

- (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

## **288 Eradication of non-native species**

If:

- (a) the actions specified under section 287 in a wildlife conservation plan include the eradication of a non-native species; and
- (b) the species is threatened in a country in which its native habitat occurs;

the wildlife conservation plan must require the Commonwealth to offer to provide stock of the species to that country before the eradication proceeds.

## **289 Scientific Committee to advise on scheduling of plans**

- (1) The Minister may seek advice from the Scientific Committee on the need for wildlife conservation plans and the order in which they should be made.
- (1A) The Scientific Committee may advise the Minister on its own initiative to make a wildlife conservation plan for a specified species described in subsection 285(1).
- (2) In giving advice under subsection (1) or (1A), the Scientific Committee must take into account the resources available for making plans.
- (3) Before making a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

## **290 Consultation on plans**

- (1) Before making a wildlife conservation plan under subsection 285(1) or (5), the Minister must:
  - (a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at

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- prescribed places in each State and self-governing Territory; and
  - (b) give a copy of it, together with a notice of a kind referred to in subsection (2), to the Scientific Committee; and
  - (c) cause the notice to be published:
    - (i) in the *Gazette*; and
    - (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory; and
    - (iii) in any other way required by the regulations (if any).
- (2) The notice must:
- (a) specify the places where copies of the proposed plan may be purchased; and
  - (b) invite persons to make written comments about the proposed plan; and
  - (c) specify:
    - (i) an address for lodgment of comments; and
    - (ii) a day by which comments must be made.
- (3) The day specified must not be a day occurring within 3 months after the notice is published in the *Gazette*.

## 291 Consideration of comments

The Minister:

- (a) must, in accordance with the regulations (if any), consider all comments on a proposed wildlife conservation plan made in response to an invitation under section 290; and
- (b) may revise the plan to take account of those comments.

## 292 Adoption of State plans

- (1) The Minister must not adopt a plan as a wildlife conservation plan under subsection 285(3) unless:
  - (a) the Minister is satisfied that an appropriate level of consultation has been undertaken in making the plan; and

- (b) the plan meets the requirements of section 287.
- (2) Before adopting a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

### **293 Publication, review and variation of plans**

- (1) As soon as practicable after the Minister makes or adopts a wildlife conservation plan under section 285, the Minister must:
  - (a) make copies of the plan available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory; and
  - (b) give notice of the making or adoption of each such plan; and
  - (c) publish the notice:
    - (i) in the *Gazette*; and
    - (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory; and
    - (iii) in any other way required by the regulations (if any).
- (2) The notice must:
  - (a) state that the Minister has made or adopted the plan; and
  - (b) specify the day on which the plan comes into force; and
  - (c) specify the places where copies of the plan may be purchased.

### **294 Variation of plans by the Minister**

- (1) The Minister may, at any time, review a wildlife conservation plan that has been made or adopted under section 285 and consider whether a variation of it is necessary.
- (2) Each plan must be reviewed by the Minister at intervals of not longer than 5 years.
- (3) If the Minister considers that a variation of a plan is necessary, the Minister may, subject to subsections (4), (5), (6) and (7) vary the plan.

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- (4) The Minister must not vary a plan, unless the plan, as so varied, continues to meet the requirements of section 287.
- (5) Before varying a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (6) If the Minister has made a plan jointly with, or adopted a plan that has been made by, a State or self-governing Territory, or an agency of a State or self-governing Territory, the Minister must seek the co-operation of that State or Territory, or that agency, with a view to varying the plan.
- (7) Sections 290, 291 and 293 apply to the variation of a plan in the same way that those sections apply to the making of a wildlife conservation plan.

**295 Variation by a State or Territory of joint plans and plans adopted by the Minister**

- (1) If a State or self-governing Territory varies a plan that:
  - (a) the Minister has made jointly with the State or self-governing Territory, or an agency of the State or Territory; or
  - (b) has been adopted by the Minister as a wildlife conservation plan;the variation is of no effect for the purposes of this Act unless it is approved by the Minister.
- (2) Before approving a variation, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (3) The Minister must not approve a variation under subsection (1) unless satisfied:
  - (a) an appropriate level of consultation was undertaken in varying the plan; and
  - (b) the plan, as so varied, continues to meet the requirements of section 287.

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- (4) If the Minister approves a variation of a plan, the plan has effect as so varied on and after the date of the approval, or such later date as the Minister determines in writing.
- (5) Section 293 applies to the variation of a plan in the same way that it applies to the making of a wildlife conservation plan.

