

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

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

Subdivision B—Commercial purpose exports and imports

303FJ Eligible commercial purpose exports

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

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

Section 303FK

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

303FK Export or import from an approved captive breeding program

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

303FL Export from an approved artificial propagation program

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

303FLA Export from an approved cultivation program

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

303FM Export from an approved aquaculture program

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

303FN Approved wildlife trade operation

- (1) The export of a specimen is an export in accordance with an approved wildlife trade operation if the specimen is, or is derived from, a specimen that was taken in accordance with a wildlife trade operation declared by a declaration in force under subsection (2) to be an approved wildlife trade operation.
- (2) The Minister may, by instrument published in the *Gazette*, declare that a specified wildlife trade operation is an ***approved wildlife trade operation*** for the purposes of this section.
- (3) The Minister must not declare an operation under subsection (2) unless the Minister is satisfied that:
 - (a) the operation is consistent with the objects of this Part; and
 - (b) the operation will not be detrimental to:
 - (i) the survival of a taxon to which the operation relates; or
 - (ii) the conservation status of a taxon to which the operation relates; and
 - (ba) the operation will not be likely to threaten any relevant ecosystem including (but not limited to) any habitat or biodiversity; and
 - (c) if the operation relates to the taking of live specimens that belong to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimens are likely to be complied with; and
 - (d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (4) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:

Section 303FN

- (a) the significance of the impact of the operation on an ecosystem (for example, an impact on habitat or biodiversity); and
 - (b) the effectiveness of the management arrangements for the operation (including monitoring procedures).
- (5) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:
 - (a) whether legislation relating to the protection, conservation or management of the specimens to which the operation relates is in force in the State or Territory concerned; and
 - (b) whether the legislation applies throughout the State or Territory concerned; and
 - (c) whether, in the opinion of the Minister, the legislation is effective.
- (6) A declaration under subsection (2) ceases to be in force at the beginning of the third anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 3 years is specified in the declaration in accordance with subsection 303FT(4).
- (7) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).
- (8) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (9) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.
- (10) For the purposes of this section, an operation is a **wildlife trade operation** if, and only if, the operation is an operation for the taking of specimens and:
 - (a) the operation is an operation that, under the regulations, is taken to be a market-testing operation; or
 - (b) the operation is an operation that, under the regulations, is taken to be a small-scale operation; or

- (c) the operation is an operation that, under the regulations, is taken to be a developmental operation; or
 - (d) the operation is a commercial fishery; or
 - (e) the operation is an operation that, under the regulations, is taken to be a provisional operation; or
 - (f) the operation is an operation of a kind specified in the regulations.
- (10A) In deciding whether to declare that a commercial fishery is an approved wildlife trade operation for the purposes of this section, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.
- (10B) Subsection (10A) does not limit the matters that may be taken into account in deciding whether to declare that a fishery is an approved wildlife trade operation for the purposes of this section.
- (11) In this section:
- fish*** includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.
- fishery*** means a class of activities by way of fishing, including activities identified by reference to all or any of the following:
- (a) a species or type of fish;
 - (b) a description of fish by reference to sex or any other characteristic;
 - (c) an area of waters or of seabed;
 - (d) a method of fishing;
 - (e) a class of vessels;
 - (f) a class of persons;
 - (g) a purpose of activities.

Section 303FO

303FO Approved wildlife trade management plan

- (1) The export of a specimen is an export in accordance with an approved wildlife trade management plan if the specimen is, or is derived from, a specimen that was taken in accordance with a plan declared by a declaration in force under subsection (2) to be an approved wildlife trade management plan.
- (2) The Minister may, by instrument published in the *Gazette*, declare that a specified plan is an ***approved wildlife trade management plan*** for the purposes of this section.
- (3) The Minister must not declare a plan under subsection (2) unless the Minister is satisfied that:
 - (a) the plan is consistent with the objects of this Part; and
 - (b) there has been an assessment of the environmental impact of the activities covered by the plan, including (but not limited to) an assessment of:
 - (i) the status of the species to which the plan relates in the wild; and
 - (ii) the extent of the habitat of the species to which the plan relates; and
 - (iii) the threats to the species to which the plan relates; and
 - (iv) the impacts of the activities covered by the plan on the habitat or relevant ecosystems; and
 - (c) the plan includes management controls directed towards ensuring that the impacts of the activities covered by the plan on:
 - (i) a taxon to which the plan relates; and
 - (ii) any taxa that may be affected by activities covered by the plan; and
 - (iii) any relevant ecosystem (for example, impacts on habitat or biodiversity);are ecologically sustainable; and
 - (d) the activities covered by the plan will not be detrimental to:
 - (i) the survival of a taxon to which the plan relates; or

- (ii) the conservation status of a taxon to which the plan relates; or
 - (iii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
 - (e) the plan includes measures:
 - (i) to mitigate and/or minimise the environmental impact of the activities covered by the plan; and
 - (ii) to monitor the environmental impact of the activities covered by the plan; and
 - (iii) to respond to changes in the environmental impact of the activities covered by the plan; and
 - (f) if the plan relates to the taking of live specimens that belong to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimens are likely to be complied with; and
 - (g) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (4) In deciding whether to declare a plan under subsection (2), the Minister must have regard to:
- (a) whether legislation relating to the protection, conservation or management of the specimens to which the plan relates is in force in the State or Territory concerned; and
 - (b) whether the legislation applies throughout the State or Territory concerned; and
 - (c) whether, in the opinion of the Minister, the legislation is effective.
- (5) A declaration under subsection (2) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection 303FT(4).
- (6) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).

Section 303FP

- (7) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (8) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.

