport of specimens which is in force or subsequently may enter into force for any Party including any measure pertaining to the Customs, public health, veterinary or plant quarantine fields.

3. The provisions of the present Convention shall in no way affect the provisions of, or the obligations deriving from, any treaty, convention or international agreement concluded or which may be concluded between States creating a union or regional trade agreement establishing or maintaining a common external customs control and removing customs control between the parties thereto insofar as they relate to trade among the States members of that union or agreement.

4. A State party to the present Convention, which is also a party to any other treaty, convention or international agreement which is in force at the time of the coming into force of the present Convention and under the provisions of which protection is afforded to marine species included in Appendix II, shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or international agreement.

5. Notwithstanding the provisions of Articles III, IV and V, any export of a specimen taken in accordance with paragraph 4 of this Article shall only require a certificate from a Management Authority of the State of introduction

to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.

6. Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

ARTICLE XV

Amendments to Appendices I and II

1. The following provisions shall apply in relation to amendments to Appendices I and II at meetings of the Conference of the Parties:

- (a) Any Party may propose an amendment to Appendix I or II for consideration at the next meeting. The text of the proposed amendment shall be communicated to the Secretariat at least 150 days before the meeting. The Secretariat shall consult the other Parties and interested bodies on the amendment in accordance with the provisions of sub-paragraphs (b) and (c) of paragraph 2 of this Article and shall communicate the response to all Parties not later than 30 days before the meeting.
- (b) Amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.
- (c) Amendments adopted at a meeting shall enter into force 90 days after that meeting for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

2. The following provisions shall apply in relation to amendments to Appendices I and II between meetings of the Conference of the Parties:

- (a) Any Party may propose an amendment to Appendix I or II for consideration between meetings by the postal procedures set forth in this paragraph.
- (b) For marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties. It shall also consult inter-governmental bodies having a function in relation to those species especially with a view to obtaining scientific data these bodies may be able to provide and to ensuring co-ordination

with any conservation measures enforced by such bodies. The Secretariat shall communicate the views expressed and data provided by these bodies and its own findings and recommendations to the Parties as soon as possible.

- (c) For species other than marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties, and, as soon as possible thereafter, its own recommendations.
- (d) Any Party may, within 60 days of the date on which the Secretariat communicated its recommendations to the Parties under sub-paragraphs (b) or (c) of this paragraph, transmit to the Secretariat any comments on the proposed amendment together with any relevant scientific data and information.
- (e) The Secretariat shall communicate the replies received together with its own recommendations to the Parties as soon as possible.
- (f) If no objection to the proposed amendment is received by the Secretariat within 30 days of the date the replies and recommendations were communicated under the provisions of sub-paragraph (e) of this paragraph, the amendment shall enter into force 90 days later for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.
- (g) If an objection by any Party is received by the Secretariat, the proposed amendment shall be submitted to a postal vote in accordance with the provisions of sub-paragraphs (h), (i) and (j) of this paragraph.
- (h) The Secretariat shall notify the Parties that notification of objection has been received.
- (i) Unless the Secretariat receives the votes for, against or in abstention from at least one-half of the Parties within 60 days of the date of the notification under sub-paragraph (h) of this paragraph, the proposed amendment shall be referred to the next meeting of the Conference for further consideration.
- (j) Provided that votes are received from one-half of the Parties, the amendment shall be adopted by a two-thirds majority of Parties casting an affirmative or negative vote.
- (k) The Secretariat shall notify all Parties of the result of the vote.
- (l) If the proposed amendment is adopted it shall enter into force 90 days after the date of the notification by the Secretariat of its acceptance for

all parties except those which make a reservation in accordance with paragraph 3 of this Article.

3. During the period of 90 days provided for by sub-paragraph (c) of paragraph 1 or sub-paragraph (l) of paragraph 2 of this Article any Party may by notification in writing to the Depositary Government make a reservation with respect to the amendment. Until such reservation is withdrawn the party shall be treated as a State not a party to the present Convention with respect to trade in the species concerned.