**296 Commonwealth assistance**

- (1) The Commonwealth may give to a State or self-governing Territory, or to an agency of a State or a self-governing Territory, financial assistance, and any other assistance, to make a wildlife conservation plan.
- (2) The Commonwealth may give to a person (other than a State or a self-governing Territory, or an agency of a State or Territory) financial assistance, and any other assistance, to implement a wildlife conservation plan.
- (3) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

**297 Plans may cover more than one species etc.**

A wildlife conservation plan made or adopted under this Subdivision may deal with all or any of the following:

- (a) one or more listed migratory species;
- (b) one or more listed marine species;
- (c) one or more species of cetacean;
- (d) one or more conservation dependent species.

**298 Reports on preparation and implementation of plans**

The Secretary must include in each annual report a report on the making and adoption under section 285 of each wildlife conservation plan during the year to which the report relates.

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**Subdivision C—Miscellaneous**

**299 Wildlife conservation plans cease to have effect**

If:

- (a) a wildlife conservation plan is in force for all or any of the following:
    - (i) a listed migratory species;
    - (ii) a listed marine species;
    - (iii) a species of cetacean; and
  - (b) the species becomes a listed threatened species (except a conservation dependent species);
- the wildlife conservation plan ceases to have effect in relation to the species on and from the day on which the species becomes a listed threatened species as mentioned in paragraph (b).

**300 Document may contain more than one plan**

- (1) All or any of the plans made under this Division may be included in the same document.
- (2) All or any of the plans adopted under this Division may be included in the same instrument of adoption.

**300A State and Territory laws not affected**

Sections 269A, 270A, 270B, 273 and 285 do not exclude or limit the concurrent operation of a law of a State or self-governing Territory.

**300B Assistance from the Scientific Committee**

- (1) The Minister may, at any time, ask the Scientific Committee to provide the Minister with a statement, information or advice for the purpose of assisting the Minister in the performance or exercise of the Minister's functions or powers under section 266B, 269AA or 270A.

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- (2) The Scientific Committee may, at any time, provide the Minister with a statement, information or advice for the purpose of assisting the Minister in the performance or exercise of the Minister's functions or powers under section 266B, 269AA or 270A (whether or not the Committee is acting in response to a request under subsection (1) of this section).

## **Division 6—Access to biological resources**

### **301 Control of access to biological resources**

- (1) The regulations may provide for the control of access to biological resources in Commonwealth areas.
- (2) Without limiting subsection (1), the regulations may contain provisions about all or any of the following:
  - (a) the equitable sharing of the benefits arising from the use of biological resources in Commonwealth areas;
  - (b) the facilitation of access to such resources;
  - (c) the right to deny access to such resources;
  - (d) the granting of access to such resources and the terms and conditions of such access.



## **Division 6A—Control of non-native species**

### **301A Regulations for control of non-native species**

The regulations may:

- (a) provide for the establishment and maintenance of a list of species, other than native species, whose members:
  - (i) do or may threaten biodiversity in the Australian jurisdiction; or
  - (ii) would be likely to threaten biodiversity in the Australian jurisdiction if they were brought into the Australian jurisdiction; and
- (b) regulate or prohibit the bringing into the Australian jurisdiction of members of a species included in the list mentioned in paragraph (a); and
- (c) regulate or prohibit trade in members of a species included in the list mentioned in paragraph (a):
  - (i) between Australia and another country; or
  - (ii) between 2 States; or
  - (iii) between 2 Territories; or
  - (iv) between a State and a Territory; or
  - (v) by a constitutional corporation; and
- (d) regulate and prohibit actions:
  - (i) involving or affecting members of a species included in the list mentioned in paragraph (a); and
  - (ii) whose regulation or prohibition is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries; and
- (e) provide for the making and implementation of plans to reduce, eliminate or prevent the impacts of members of species included in the list mentioned in paragraph (a) on biodiversity in the Australian jurisdiction.

**Division 7—Aid for conservation of species in foreign countries**

**302 Aid for conservation of species in foreign countries**

On behalf of the Commonwealth, the Minister may give financial assistance to the governments of foreign countries and organisations in foreign countries to help the recovery and conservation, in those countries, of species covered by international agreements to which Australia is a party.

## **Division 8—Miscellaneous**

### **303 Regulations**

- (1) The regulations may make provision for the conservation of biodiversity in Commonwealth areas.
- (2) In particular, the regulations may prohibit or regulate actions affecting a member of a native species in a Commonwealth area. This does not limit subsection (1).

### **303A Exemptions from this Part**

- (1) A person proposing to take an action that would contravene a provision of this Part apart from this section may apply in writing to the Minister for an exemption from the provision.
- (2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.
- (3) The Minister may, by written notice, exempt a specified person from the application of a specified provision of this Part in relation to a specified action.
- (4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.
- (5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency. This does not limit the matters the Minister may consider.
- (6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.