303FP Accredited wildlife trade management plan

- (1) The export of a specimen is an export in accordance with an accredited wildlife trade management plan if the specimen is, or is derived from, a specimen that was taken in accordance with a plan declared by a declaration in force under subsection (2) to be an accredited wildlife trade management plan.
- (2) The Minister may, by instrument published in the *Gazette*, declare that a specified plan is an ***accredited wildlife trade management plan*** for the purposes of this section.
- (3) The Minister must not declare a plan under subsection (2) unless the Minister is satisfied that:
 - (a) the plan is in force under a law of the Commonwealth or of a State or Territory; and
 - (b) the conditions set out in subsection 303FO(3) have been met in relation to the plan; and
 - (c) the plan imposes limits in relation to the taking of specimens; and
 - (d) the compliance and enforcement measures relating to the plan are likely to be effective in preventing specimens taken in breach of the plan from being traded or exported; and
 - (e) the plan provides for the monitoring of:
 - (i) the taking of specimens under the plan; and
 - (ii) the export of specimens taken under the plan; and
 - (iii) the status of the species to which the plan relates in the wild; and
 - (iv) the impacts of the activities under the plan on the habitat of the species to which the plan relates; and

Section 303FQ

- (f) the plan provides for statistical reports about specimens taken under the plan to be given to the Minister on a regular basis; and
 - (g) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (4) A declaration under subsection (2) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection 303FT(4).
- (5) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).
- (6) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (7) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.
- (8) The Minister must publish on the internet copies of reports given as mentioned in paragraph (3)(f).
- (9) The Minister is not required to comply with subsection (8) to the extent to which compliance could reasonably be expected to:
 - (a) prejudice substantially the commercial interests of a person; or
 - (b) be detrimental to:
 - (i) the survival of a taxon to which the plan relates; or
 - (ii) the conservation status of a taxon to which the plan relates.

303FQ Consultation with State and Territory agencies

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

Section 303FR

303FR Public consultation

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

303FRA Assessments

- (1) The regulations may prescribe an assessment process that is to be used for the purposes of sections 303FN, 303FO and 303FP to assess the potential impacts on the environment of:
 - (a) a wildlife trade operation; or
 - (b) the activities covered by a plan;where the operation is, or the activities are, likely to have a significant impact on the environment.
- (2) If regulations made for the purposes of subsection (1) apply to a wildlife trade operation or to a plan, the Minister must not declare:
 - (a) the operation under subsection 303FN(2); or
 - (b) the plan under subsection 303FO(2) or 303FP(2);

Section 303FS

unless the assessment process prescribed by those regulations has been followed in relation to the assessment of the operation or plan, as the case may be.

- (3) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision for:
- (a) the application of Part 8 (except sections 82, 83 and 84) and the other provisions of this Act (so far as they relate to that Part) in relation to the assessment process, subject to such modifications as are specified in the regulations; and
 - (b) exemptions from the assessment process.
- (4) In this section:

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

303FS Register of declarations

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

303FT Additional provisions relating to declarations

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

Section 303FT

- (a) the instrument of declaration is to specify that class of specimens; and
 - (b) the plan or operation is covered by the declaration only to the extent that the plan or operation relates to that class of specimens.
- (4) The Minister may make a declaration about a plan or operation even though he or she considers that the plan or operation should be the subject of the declaration only:
 - (a) during a particular period; or
 - (b) while certain circumstances exist; or
 - (c) while a certain condition is complied with.In such a case, the instrument of declaration is to specify the period, circumstances or condition.
- (5) If a declaration specifies a particular period as mentioned in subsection (4), the declaration ceases to be in force at the end of that period.
- (6) If a declaration specifies circumstances as mentioned in subsection (4), the Minister must, by instrument published in the *Gazette*, revoke the declaration if he or she is satisfied that those circumstances have ceased to exist.
- (7) The Minister may, by instrument published in the *Gazette*, vary a declaration by:
 - (a) specifying one or more conditions (or further conditions) to which the declaration is subject; or
 - (b) revoking or varying a condition:
 - (i) specified in the instrument of declaration; or
 - (ii) specified under paragraph (a).
- (8) A condition may relate to reporting or monitoring.
- (9) The Minister must, by instrument published in the *Gazette*, revoke a declaration if he or she is satisfied that a condition of the declaration has been contravened.

- (10) The Minister may, by instrument published in the *Gazette*, revoke a declaration at any time.
- (11) A copy of an instrument under section 303FN, 303FO or 303FP or this section is to be made available for inspection on the internet.

303FU Approved commercial import program

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

Section 303GA

Division 6—Miscellaneous

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

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

Deferral of decision

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

Section 303GA

controlled action—the day on which the Minister makes a decision under section 133 approving, or refusing to approve, the taking of the controlled action;

- (e) if subparagraph (1)(b)(iii) applies—the day on which a decision is made to issue, or to refuse to issue, the non-Part 13A permit referred to in that subparagraph;
- (f) if subparagraph (1)(b)(iv) applies—the day on which a decision is made to issue, or to refuse to issue, the non-Part 13A permit referred to in that subparagraph.

Refusal of permit

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

Section 303GB

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

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

Related action

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

303GB Exceptional circumstances permit

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

Section 303GB

- (i) the export or import of the specimen, as the case may be, would not be contrary to the objects of this Part; and
 - (ii) exceptional circumstances exist that justify the proposed export or import of the specimen; and
 - (iii) the export or import of the specimen, as the case may be, would not adversely affect biodiversity;
- the Minister may issue a permit to the person.
- (1A) The Minister must not issue a permit under this section unless the grant of that permit would not be contrary to CITES.
- (2) A permit under this section authorises the holder of the permit to take the action or actions specified in the permit, in the permitted period, without breaching section 303CC, 303CD, 303DD or 303EK.
- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than:
- (a) if the permit relates to a CITES specimen—6 months after that date; or
 - (b) if the permit relates to a specimen other than a CITES specimen—12 months after that date.

Duration of permit

- (3) A permit under this section:
- (a) comes into force on the date on which it is issued; and
 - (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
 - (i) the permitted period (within the meaning of subsection (2A));
 - (ii) each period for which one or more conditions of the permit are expressed to apply.