ARTICLE XVI

Appendix III and Amendments thereto

1. Any party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of sub-paragraph (b) of Article I.

2. Each list submitted under the provisions of paragraph 1 of this Article shall be communicated to the Parties by the Secretariat as soon as possible after receiving it. The list shall take effect as part of Appendix III 90 days after the date of such communication. At any time after the communication of such list, any Party may by notification in writing to the Depositary Government enter a reservation with respect to any species or any parts or derivatives, and until such reservation is withdrawn, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned.

3. A Party which has submitted a species for inclusion in Appendix III may withdraw it at any time by notification to the Secretariat which shall communicate the withdrawal to all Parties. The withdrawal shall take effect 30 days after the date of such communication.

4. Any Party submitting a list under the provisions of paragraph 1 of this Article shall submit to the Secretariat a copy of all domestic laws and regulations applicable to the protection of such species, together with any interpretations which the Party may deem appropriate or the Secretariat may request. The Party shall, for as long as the species in question is included in Appendix III, submit any amendments of such laws and regulations or any new interpretations as they are adopted.

ARTICLE XVII

Amendment of the Convention

1. An extraordinary meeting of the Conference of the Parties shall be convened by the Secretariat on the written request of at least one-third of the Parties to consider and adopt amendments to the present Convention. Such amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.
2. The text of any proposed amendment shall be communicated by the Secretariat to all Parties at least 90 days before the meeting.
3. An amendment shall enter into force for the Parties which have accepted it 60 days after two-thirds of the Parties have deposited an instrument of acceptance of the amendment with the Depositary Government. Thereafter, the amendment shall enter into force for any other Party 60 days after that Party deposits its instrument of acceptance of the amendment.

ARTICLE XVIII

Resolution of Disputes

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.
2. If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at the Hague and the Parties submitting the dispute shall be bound by the arbitral decision.

ARTICLE XIX

Signature

The present Convention shall be open for signature at Washington until 30th April 1973 and thereafter at Berne until 31st December 1974.

ARTICLE XX

Ratification, Acceptance, Approval

The present Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Swiss Confederation which shall be the Depositary Government.

ARTICLE XXI

Accession

The present Convention shall be open indefinitely for accession. Instruments of accession shall be deposited with the Depositary Government.

ARTICLE XXII

Entry into Force

1. The present Convention shall enter into force 90 days after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, with the Depositary Government.
2. For each State which ratifies, accepts or approves the present Convention or accedes thereto after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the present Convention shall enter into force 90 days after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

ARTICLE XXIII

Reservations

1. The provisions of the present Convention shall not be subject to general reservations. Specific reservations may be entered in accordance with the provisions of this Article and Articles XV and XVI.
2. Any State may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to:
 - (a) any species included in Appendix I, II, or III; or
 - (b) any parts or derivatives specified in relation to a species included in Appendix III.
3. Until a Party withdraws its reservation entered under the provisions of this Article, it shall be treated as a State not a party to the present Convention with respect to trade in the particular species or parts or derivatives specified in such reservation.

ARTICLE XXIV

Denunciation

Any Party may denounce the present Convention by written notification to the Depositary Government at any time. The denunciation shall take effect twelve months after the Depositary Government has received the notification.

ARTICLE XXV

Depositary

1. The original of the present Convention, in the Chinese, English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Depositary Government, which shall transmit certified copies thereof to all States that have signed it or deposited instruments of accession to it.
2. The Depositary Government shall inform all signatory and acceding States and the Secretariat of signatures, deposit of instruments of ratification, acceptance, approval or accession, entry into force of the present Convention, amendments thereto, entry and withdrawal of reservations and notifications of denunciation.
3. As soon as the present Convention enters into force, a certified copy thereof shall be transmitted by the Depositary Government to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

Done at Washington this third day of March, One Thousand Nine Hundred and Seventy-three.

**Schedule 9—Exotic birds that are not
classified exotic birds** [see Note 2]