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- (7) Within 10 business days after making the notice, the Minister must:
- (a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations; and
  - (b) give a copy of the notice to the person specified in the notice.

**303AA Conditions relating to accreditation of plans, regimes and policies**

- (1) This section applies to an accreditation of a plan, regime or policy under section 208A, 222A, 245 or 265.
- (2) The Minister may accredit a plan, regime or policy under that section even though he or she considers that the plan, regime or policy should be accredited 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 accreditation is to specify the period, circumstances or condition.
- (3) If an accreditation specifies a particular period as mentioned in subsection (2), the accreditation ceases to be in force at the end of that period.
- (4) If an accreditation specifies circumstances as mentioned in subsection (2), the Minister must, in writing, revoke the accreditation if he or she is satisfied that those circumstances have ceased to exist.
- (5) The Minister may, in writing, vary an accreditation by:
- (a) specifying one or more conditions (or further conditions) to which the accreditation is subject; or
  - (b) revoking or varying a condition:
    - (i) specified in the instrument of accreditation; or
    - (ii) specified under paragraph (a).

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- (6) A condition may relate to reporting or monitoring.
- (7) The Minister must, in writing, revoke an accreditation if he or she is satisfied that a condition of the accreditation has been contravened.

**303AB Amended policies, regimes or plans taken to be accredited**

- (1) If:
  - (a) a plan, regime or policy is accredited under section 208A, 222A, 245 or 265; and
  - (b) the plan, regime or policy is amended, or is proposed to be amended; and
  - (c) the Minister is satisfied that the amendments are, or will be, minor; and
  - (d) the Minister is satisfied that the plan, regime or policy as amended meets, or will meet, the requirements of subsection 208A(1), 222A(1), 245(1) or 265(1) (as the case may be);the Minister may, by instrument in writing, determine that this subsection applies to the amendments.
- (2) If the Minister makes a determination under subsection (1), the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection 208A(1), 222A(2), 245(1) or 265(1) (as the case may be).
- (3) A determination under subsection (1) of this section is not a legislative instrument.

## **Part 13A—International movement of wildlife specimens**

### **Division 1—Introduction**

#### **303BA Objects of Part**

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

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

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

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

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

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

(c) ceremonial or religious purposes.

### 303BB Simplified outline

The following is a simplified outline of this Part:

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

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**303BC Definitions**

In this Part, unless the contrary intention appears:

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

***engage in conduct*** means:

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

***export*** means:

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

but does not include:

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

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

***import*** means:

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

but does not include:

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

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



external Territory without having been imported into any other country.

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

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

**recipient** means:

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

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

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

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

**take** includes:

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

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

Note: See also section 528.

## **Division 2—CITES species**

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

#### **303CA Listing of CITES species**

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

Note: See section 4 of the *Acts Interpretation Act 1901*.
- (3) The list must include all species from time to time included in any of Appendices I, II and III to CITES. The list must not include any other species.
- (4) For each species included in the list, there is to be a notation:
  - (a) describing the specimens belonging to that species that are included in a particular Appendix to CITES; and
  - (b) identifying the Appendix in which the species is included; and
  - (c) identifying the date on which the provisions of CITES first applied to the specimens.
- (5) A description mentioned in paragraph (4)(a):
  - (a) may cover all specimens that belong to the species; or
  - (b) may cover specified kinds of specimens that belong to the species; or
  - (c) may state that the inclusion of a specimen in a particular Appendix to CITES is subject to restrictions or conditions.
- (6) A restriction or condition mentioned in paragraph (5)(c) may:
  - (a) impose a quantitative limit in relation to the export or import of a specimen; or
  - (b) relate to the imposition of a quota in relation to the export or import of specimens; or

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- (c) relate to a particular population of a species; or
  - (d) reflect any other restriction or condition set out in the relevant Appendix to CITES.
- (7) Subsection (6) does not limit paragraph (5)(c).
- (8) A notation in the list is to be consistent with CITES.
- (9) The Minister may, by legislative instrument:
  - (a) correct an inaccuracy or update the name of a species; or
  - (b) amend the list, as necessary, so that it includes all species required to be included in the list under subsection (3); or
  - (c) amend the list, as necessary, so that the notations in the list are consistent with CITES.
- (11) For the purposes of this section, it is to be assumed that the definition of *specimen* in CITES includes a reference to a thing that is a specimen for the purposes of this Act.

Note: See also section 303CB.