Section 303GC

Further information

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

Public consultation

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

303GC Permit authorising the Secretary to export or import specimens

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

Section 303GC

- (2) The Minister may, on application made by the Secretary under subsection (1), issue a permit to the Secretary. This subsection has effect subject to subsections (4) and (5).
- (3) A permit under subsection (2) authorises the Secretary to take the action or actions specified in the permit, in the permitted period, without breaching section 303CC, 303CD, 303DD or 303EK.
- (3A) For the purpose of subsection (3), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 12 months after that date.
- (4) The Minister must not issue a permit under this section to export a specimen unless the Minister is satisfied that:
 - (a) both:
 - (i) the recipient of the specimen will be a relevant CITES authority of a country; and
 - (ii) the specimen will be used by that relevant CITES authority for the purpose of the identification of a specimen and/or for the purpose of education or training; or
 - (b) both:
 - (i) the specimen has been seized under this Act; and
 - (ii) the specimen will be used to facilitate investigations in or outside Australia in relation to trade relating to wildlife.
- (5) The Minister must not issue a permit under this section to import a specimen unless the Minister is satisfied that:
 - (a) the specimen will be used by the Secretary for the purposes of the identification of a specimen; or
 - (b) both:
 - (i) the sender of the specimen will be a relevant CITES authority of a country; and

Section 303GD

- (ii) the specimen will be used for the purpose of the identification of a specimen and/or for the purpose of education or training; or
 - (c) the specimen was exported from Australia in contravention of:
 - (i) this Part; or
 - (ii) the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; or
 - (d) the specimen will be used to facilitate investigations in or outside Australia in relation to trade relating to wildlife.
- (6) A permit under this section:
- (a) comes into force on the date on which it is issued; and
 - (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
 - (i) the permitted period (within the meaning of subsection (3A));
 - (ii) each period for which one or more conditions of the permit are expressed to apply.

303GD Testing permit—section 303EE assessments

Applications for permits

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

Further information

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

Section 303GD

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

Minister may issue permits

- (5) The Minister may, on application made by a person under subsection (1), issue a permit to the person. This subsection has effect subject to subsections (7) and (8).
- (6) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303EK.
- (6A) For the purpose of subsection (6), the ***permitted period*** is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 6 months after that date.
- (7) The Minister must not issue a permit to a person unless the Minister is satisfied that:
- (a) the person has made an application to the Minister under section 303EE for the list referred to in section 303EB to be amended by including an item; and
 - (b) if the proposed amendment were made, the specimen would be covered by the item; and
 - (c) the specimen is not a CITES specimen; and
 - (d) if an assessment is to be made under subsection 303EE(3) of the potential impacts on the environment of the proposed amendment—the terms of reference for a report on the assessment have been:
 - (i) prepared as mentioned in paragraph 303EF(1)(a); or
 - (ii) finalised as mentioned in subparagraph 303EF(1)(b)(iii); and
 - (e) the person proposes to conduct tests on the specimen in Australia in order to obtain information for the assessment; and

Section 303GE

- (f) the information is required for the assessment; and
 - (g) it is not reasonably practicable for the person to obtain the information without conducting the tests in Australia; and
 - (h) the tests will be conducted in a controlled environment.
- (8) The Minister must not issue a permit under this section unless the permit is subject to one or more conditions about holding the specimen in quarantine.

Duration of permit

- (9) A permit under this section:
- (a) comes into force on the date on which it is issued; and
 - (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
 - (i) the permitted period (within the meaning of subsection (6A));
 - (ii) each period for which one or more conditions of the permit are expressed to apply.

Investigations

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

303GE Conditions of permits

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

Section 303GF

- (b) on the application of the holder of the permit concerned.
- (5) If a permit authorises its holder to take a particular action, a condition of the permit may require the holder to do, or not do, an act or thing before, at or after the time when the action takes place.
- (5A) Without limiting subsection (5), a condition of a permit may be expressed to apply for a period that will not end until after the export or import of a specimen under the permit has occurred, including for example:
- (a) a period the length of which is known when the condition is imposed (such as a period that is expressed as a specified number of years); or
 - (b) a period the length of which is unknown when the condition is imposed (such as a period that is expressed as the life of the specimen, or the life of progeny of the specimen).
- Note: Conditions may, for example, relate to how a specimen, and its progeny, are kept or dealt with during their lifetimes.
- (6) If a person is given an authority under section 303GG by the holder of a permit, subsections (5) and (5A) apply to the person in a corresponding way to the way in which they apply to the holder of the permit.
- (7) Subsections (4), (5), (5A) and (6) are to be disregarded in determining the meaning of a provision of this Act (other than a provision of this Part) that relates to conditions of permits issued otherwise than under this Part.

303GF Contravening conditions of a permit

- (1) This section applies to a permit issued under this Part.
- (2) A person commits an offence if:
- (a) the person is:
 - (i) the holder of a permit; or
 - (ii) a person to whom an authority under section 303GG has been given by the holder of a permit; and

Section 303GF

- (b) the person engages in conduct; and
- (c) the conduct results in a contravention of a condition of the permit.

Penalty: 300 penalty units.

- (3) The holder of a permit commits an offence if:
 - (a) the person is:
 - (i) the holder of a permit; or
 - (ii) a person to whom an authority under section 303GG has been given by the holder of a permit; and
 - (b) the person engages in conduct; and
 - (c) the conduct results in a contravention of a condition of the permit; and
 - (d) the condition relates to:
 - (i) the sale or other disposal of a live animal or a live plant; or
 - (ii) the sale or other disposal of the progeny of a live animal or a live plant; or
 - (iii) the release from captivity of a live animal; or
 - (iv) the release from captivity of the progeny of a live animal; or
 - (v) the escape of a live plant.

Penalty: 600 penalty units.