**303CB Stricter domestic measures**

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

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) The Minister must not make a declaration under subsection (1) unless:
  - (a) the modification has the effect of treating a specified specimen that is included in Appendix II to CITES as if the specimen were included in Appendix I to CITES; or
  - (b) the modification has the effect of broadening the range of specimens included in a specified Appendix to CITES in relation to a specified species; or
  - (c) the modification has the effect of decreasing a quantitative limit in relation to the export or import of a specimen; or

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- (d) the modification has the effect of treating a specified specimen that is not included in Appendix I, II or III to CITES as if the specimen were included in Appendix I to CITES; or
  - (e) the modification has the effect of treating a specified specimen that is not included in Appendix I, II or III to CITES as if the specimen were included in Appendix II to CITES.
- (5) A reference in this Act to the *list referred to in section 303CA* is a reference to that list as modified under this section.

**Subdivision B—Offences and permit system**

**303CC Exports of CITES specimens**

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

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

*Authorised export—permit*

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

*Authorised export—CITES exemptions*

- (3) Subsection (1) does not apply if the export of the specimen is an export that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.
- (4) Subsection (1) does not apply if the Minister issues a certificate under subsection (5) in relation to the specimen.

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- (5) If the Minister is satisfied that a specimen was acquired before the provisions of CITES applied to the specimen, the Minister may issue a certificate to that effect.
- (6) Subsection (1) does not apply if the export of the specimen is an export that, under the regulations, is taken to be an export of a personal or household effect.

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

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

### **303CD Imports of CITES specimens**

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

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

#### *Authorised import—permit*

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

#### *Authorised import—CITES exemptions*

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

Note: See paragraph 3 of Article VII of CITES.

- (4) Subsection (1) does not apply if:
  - (a) the specimen is a CITES II specimen; and
  - (b) the specimen is not a live specimen; and

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

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

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

### **303CE Applications for permits**

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

### **303CF Further information**

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

### **303CG Minister may issue permits**

- (1) The Minister may, on application made by a person under section 303CE, issue a permit to the person. This subsection has effect subject to subsection (3).
- (2) A permit authorises its holder to take the action or actions specified in the permit, 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 6 months after that date.
- (3) The Minister must not issue a permit unless the Minister is satisfied that:
  - (a) the action or actions specified in the permit will not be detrimental to, or contribute to trade which is detrimental to:

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- (i) the survival of any taxon to which the specimen belongs; or
  - (ii) the recovery in nature of any taxon to which the specimen belongs; or
  - (iii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
- (b) the specimen was not obtained in contravention of, and the action or actions specified in the permit would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
- (c) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and
- (d) if any restriction or condition is applicable to the specimen under a notation in the list referred to in section 303CA—that restriction or condition has been, or is likely to be, complied with; and
- (e) if the permit authorises the export of a CITES specimen:
  - (i) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
  - (ii) the relevant conditions set out in the table in section 303CH have been met; and
- (f) if the permit authorises the import of a CITES specimen:
  - (i) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB); or
  - (ii) the relevant conditions set out in the table in section 303CH have been met; and
- (g) if:
  - (i) the permit authorises the import of a CITES II specimen; and
  - (ii) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB);



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- the country from which the specimen is proposed to be imported has a relevant CITES authority and permission to export the specimen from that country has been given by a relevant CITES authority of that country; and
- (h) if the permit authorises the export of a CITES specimen that is a regulated native specimen—the conditions set out in subsection 303DG(4) have been met; and
  - (i) if the permit authorises the import of a CITES specimen that is a regulated live specimen—the conditions set out in subsection 303EN(3) have been met.
- (4) Subsection (3) does not apply in relation to a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be.
- (5) The Minister must not issue a permit to export a specimen (other than a live animal) that has been imported into Australia or an external Territory, unless the Minister is satisfied that:
- (a) the specimen was lawfully imported (section 303GY); and
  - (b) if the specimen is a CITES I specimen:
    - (i) the country to which the specimen is proposed to be exported has a relevant CITES authority; and
    - (ii) permission to import that specimen into that country has been given by a relevant CITES authority of that country.
- (6) This section has effect subject to section 303GA.

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

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

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

**Chapter 5** Conservation of biodiversity and heritage  
**Part 13A** International movement of wildlife specimens  
**Division 2** CITES species

Section 303CH

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

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<b>Specific conditions</b>			
<b>Item</b>	<b>Category of specimen</b>	<b>Action</b>	<b>Specific conditions</b>
3	CITES II	Import	<p>(a) for any specimen—the country from which the specimen is proposed to be imported has a relevant CITES authority and permission to export the specimen from that country has been given by a relevant CITES authority of that country; and</p> <p>(b) for a specimen that:</p> <ul style="list-style-type: none"> <li>(i) is specified by the Minister under subsection (2) as a declared specimen; and</li> <li>(ii) is not, or is not derived from, an animal that was bred in captivity (section 527B); and</li> <li>(iii) is not, or is not derived from, a plant that was artificially propagated (section 527C);</li> </ul> <p>the proposed import of the specimen would be an import from an approved commercial import program in accordance with section 303FU.</p>

**Chapter 5** Conservation of biodiversity and heritage  
**Part 13A** International movement of wildlife specimens  
**Division 2** CITES species

Section 303CH

<b>Specific conditions</b>			
<b>Item</b>	<b>Category of specimen</b>	<b>Action</b>	<b>Specific conditions</b>
4	CITES II	Export	(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and (b) the proposed export of the specimen would be: (i) an export from an approved captive breeding program in accordance with section 303FK; or (ii) an export from an approved artificial propagation program in accordance with section 303FL; or (iia) an export from an approved cultivation program in accordance with section 303FLA; or (iii) an export in accordance with an approved wildlife trade operation (section 303FN); or (iv) an export in accordance with an approved wildlife trade management plan (section 303FO).
5	CITES III	Import	The country from which the specimen is proposed to be imported has a relevant CITES authority, and permission to export the specimen from that country has been given by a relevant CITES authority of that country.

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

- (2) The Minister may, by notifiable instrument, specify a specimen as a declared specimen for the purposes of subparagraph (b)(i) of item 3 of the table in subsection (1).

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

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

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

- (a) the day on which the application is made;

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

**303CJ Duration of permits**

A permit under section 303CG:

- (a) comes into force on the date on which it is issued; and
- (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
  - (i) the permitted period (within the meaning of subsection 303CG(2A));
  - (ii) each period for which one or more conditions of the permit are expressed to apply.

**303CK Register of applications and decisions**

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

**Subdivision C—Application of CITES**

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

For the purposes of the application of CITES to Australia:

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

(b) the Secretary is the Scientific Authority.

**303CM Interpretation of CITES provisions**

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

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

- (1) In making a decision under this Part in relation to a CITES specimen, the Minister may have regard to a relevant resolution of the Conference of the Parties under Article XI of CITES.
- (2) Subsection (1) applies to a resolution, whether made before or after the commencement of this section.

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

**Subdivision A—Regulated native specimens**

**303DA Regulated native specimens**

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

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

**303DB Listing of exempt native specimens**

- (1) The Minister must, by legislative instrument, establish a list of exempt native specimens.
- (2) For each specimen included in the list, there is to be a notation that states whether the inclusion of the specimen in the list is subject to restrictions or conditions and, if so, the nature of those restrictions or conditions.
- (3) A restriction or condition mentioned in subsection (2) may:
  - (a) consist of a quantitative limit in relation to the export of the specimen; or
  - (b) relate to the circumstances of the export of the specimen; or
  - (c) relate to the source of the specimen; or
  - (d) relate to the circumstances in which the specimen was taken or, if the specimen is derived from another specimen that was taken, the circumstances in which the other specimen was taken; or
  - (e) relate to an expiry date for the inclusion of the specimen on the list.
- (4) Subsection (3) does not limit subsection (2).
- (5) The list, as first established, must:



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- (a) contain the specimens referred to in Part I of Schedule 4 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section; and
  - (b) reflect the restrictions and conditions that are applicable to the inclusion of those specimens in that Part of that Schedule.
- (6) The list must not include a specimen that belongs to an eligible listed threatened species unless:
  - (a) the Minister is satisfied that the export of the specimen will not:
    - (i) adversely affect the conservation status of the species concerned; and
    - (ii) be inconsistent with any recovery plan or wildlife conservation plan for that species; and
  - (aa) the Minister has had regard to any approved conservation advice for that species; and
  - (b) the inclusion of the specimen on the list is subject to a restriction or condition to the effect that:
    - (i) the specimen must be, or be derived from, a plant that was artificially propagated (section 527C); and
    - (ii) the specimen was propagated in an operation that has derived its stock in a way that did not breach a law of the Commonwealth, a State or a Territory.