- (4) For the purposes of subsection (3), a person is taken to have released an animal from captivity if:
 - (a) that animal has escaped from captivity; and
 - (b) either:
 - (i) the person allowed the animal to escape; or
 - (ii) the person failed to take all reasonable measures to prevent the animal from escaping.
- (4A) For the purposes of subsection (3), a person is taken to have allowed a plant to escape if:
 - (a) the plant has grown or propagated in the wild; and

Section 303GG

- (b) either:
 - (i) the person allowed the plant to escape; or
 - (ii) the person failed to take all reasonable measures to prevent the plant from growing or propagating in the wild.
- (5) In subsections (2) and (3), strict liability applies to the circumstance that the person was given an authority under section 303GG.

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

303GG Authorities under permits

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

Section 303GH

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

303GH Transfer of permits

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

303GI Suspension or cancellation of permits

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

303GJ Review of decisions

- (1) Subject to subsection (2), an application may be made to the Administrative Appeals Tribunal for review of a decision:
- (a) to issue or refuse a permit; or
 - (b) to specify, vary or revoke a condition of a permit; or
 - (c) to impose a further condition of a permit; or
 - (d) to transfer or refuse to transfer a permit; or
 - (e) to suspend or cancel a permit; or
 - (f) to issue or refuse a certificate under subsection 303CC(5); or
 - (g) of the Secretary under a determination in force under section 303EU; or
 - (h) to make or refuse a declaration under section 303FN, 303FO or 303FP; or

Section 303GK

- (i) to vary or revoke a declaration under section 303FN, 303FO or 303FP.
- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).
- (3) In this section:

permit means a permit under this Part.

303GK Permit to be produced

Export permit

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

Import permit

- (3) For the purposes of this Part, if the holder of a permit to import a specimen imports that specimen, he or she is not to be taken to have imported that specimen in accordance with that permit unless,

Section 303GL

before or within a reasonable time after importing the specimen, he or she produced the permit, or caused the permit to be produced, to an authorised officer doing duty in relation to the import of the specimen.

Authorities under section 303GG

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

303GL Pre-CITES certificate to be produced

Export certificate

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

Import certificate

- (3) If a person imports a specimen and wishes to rely on a certificate referred to in paragraph 303CD(6)(b), he or she is not entitled to

Section 303GM

rely on the certificate unless, before or within a reasonable time after importing the specimen, he or she produced the certificate, or caused the certificate to be produced, to an authorised officer doing duty in relation to the import of the specimen.

303GM Fees

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

303GN Possession of illegally imported specimens

Object

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

Note: See Article 8 of the Biodiversity Convention.

Possession of CITES specimens and unlisted regulated live specimens

- (2) A person commits an offence if:
 - (a) the person has in the person's possession, in the Australian jurisdiction, a specimen; and
 - (b) the specimen is:
 - (i) a CITES specimen; or

Section 303GN

- (ii) a regulated live specimen that is not included in the list referred to in section 303EB;
and the person is reckless as to that fact; and
- (c) the specimen does not belong to a native species.

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

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

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

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

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

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

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

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

Possession of listed regulated live specimens

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

Section 303GO

- (ii) the specimen was not imported, but any of the specimens of which it is the progeny was unlawfully imported.

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

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

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

Unlawfully imported

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

303GO Regulations relating to welfare

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

Section 303GP

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

303GP Cruelty—export or import of animals

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

Penalty: Imprisonment for 2 years.

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

Penalty: Imprisonment for 2 years.

Section 303GQ

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

Penalty: Imprisonment for 2 years.

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

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

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

Penalty: Imprisonment for 5 years.

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

303GR Evidence

- (1) In any proceedings for an offence against this Part:
- (a) any record kept in accordance with the regulations or another law of the Commonwealth or a law of a State or Territory is

Section 303GS

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

303GS Evidence of examiner

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

- (f) the name of any method used to analyse the substance, matter, specimen or thing or any portion of it;
 - (g) the results of any such analysis;
 - (h) how the substance, matter, specimen or thing was dealt with after handling by the examiner, including details of:
 - (i) the quantity of the substance, matter, specimen or thing retained after analysis; and
 - (ii) names of any persons to whom any of the substance, matter, specimen or thing was given after analysis; and
 - (iii) measures taken to secure any retained quantity of the substance, matter, specimen or thing after analysis;
- is admissible in any proceeding for an offence against this Part as prima facie evidence of the matters in the certificate and the correctness of the results of the analysis.
- (3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) is taken to be such a certificate unless the contrary is established.
- (4) A certificate is not to be admitted in evidence in accordance with subsection (2) in proceedings for an offence against this Part unless:
- (a) the person charged with the offence; or
 - (b) a solicitor who has appeared for the person in those proceedings;
- has, at least 14 days before the certificate is sought to be admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.
- (5) Subject to subsection (6), if, under subsection (2), a certificate is admitted in evidence in proceedings for an offence against this Part, the person charged with the offence may require the person giving the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.

Section 303GT

- (6) Subsection (5) does not entitle the person charged to require the person giving a certificate to be called as a witness for the prosecution unless:
 - (a) the prosecutor has been given at least 4 days notice of the person's intention to require the examiner to be so called; or
 - (b) the court, by order, allows the person charged to require the person giving the certificate to be so called.
- (7) Any evidence given in support, or in rebuttal, of a matter stated in a certificate given under subsection (2) must be considered on its merits and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

303GT Protection of witness

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

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

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

303GV Saving of other laws

- (1) This Part is in addition to the following laws:
 - (a) the *Customs Act 1901*;
 - (b) the *Biosecurity Act 2015*;
 - (c) any other law of the Commonwealth or of an external Territory, whether passed or made before or after the commencement of this Part.
- (2) The holder of a permit under this Part authorising the export or import of a specimen is not, by reason only of being the holder of the permit, exempt from compliance with any law referred to in paragraph (1)(a), (b) or (c) that applies in relation to that specimen.
- (3) Without limiting subsection (1), this Part, and regulations made for the purposes of this Part, do not authorise or permit the doing of any act in contravention of the *Biosecurity Act 2015* or of a law of an external Territory relating to quarantine.

303GW Part not to apply to certain specimens

Transshipment

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

Section 303GW

- (2) For the purposes of this Part, if a specimen is brought into an external Territory:
- (a) for the purpose of transshipment to another country; or
 - (b) as part of an aircraft's stores or ship's stores;
- that specimen:
- (c) is taken not to have been imported into that Territory; and
 - (d) when it leaves that Territory, is taken not to be exported from that Territory.
- (3) For the purposes of subsection (1), a specimen is to be taken to be brought into Australia for the purpose of transshipment to another country if, and only if:
- (a) the specimen is brought into Australia in the course of being transported to an identified person in the other country; and
 - (b) any delay in its leaving Australia will be due solely to the arrangements for its transport; and
 - (c) it will be under customs control under the *Customs Act 1901* all the time that it is in Australia.
- (4) For the purposes of subsection (2), a specimen is taken to be brought into an external Territory for the purpose of transshipment to another country if, and only if:
- (a) the specimen is brought into that Territory in the course of being transported to an identified person in the other country; and
 - (b) any delay in its leaving that Territory will be due solely to the arrangements for its transport; and
 - (c) it will be under the control of an authorised officer all the time that it is in that Territory.

Emergency

- (5) For the purposes of this Part, if:
- (a) the Minister, the Director of Biosecurity, a prescribed person or a prescribed organisation is satisfied that, in order to meet an emergency involving danger to the life or health of a human or an animal, it is necessary or desirable that a

Section 303GX

specimen that could be used in treating that person or animal should be sent out of, or brought into, Australia or an external Territory; and

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

Quarantine

- (6) Subject to subsections (1), (2) and (5), if, in accordance with the *Biosecurity Act 2015* 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 biosecurity control under the *Biosecurity Act 2015* or subject to quarantine, then, for the purposes of this Part, that specimen is taken to have been imported by:
- (a) if a person holds a permit to import that specimen—the holder of that permit; or
- (b) in any other case—a person whose identity is not known; but this subsection does not affect the commission of any offence committed before the importation of that specimen.

Definitions

- (7) In this section:

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

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

- (1) In this section:

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

Section 303GX

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

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

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

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

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

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

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

- (2) The Minister may, by notifiable instrument, 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 notifiable instrument, declare that a specimen of a kind specified in the notice is a prescribed specimen for the purposes of this section.

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunseting under that Act.

- (4) For the purposes of this Part, if a prescribed specimen that is owned by, or is under the control of, a traditional inhabitant and that has been used, is being used or is intended to be used by him or her in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone, is:

- (a) brought to an Australian place from a Papua New Guinea place; or
- (b) taken from an Australian place to a Papua New Guinea place; then, subject to subsection (5), that specimen:
- (c) in the case where the specimen is brought into Australia as mentioned in paragraph (a)—is taken not to have been imported into Australia; and
- (d) in the case where the specimen is taken from Australia as mentioned in paragraph (b)—is taken not to have been exported from Australia.

(5) If:

- (a) a prescribed specimen that has been brought into Australia is, under subsection (4), taken not to have been imported into Australia; and
- (b) that prescribed specimen is brought to a place in Australia that is not in the Protected Zone or in an area in the vicinity of the Protected Zone;

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

303GY When a specimen is *lawfully imported*

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

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

Section 303GY

(ii) the Customs (Prohibited Imports) Regulations.

Part 14—Conservation agreements

304 Object of this Part

- (1) The object of this Part is to provide for:
- (a) conservation agreements between the Commonwealth and persons related to the protection and conservation of the following:
 - (i) biodiversity;
 - (ii) the world heritage values of declared World Heritage properties;
 - (iii) the National Heritage values of National Heritage places;
 - (iv) the Commonwealth Heritage values of Commonwealth Heritage places;
 - (v) the ecological character of a declared Ramsar wetland;
 - (vi) the environment, in respect of the impact of a nuclear action;
 - (vii) the environment in a Commonwealth marine area;
 - (viii) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development;
 - (ix) the environment on Commonwealth land; and
 - (b) the effect of conservation agreements; and
 - (c) the publication of conservation agreements.
- (2) Conservation agreements are agreements whose primary object is to enhance the conservation of matters referred to in paragraph (1)(a). They may relate to private or public land, or to marine areas.

Note: Conservation agreements cannot cover all or part of a Commonwealth reserve (see subsection 305(4)).

Section 305

305 Minister may enter into conservation agreements

- (1) The Minister may, on behalf of the Commonwealth, enter into an agreement (a *conservation agreement*) with a person for the protection and conservation of all or any of the following:
- (a) biodiversity in the Australian jurisdiction;
 - (b) the world heritage values of a declared World Heritage property in the Australian jurisdiction;
 - (c) the National Heritage values of a National Heritage place;
 - (d) the Commonwealth Heritage values of a Commonwealth Heritage place (whether inside or outside the Australian jurisdiction);
 - (e) the ecological character of a declared Ramsar wetland in the Australian jurisdiction;
 - (f) the environment, in respect of the impact of a nuclear action in the Australian jurisdiction;
 - (g) the environment in a Commonwealth marine area in the Australian jurisdiction;
 - (ga) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development in the Australian jurisdiction;
 - (h) the environment on Commonwealth land in the Australian jurisdiction.

Note: Conservation agreements cannot cover all or part of a Commonwealth reserve (see subsection 305(4)).