**303DC Minister may amend list**

- (1) The Minister may, by legislative instrument, amend the list referred to in section 303DB by:
  - (a) doing any of the following:
    - (i) including items in the list;
    - (ii) deleting items from the list;
    - (iii) imposing a condition or restriction to which the inclusion of a specimen in the list is subject;
    - (iv) varying or revoking a condition or restriction to which the inclusion of a specimen in the list is subject; or

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- (b) correcting an inaccuracy or updating the name of a species.
- (1A) In deciding whether to amend the list referred to in section 303DB to include a specimen derived from a commercial fishery, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.
- (1B) Subsection (1A) does not apply to an amendment mentioned in paragraph (1)(b).
- (1C) Subsection (1A) does not limit the matters that may be taken into account in deciding whether to amend the list referred to in section 303DB to include a specimen derived from a commercial fishery.
- (1D) In this section:
- fishery* has the same meaning as in section 303FN.
- (2) For the purposes of paragraph (1)(b), *correcting an inaccuracy* includes ensuring that the list complies with subsection 303DB(5).
- (3) Before amending the list referred to in section 303DB as mentioned in paragraph (1)(a) of this section, the Minister:
- (a) must consult such other Minister or Ministers as the Minister considers appropriate; and
  - (b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and
  - (c) may consult such other persons and organisations as the Minister considers appropriate.
- (4) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (1)(b) of this section applies.

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

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

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

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

#### *Exemption—permit*

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

#### *Exemption—accredited wildlife trade management plan*

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

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*Exemption—exchange of scientific specimens*

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

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

**303DE Applications for permits**

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

**303DF Further information**

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

**303DG Minister may issue permits**

- (1) The Minister may, on application made by a person under section 303DE, issue a permit to the person. This subsection has effect subject to subsections (3) to (4A).
- (2) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303DD.

- (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 3 years after that date.
- (3) The Minister must not issue a permit authorising the export of a live native mammal, a live native reptile, a live native amphibian or a live native bird unless the Minister is satisfied that the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA).
- (3A) The Minister must not issue a permit authorising the export of a live terrestrial invertebrate, or a live freshwater fish, prescribed by the regulations for the purposes of paragraph 303DD(3)(ba) unless the Minister is satisfied that:
- (a) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
  - (b) the proposed export would be an export from an approved aquaculture program in accordance with section 303FM.
- (4) The Minister must not issue a permit unless the Minister is satisfied that:
- (a) the export of the specimen will not be detrimental to, or contribute to trade which is detrimental to:
    - (i) the survival of any taxon to which the specimen belongs; or
    - (ii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
  - (b) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and
  - (c) the specimen was not obtained in contravention of, and the export would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
  - (d) if the specimen belongs to an eligible listed threatened species—the export of the specimen is covered by

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- subsection (7) or (8), and the export would not be inconsistent with any recovery plan for that species; and
- (e) if the specimen does not belong to an eligible listed threatened species:
- (i) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
  - (ii) the proposed export would be an eligible commercial purpose export (within the meaning of section 303FJ).
- (4A) If the Minister is considering whether to issue a permit relating to a specimen that belongs to a particular eligible listed threatened species, the Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the species.
- (5) Subsection (4) does not apply in relation to a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be.
- (6) The Minister must not issue a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be, unless the Minister is satisfied that the specimen was lawfully imported (section 303GY).

*Eligible listed threatened species*

- (7) This subsection covers the export of a specimen if:
- (a) the export of the specimen would be an export from an approved captive breeding program in accordance with section 303FK; or
  - (b) the export of the specimen would be an export from an approved artificial propagation program in accordance with section 303FL; or
  - (ba) the export of the specimen would be an export from an approved cultivation program in accordance with section 303FLA; or

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- (c) the export of the specimen would be an export from an approved aquaculture program in accordance with section 303FM;

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

Note: See also subsection (3).

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

*Section has effect subject to section 303GA*

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

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

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

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

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

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**303DI Duration of permits**

A permit under section 303DG:

- (a) comes into force on the date on which it is issued; and
- (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
  - (i) the permitted period (within the meaning of subsection 303DG(2A));
  - (ii) each period for which one or more conditions of the permit are expressed to apply.

**303DJ Register of applications and decisions**

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



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

### **Subdivision A—Regulated live specimens**

#### **303EA Regulated live specimens**

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

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

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

- (1) The Minister must, by legislative instrument, establish a list of specimens that are taken to be suitable for live import.
- (2) The list is to be divided into 2 Parts, as follows:
  - (a) Part 1 is to be a list of unregulated specimens;
  - (b) Part 2 is to be a list of allowable regulated specimens.
- (3) The list may only contain specimens that are live animals or live plants.
- (4) Part 1 of the list, as first established, must contain only the specimens referred to in Part I of Schedule 5 or Part I of Schedule 6 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section.
- (5) Part 1 of the list must not contain a CITES specimen.
- (6) Part 1 of the list is taken to include a live plant the introduction of which into Australia is not inconsistent with the *Biosecurity Act 2015*.
- (7) For each specimen included in Part 2 of the list (except a specimen referred to in subsection (11A)), there is to be a notation that states

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whether the inclusion of the specimen in that part of the list is subject to restrictions or conditions and, if so, the nature of those restrictions or conditions.