- (1A) The protection and conservation of the matters in subsection (1) include all or any of the following:
- (a) the protection, conservation and management of any listed species or ecological communities, or their habitats;
 - (b) the management of things in a way necessary for the protection and conservation of:
 - (i) the world heritage values of a declared World Heritage property; or
 - (ii) the National Heritage values of a National Heritage place; or

- (iii) the Commonwealth Heritage values of a Commonwealth Heritage place; or
- (iv) the ecological character of a declared Ramsar wetland; or
- (v) the environment, in respect of the impact of a nuclear action; or
- (vi) the environment in a Commonwealth marine area; or
- (via) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or
- (vii) the environment on Commonwealth land;
- (c) the abatement of processes, and the mitigation or avoidance of actions, that might adversely affect:
 - (i) biodiversity; or
 - (ii) the world heritage values of a declared World Heritage property; or
 - (iii) the National Heritage values of a National Heritage place; or
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or
 - (v) the ecological character of a declared Ramsar wetland; or
 - (vi) the environment, in respect of the impact of a nuclear action; or
 - (vii) the environment in a Commonwealth marine area; or
 - (viii) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or
 - (viii) the environment on Commonwealth land.

Note: When the Minister is considering entering into a conservation agreement, the Minister must take into account any responsibilities of other Commonwealth Ministers that may be affected by the agreement.

- (2) However, the Minister must not enter into a conservation agreement unless satisfied that:

Section 305

- (a) in the case of a proposed agreement wholly or partly for the protection and conservation of biodiversity—the agreement:
 - (i) will result in a net benefit to the conservation of biodiversity; and
 - (ii) is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan; and
- (b) in the case of a proposed agreement wholly or partly for the protection and conservation of heritage values—the agreement:
 - (i) will result in a net benefit to the conservation of those heritage values; and
 - (ii) is not inconsistent with at least one of the Australian World Heritage management principles, the National Heritage management principles and the Commonwealth Heritage management principles; and
- (c) in the case of a proposed agreement wholly or partly for the protection and conservation of the ecological character of a declared Ramsar wetland—the agreement:
 - (i) will result in a net benefit to the conservation of that ecological character; and
 - (ii) is not inconsistent with the Australian Ramsar management principles; and
- (d) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment, in respect of the impact nuclear actions—the agreement does not relate to the construction or operation of any of the following nuclear installations:
 - (i) a nuclear fuel fabrication plant;
 - (ii) a nuclear power plant;
 - (iii) an enrichment plant;
 - (iv) a reprocessing facility; and
- (e) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment in a Commonwealth marine area—the agreement will result in a net benefit to the conservation of the environment in that area; and

- (ea) in the case of a proposed agreement wholly or partly for the protection and conservation of a water resource, in respect of the impacts of actions involving coal seam gas development or large coal mining development—the agreement will result in a net benefit to the conservation of the water resource; and
 - (f) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment on Commonwealth land—the agreement will result in a net benefit to the conservation of the environment on that land.
- (3) For the purposes of subsection (2), in deciding whether a proposed agreement will result in a net benefit to the conservation as mentioned in paragraph (2)(a), (b), (c), (e) or (f), the Minister must have regard to the matters (if any) prescribed by the regulations.
- (3A) If:
 - (a) the Minister is considering whether to enter into a proposed conservation agreement that is wholly or partly for the protection and conservation of biodiversity; and
 - (b) the agreement would or could affect a particular listed threatened species or listed threatened ecological community;the Minister must, in deciding whether to enter into the agreement, have regard to any approved conservation advice for the species or community.
- (4) A conservation agreement must not cover all or part of a Commonwealth reserve.
- (5) Under subsection (1), the Minister may enter into a conservation agreement covering land with one of the following persons who has a usage right relating to the land:
 - (a) an indigenous person;
 - (b) a body corporate wholly owned by indigenous persons;
 - (c) a body corporate established by or under an Act for the purposes of holding for the benefit of indigenous persons land vested in it by or under that Act;
 - (d) the trustee of a trust that holds land for the benefit of indigenous persons.

Section 306

This does not limit subsection (1).

- (6) The Minister must take account of the following when entering into a conservation agreement that is wholly or partly for the protection and conservation of biodiversity as described in subsection (5):
- (a) paragraph (j) of Article 8 of the Biodiversity Convention;
 - (b) paragraph (c) of Article 10 of the Biodiversity Convention;
 - (c) paragraph 4 of Article 18 of the Biodiversity Convention;
 - (d) objective 1.8.2 of the National Strategy for the Conservation of Australia's Biological Diversity, published by the Commonwealth in 1996.

306 Content of conservation agreements

- (1) Without limiting section 305, a conservation agreement may provide, for example, for all or any of the following:
- (a) activities that promote the protection and conservation of all or any of the following:
 - (i) biodiversity;
 - (ii) the world heritage values of a declared World Heritage property;
 - (iii) the National Heritage values of a National Heritage place;
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
 - (v) the ecological character of a declared Ramsar wetland;
 - (vi) the environment, in respect of the impact of a nuclear action;
 - (vii) the environment in a Commonwealth marine area;
 - (viii) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development;
 - (ix) the environment on Commonwealth land;
 - (b) controlling or prohibiting, in any place covered by the agreement, actions or processes that might adversely affect:

Section 306

- (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or
 - (ii) the world heritage values of a declared World Heritage property; or
 - (iii) the National Heritage values of a National Heritage place; or
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or
 - (v) the ecological character of a declared Ramsar wetland; or
 - (vi) the environment, in respect of the impact of a nuclear action; or
 - (vii) the environment in a Commonwealth marine area; or
 - (viii) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or
 - (ix) the environment on Commonwealth land;
 - (c) requiring a person bound by the agreement not to obstruct access by a person authorised under the agreement to places covered by the agreement for the purpose of monitoring compliance with the agreement;
 - (d) requiring a person bound by the agreement to give such an authorised person information requested by the authorised person that is in the first-mentioned person's control and is relevant to compliance with the agreement;
 - (e) requiring the Commonwealth to provide financial, technical or other assistance to a person bound by the agreement;
 - (g) the commencement and duration of the agreement.
- (2) Without limiting section 305 or subsection (1) of this section, a conservation agreement entered into with the owner of a place may provide, for example, for all or any of the following:
- (a) requiring the owner to carry out specified activities, or to do specified things, that promote the conservation of all or any of the following:
 - (i) biodiversity;

Section 306

- (ii) the world heritage values of a declared World Heritage property;
- (iii) the National Heritage values of a National Heritage place;
- (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
- (v) the ecological character of a declared Ramsar wetland;
- (vi) the environment, in respect of the impact of a nuclear action;
- (vii) the environment in a Commonwealth marine area;
- (viiia) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development;
- (viii) the environment on Commonwealth land;
- (b) restricting the use of the place, or requiring the owner to refrain from, control or refuse to permit, actions or processes that may adversely affect:
 - (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or
 - (ii) the world heritage values of a declared World Heritage property; or
 - (iii) the National Heritage values of a National Heritage place; or
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or
 - (v) the ecological character of a declared Ramsar wetland; or
 - (vi) the environment, in respect of the impact of a nuclear action; or
 - (vii) the environment in a Commonwealth marine area; or
 - (viiia) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or
 - (viii) the environment on Commonwealth land;

Section 306A

- (c) requiring the owner to permit access to the place by specified persons;
- (d) requiring the owner to contribute towards costs incurred in implementing the agreement;
- (e) specifying the manner in which any money paid to the owner under the agreement is to be applied by the owner;
- (f) requiring the owner to repay to the Commonwealth any money paid to the owner under the agreement if the owner commits a specified breach of the agreement or in other specified circumstances;
- (g) providing for any other matter relating to the conservation or enhancement of the place, including the preparation and implementation of a plan of management for the place.

306A Conservation agreement may include declaration that actions do not need approval under Part 9

- (1) A conservation agreement may include a declaration to the effect that actions in a specified class do not need approval under Part 9 for the purposes of a specified provision of Part 3. The declaration may specify conditions relating to the taking of actions in the class.
- (2) The Minister must not enter into a conservation agreement that contains a declaration under subsection (1) unless the Minister is satisfied that the actions to which the declaration relates are not likely to have a significant impact on the matter protected by the provision of Part 3 proposed to be specified in the declaration.

307 Conservation agreements to be legally binding

A conservation agreement is legally binding on:

- (a) the Commonwealth; and
- (b) the person or persons with whom the Minister entered into the agreement on behalf of the Commonwealth; and
- (c) anyone else who is a successor to the whole or any part of any interest that a person mentioned in paragraph (b) had,

Section 307A

when the agreement was entered into, in any place covered by the agreement.

307A Conservation agreements may deal with remediation or mitigation measures

When this section applies

- (1) This section applies if the Minister considers that an action taken by a person after the commencement of this section contravened, or may have contravened, a provision of Part 3.

Conservation agreements may provide for measures to repair or mitigate damage

- (2) The Minister may enter into a conservation agreement with the person that provides for the protection and conservation of a matter referred to in section 305 by providing for the taking of measures to repair or mitigate damage to the matter protected by the provision of Part 3 (whether or not the damage may or will be, or has been, caused by the action).
- (3) The conservation agreement may state that specified provisions of the agreement, being provisions for the taking of measures as mentioned in subsection (2), are provisions that may be enforced in the Federal Court under this section. A provision of the agreement to which such a statement applies is a **remediation provision**.
- (4) If the conservation agreement contains a statement as mentioned in subsection (3), that statement must specify the provision of Part 3 referred to in subsection (1).

Federal Court may order compliance with remediation provision

- (5) If the Minister considers that the person has contravened a remediation provision, the Minister may apply to the Federal Court for an order under subsection (6).

Section 308

- (6) If the Federal Court is satisfied that the person has contravened a remediation provision, the Court may make one or more of the following orders:
- (a) an order directing the person to comply with the remediation provision;
 - (b) any other order that the Court considers appropriate.

Civil penalty for contravention of remediation provision

- (7) The person must not contravene a remediation provision.
- (8) Subsection (7) is a civil penalty provision. Under section 481, the Federal Court may order the person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person to pay under that section for a contravention of the provision of Part 3 referred to in subsection (1).

This section does not limit sections 305, 306 and 307

- (9) This section does not limit anything in sections 305, 306 and 307.

308 Variation and termination of conservation agreements

- (1) A conservation agreement may be varied by a variation agreement entered into by the Minister, on behalf of the Commonwealth, and the person or persons bound by the conservation agreement under paragraph 307(b) or (c).
- (2) Sections 305 and 306 apply in relation to variation agreements in the same way as they apply in relation to conservation agreements.
- (3) A conservation agreement may be terminated:
- (a) by agreement between the Minister, on behalf of the Commonwealth, and the person or persons bound by the conservation agreement under paragraph 307(b) or (c); or
 - (b) in such other manner, or in such circumstances (if any), as the agreement specifies.

Section 309

- (4) If the Minister is satisfied that a conservation agreement is not capable of achieving its purpose, the Minister may, by order published in the *Gazette*, terminate the agreement or vary it in any way the Minister thinks necessary to ensure it becomes capable of achieving its purpose.
- (5) The Minister may make an order under subsection (4) in relation to a conservation agreement without the agreement of the person or persons bound by the conservation agreement under paragraph 307(b) or (c).
- (6) The Minister must cause a copy of an order to be laid before each House of the Parliament within the prescribed period after the publication of the order.
- (7) If a conservation agreement is varied by an order, the person or persons bound by the conservation agreement under paragraph 307(b) or (c) may, by written notice given to the Minister, terminate the agreement.
- (8) If a conservation agreement is terminated or varied by an order, the person or persons bound by the conservation agreement under paragraph 307(b) or (c) are not entitled to any compensation in respect of the termination or variation.

Note: See Parts 17 and 18 for remedies for breach of conservation agreements.

309 Publication of conservation agreements

- (1) As soon as practicable after a conservation agreement has been entered into or varied, other than by an order under subsection 308(4), the Minister must:
 - (a) take reasonable steps to ensure that copies of the agreement or variation are available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory; and
 - (b) cause a notice of the agreement or variation to be published:
 - (i) in the *Gazette*; and
 - (ii) in any other way required by the regulations.