- (8) A restriction or condition referred to in subsection (7) may:
  - (a) consist of a quantitative limit in relation to the import of the specimen; or
  - (b) relate to the circumstances of the import of the specimen; or
  - (c) relate to the source of the specimen; or
  - (d) relate to the circumstances in which the specimen was taken.
- (9) Subsection (8) does not limit subsection (7).
- (10) Part 2 of the list, as first established, must contain only specimens that were, at any time before the commencement of this section, the subject of an import permit granted under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*.
- (11) For the purposes of subsection (10), a specimen is taken to have been the subject of an import permit if, and only if, the specimen was identified in the permit at the species or sub-species level.
- (11A) Part 2 of the list is taken to include a live plant that is a CITES specimen the introduction of which into Australia is not inconsistent with the *Biosecurity Act 2015*.

**303EC Minister may amend list**

- (1) The Minister may, by legislative instrument, amend the list referred to in section 303EB by:
  - (a) doing any of the following:
    - (i) including items in a particular part of the list;
    - (ii) deleting items from a particular part of the list;
    - (iii) imposing a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject;
    - (iv) varying or revoking a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject; or

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- (b) correcting an inaccuracy or updating the name of a species.
- (2) For the purposes of paragraph (1)(b), *correcting an inaccuracy* includes ensuring that the list complies with subsections 303EB(4) and (10).
- (3) Before amending the list referred to in section 303EB as mentioned in paragraph (1)(a) of this section, the Minister:
  - (a) must consult such other Minister or Ministers as the Minister considers appropriate; and
  - (b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and
  - (c) may consult such other persons and organisations as the Minister considers appropriate.
- (5) The Minister must not amend the list referred to in section 303EB by including an item in the list, unless:
  - (a) the amendment is made following consideration of a relevant report under section 303ED or 303EE; or
  - (b) the amendment is made following consideration of a relevant review under section 303EJ.
- (6) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (1)(b) of this section applies.

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

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

- (1) The Minister may formulate a proposal for the list referred to in section 303EB to be amended by including an item.
- (2) Unless subsection (3) applies, the Minister must:
  - (a) cause to be conducted an assessment of the potential impacts on the environment of the proposed amendment; and

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- (b) cause to be prepared a report on those impacts.  
The report must be prepared in accordance with section 303EF and be given to the Minister.
- (3) This subsection applies if:
  - (a) Biosecurity Australia has prepared a report (whether before or after the amendment was proposed) on the potential impacts on the environment if the specimen were to be imported; and
  - (b) the report is of a type specified in regulations made for the purposes of this paragraph; and
  - (c) the report is given to the Minister; and
  - (d) the Minister determines that subsection (2) does not apply to the proposed amendment.
- (4) A determination made under paragraph (3)(d) is not a legislative instrument.

**303EE Application for amendment of list**

- (1) A person may, in accordance with the regulations, apply to the Minister for the list referred to in section 303EB to be amended by including an item.
- (2) The Minister must not consider the application unless either subsection (3) or (4) applies to the proposed amendment.
- (3) This subsection applies to the proposed amendment if:
  - (a) subsection (4) does not apply to the proposed amendment; and
  - (b) an assessment is made of the potential impacts on the environment of the proposed amendment; and
  - (c) a report on those impacts is given to the Minister.  
The report must be prepared in accordance with section 303EF.
- (4) This subsection applies to the proposed amendment if:
  - (a) Biosecurity Australia has prepared a report (whether before or after the amendment was proposed) on the potential

- impacts on the environment if the specimen were to be imported; and
  - (b) the report is of a type specified in regulations made for the purposes of this paragraph; and
  - (c) the report has been given to the Minister; and
  - (d) the Minister determines that subsection (3) does not apply to the proposed amendment.
- (5) A determination made under paragraph (4)(d) is not a legislative instrument.

### **303EF Requirement for assessments**

- (1) The assessment under subsection 303ED(2) or 303EE(3) must provide for:
- (a) if the Minister determines that this paragraph applies—the preparation of terms of reference for a report on the relevant impacts; or
  - (b) if the Minister determines that this paragraph applies—all of the following:
    - (i) the preparation of draft terms of reference for a report on the relevant impacts;
    - (ii) the publication of the draft terms of reference for public comment for a period of at least 10 business days that is specified by the Minister;
    - (iii) the finalisation of the terms of reference, to the Minister's satisfaction, taking into account the comments (if any) received on the draft terms of reference.
- (2) The assessment must also provide for:
- (a) the preparation of a draft of a report on the relevant impacts; and
  - (b) the publication of the draft report for public comment for a period of at least 20 business days that is specified by the Minister; and

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- (c) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and
  - (d) any other matter prescribed by the regulations.
- (3) A determination made under paragraph (1)(a) or (b) is not a legislative instrument.