Section 310

- (2) The notice must:
 - (a) state that the agreement or variation has been entered into or made; and
 - (b) specify the places where copies of the agreement or variation may be purchased.
- (3) Subsection (1) does not apply in relation to a conservation agreement, or a variation of such an agreement, or any part of such an agreement or variation, if the Minister is satisfied that disclosure of the agreement or variation, or the part of the agreement or variation, as the case may be, would result in harm being done to:
 - (a) components of biodiversity; or
 - (b) the world heritage values of a declared World Heritage property; or
 - (c) the National Heritage values of a National Heritage place; or
 - (d) the Commonwealth Heritage values of a Commonwealth Heritage place.
- (4) Subsection (1) does not apply in relation to a conservation agreement, or a variation of such an agreement, or any part of such an agreement or variation, if the Minister is satisfied that disclosure of the agreement or variation, or the part of the agreement or variation, as the case may be, would disclose matters that the Minister is satisfied are commercial-in-confidence.
- (5) The Minister must not be satisfied that matter is commercial-in-confidence unless a person demonstrates to the Minister that:
 - (a) release of information under subsection (1) about the matter would cause competitive detriment to the person; and
 - (b) the information is not in the public domain; and
 - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information is not readily discoverable.

Section 310

310 List of conservation agreements

The Minister must:

- (a) maintain an up-to-date list of conservation agreements that are in force; and
- (b) take reasonable steps to ensure that copies of the list are available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

311 Commonwealth, State and Territory laws

- (1) A provision of a conservation agreement has no effect to the extent (if any) to which it is inconsistent with a law of the Commonwealth, or of a State or Territory.
- (2) For the purposes of subsection (1), a provision of a conservation agreement is not taken to be inconsistent with a law of the Commonwealth, or of a State or Territory, if both the provision and the law are capable of being complied with.

312 Minister must not give preference

The Minister must not, in exercising powers on behalf of the Commonwealth under this Part, give preference to one State or any part thereof within the meaning of section 99 of the Constitution.

Part 15—Protected areas

Division 1—Managing World Heritage properties

Subdivision A—Simplified outline of this Division

313 Simplified outline of this Division

The following is a simplified outline of this Division:

The Commonwealth may submit a property for inclusion in the World Heritage List only after seeking the agreement of relevant States, self-governing Territories and land-holders.

The Minister must make plans for managing properties on the World Heritage List that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

The Commonwealth must try to prepare and implement management plans for other properties on the World Heritage List, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to World Heritage properties in States and Territories.

The Commonwealth can provide assistance for the protection or conservation of declared World Heritage properties.

Note: Section 12 prohibits an action that has a significant impact on the world heritage values of a declared World Heritage property, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

Section 314

Subdivision B—Seeking agreement on World Heritage listing

314 Special provisions relating to World Heritage nominations

- (1) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property containing an area owned or occupied by another person only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the other person on:
 - (a) the proposed submission of the property (so far as it relates to the area); and
 - (b) management arrangements for the property (so far as they relate to the area).
- (2) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property in a State or self-governing Territory only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the State or Territory on:
 - (a) the proposed submission of the property; and
 - (b) management arrangements for the property.
- (3) A failure to comply with this section does not affect the submission of a property to the World Heritage Committee for inclusion in the World Heritage List or the status of a property as a declared World Heritage property.

Subdivision C—Notice of submission of property for listing

315 Minister must give notice of submission of property for listing etc.

- (1) The Minister must give notice in the *Gazette* and in the way (if any) prescribed by the regulations of any of the following events as soon as practicable after the event occurs:
 - (a) the Commonwealth submits a property to the World Heritage Committee for inclusion in the World Heritage List;

- (b) the Commonwealth extends the boundaries of a property submitted to the World Heritage Committee for inclusion in the World Heritage List;
 - (c) the Commonwealth restricts the boundaries of a property submitted to the World Heritage Committee for inclusion in the World Heritage List;
 - (d) the Commonwealth withdraws the submission of a property for inclusion in the World Heritage List;
 - (e) a property submitted by the Commonwealth is included in the World Heritage List;
 - (f) all or part of a property is removed from the World Heritage List.
- (2) The notice must specify the area included in, or excluded or deleted from, the submission or World Heritage List as a result of the event.
- (3) A failure to comply with this section does not affect the status of an area as a declared World Heritage property.

Subdivision D—Plans for listed World Heritage properties in Commonwealth areas

316 Making plans

Minister must make plan

- (1) The Minister must make a written plan for managing a property that is included in the World Heritage List and is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the property:
- (a) is included in the World Heritage List; or
 - (b) becomes entirely within one or more Commonwealth areas.

Amending and replacing plan

- (2) The Minister may make a written plan amending, or revoking and replacing, a plan made under subsection (1) or this subsection.

Section 317

Requirements for plan

- (3) A plan must not be inconsistent with:
- (a) Australia's obligations under the World Heritage Convention; or
 - (b) the Australian World Heritage management principles.

Note: Section 323 explains what Australian World Heritage management principles are.

Ensuring plans reflect current management principles

- (4) If the Australian World Heritage management principles change so that a plan (the **earlier plan**) is inconsistent with them, the Minister must make another plan:
- (a) amending the earlier plan so it is not inconsistent with them; or
 - (b) revoking and replacing the earlier plan.

Plan may be in same document as another plan

- (5) To avoid doubt, a plan under this section for a property may be in the same document as:
- (a) a plan under this section for another property; or
 - (b) a plan that this Act or another law of the Commonwealth requires or permits to be prepared.

Commonwealth reserves

- (6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a property as is in a Commonwealth reserve.

Note: A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the World Heritage Convention.

317 Notice of plans

The Minister must give notice of the making of a plan under section 316, in accordance with the regulations.