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

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

*Notice of extension of time*

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

**303EH Requesting further information**

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

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

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

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

**303EJ Reviews**

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

**Subdivision C—Offence and permit system**

**303EK Imports of regulated live specimens**

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

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

*Exemption—permit*

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

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### *Exemption—testing permit*

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

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

### **303EL Applications for permits**

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

### **303EM Further information**

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

### **303EN Minister may issue permits**

- (1) The Minister may, on application made by a person under section 303EL, issue a permit to the person. This subsection has effect subject to subsection (3).
- (2) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 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



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specified must start on the date of issue of the permit and end not later than 3 years after that date.

- (3) The Minister must not issue a permit unless the Minister is satisfied that:
- (a) the proposed import would not be:
    - (i) likely to threaten the conservation status of a species or ecological community; or
    - (ii) likely to threaten biodiversity; and
  - (b) the specimen is included in Part 2 of the list referred to in section 303EB; and
  - (c) if any restriction or condition is applicable to the specimen under a notation in Part 2 of the list referred to in section 303EB—that restriction or condition has been, or is likely to be, complied with; and
  - (d) the specimen was not obtained in contravention of, and the import would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
  - (e) if the specimen belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with.
- (4) This section has effect subject to section 303GA.

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

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

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

- (a) the day on which the application is made;
- (b) if a request for further information in relation to the application is made under section 303EM—the day on which the applicant complies with the request;

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- (c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

**303EP Duration of permits**

A permit under section 303EN:

- (a) comes into force on the date on which it is issued; and
- (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
  - (i) the permitted period (within the meaning of subsection 303EN(2A));
  - (ii) each period for which one or more conditions of the permit are expressed to apply.

**303EQ Register of applications and decisions**

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

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

**303ER Object**

The object of this Subdivision is:

- (a) to comply with Australia's obligations under:
  - (i) the Biodiversity Convention; and
  - (ii) CITES; and

- (b) otherwise to further the protection and conservation of the wild fauna and flora of Australia and of other countries; by requiring the marking of certain live specimens for the purposes of identification.

Note: See Article 8 of the Biodiversity Convention.

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

This Subdivision applies to a regulated live specimen if:

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

### **303ET Extended meaning of *marking***

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

- (a) in the case of a live plant:
  - (i) the marking or labelling of a container in which the plant is kept or in which the plant is growing; and
  - (ii) the placement of a label or tag on the plant;
- (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.

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

*Determinations*

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

*Matters that may be covered by determination*

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

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

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

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

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

**303EV Offences**

*Owner to ensure specimens marked etc.*

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

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

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

*Offence*

- (3) A person who contravenes subsection (1) or (2) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.
- (4) Subsection (2) does not apply if the person engages in the conduct in accordance with a determination under section 303EU.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the import of the specimen would be an import for the purposes of research in accordance with section 303FC; or
- (b) the import of the specimen would be an import for the purposes of education in accordance with section 303FD; or
- (c) the import of the specimen would be an import for the purposes of exhibition in accordance with section 303FE; or

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

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

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



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- (i) the acquisition of a better understanding, and/or increased knowledge, of a taxon to which the specimen belongs;
- (ii) the conservation of biodiversity;
- (iii) the maintenance and/or improvement of human health; and
- (c) the import is not primarily for commercial purposes; and
- (d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

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

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

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

- (1) The export of a specimen is an export for the purposes of exhibition in accordance with this section if:
  - (a) the specimen will be used for the purpose of an exhibition; and
  - (b) the export is not primarily for commercial purposes; and

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

**303FF Export or import for conservation breeding or propagation**

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

- (c) the program is a program that, under the regulations, is taken to be an approved co-operative conservation program; and
- (d) the import is not primarily for commercial purposes; and
- (e) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

### **303FG Export or import of household pets**

#### *Export of live native animals*

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

#### *Export of live CITES specimens*

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

#### *Import of live animals*

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

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- (c) the animal is included in Part 2 of the list referred to in section 303EB.

*Listing of native household pet animals*

- (4) The Minister must, by legislative instrument, establish a list of native household pet animals.
- (5) The list, as first established, must contain the animals referred to in Schedule 7 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section.
- (6) The Minister may, by legislative instrument, amend the list referred to in subsection (4) by:
  - (a) including or deleting items from the list; or
  - (b) correcting an inaccuracy or updating the name of a species.
- (7) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (6)(b) of this section applies.

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

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