

1982

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Wildlife Protection (Regulation of Exports  
and Imports) Bill 1982

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Home  
Affairs and Environment the Hon. Ian Wilson)

## OUTLINE

The purpose of this Bill is to allow Australia to more fully implement and fulfil its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and other international agreements and to ensure that no Australian native species becomes threatened through inadequate control of exports or through imports of exotic species.

The Bill will replace the numerous existing enactments dealing with the protection of wildlife such as the Customs (Endangered Species) Regulations, certain provisions in the Customs (Prohibited Imports) Regulations and the Customs (Prohibited Exports) Regulations and various ordinances in force in the external Territories. The Bill brings these laws together into a single, readily accessible statute thereby emphasising to the international community Australia's consciousness of its obligations under CITES, facilitating a more uniform approach to wildlife management by the Minister responsible for wildlife conservation and overcoming a number of deficiencies which have become apparent in existing legislation.

Under the Bill the export and import of wildlife which is threatened with extinction will be strictly regulated. Permits for trade in such wildlife will only be provided where certain conditions prevail and the trade is for scientific or bona fide zoological purposes, or the wildlife has been bred in captivity or artificially propagated. Trade in species which may become endangered if trade is not closely controlled will be regulated by a similar permit system.

The Bill also contains provisions allowing control of trade in wildlife considered to require special protection, for example, for animal welfare reasons or where the Government's policy on trade in certain species of wildlife is particularly

strict, such as whales. Such species may not necessarily be endangered.

Trade in species which, although not endangered themselves, should be regulated because of their resemblance to endangered species, will also be closely controlled by a permit system.

Except as otherwise exempted by the Bill the export of specimens of Australian wildlife will require a permit. Export of live Australian animals will only be permitted for bona fide scientific or zoological purposes. Commercial exports will only be permitted when wildlife has been taken in accordance with a management program which will ensure survival of the species in the wild. Imports of species which could prejudice conservation of wildlife within Australia, through changes in habitat or by harming Australian native species in other ways, will be prohibited.

In order that scientific research is not hindered, the Bill provides for authorisation of facilitated exchange of specimens, other than live animals, between registered scientific institutions without a permit. Live animals may only be traded between approved institutions.

The Bill prohibits the possession of wildlife which has been illegally imported, or which is reasonably suspected of having been illegally imported. Penalties are significantly increased and are in keeping with the substantial prices obtainable for illegally traded wildlife and evidence of organized criminal activity in wildlife smuggling.

## NOTES ON CLAUSES

### PART I - PRELIMINARY

#### Clause 1

Provides for the citation of the Bill.

#### Clause 2

Provides that the Bill is to come into operation on a date to be fixed by Proclamation. This will allow any necessary administrative arrangements to be completed before the Bill is brought into operation.

#### Clause 3

Provides that the object of the Bill is to comply with Australia's obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and otherwise to further the protection of the wild fauna and flora of Australia and other certain animals, plants and goods.

Australia became a signatory to CITES in 1973 and enacted the Customs (Endangered Species) Regulations in 1976 to enable ratification of the Convention in that year. A number of acts and ordinances are intended to give effect to the Convention in the external Territories. The Convention allows parties to adopt stricter domestic measures and Australia's controls over species listed in CITES are stricter than those required under the Convention as Australia has always given wildlife controls high priority.

Various provisions of the Customs (Prohibited Exports) Regulations are used to implement the Government's strict policy on exports of native Australian fauna. Similarly, parts of the

Customs (Prohibited Imports) Regulations control importation of exotic fauna into Australia.

The day to day administration and enforcement of the above legislation has revealed a number of deficiencies and shortcomings which will be remedied by the Bill. In addition, a single piece of legislation will provide greater public appreciation of the Government's policy, lead to improved efficiency in enforcement and administration and will emphasise to the international community Australia's consciousness of its obligations under CITES.

Clause 3(a) provides for controls over the export of all native Australian animals and plants, other than those specimens listed on Schedule 4 which are essentially normal commercial products. The Government's policy on trade in Australian wildlife has always been very strict. This Bill will continue and strengthen that policy. Exports of Australian plants, which are currently not covered by existing legislation, will be controlled by the new Bill.

Clause 3(b) provides for trade controls on animals and plants that are threatened with extinction. Essentially, these are CITES Appendix I species and are specified in Schedule 1 to the Bill.

Clause 3(c) provides for trade controls on animals and plants which are not necessarily threatened but may become threatened with extinction if international trade in such species is not regulated. Essentially, these are CITES Appendix II species and are specified in Schedule 2 to the Bill.

Clause 3(d) provides for control of trade in species which, although not threatened or endangered, may require special protection. Such species will be specified in Schedule 3 to the Bill.

Clause 3(e) provides for control over the importation of species of live exotic animals and plants which could be detrimental to Australian wildlife should they become established in the Australian environment. Species specified in Schedules 5 and 6 to the Bill will not be subject to the legislation.

Clauses 3(f) and (g) provide for compliance with CITES requirements to control trade in specimens which are difficult to distinguish in trade from Appendix I and other Appendix II species in order that trade in threatened and endangered species may be adequately controlled. These species are specified in Schedule 2 to the Bill.

#### Clause 4

Contains the definitions which are required for the purposes of the Bill.

Exports or imports for the purposes of "scientific research" shall be permissible under the regulations where -

- (a) both the sender and the recipient have scientific research as their major function, are primarily non-commercial and non-profit making organisations and do not engage in commercial trade in animals which have not been bred in captivity or plants which have not been artificially propagated;
- (b) the recipient intends to use the specimen in undertaking scientific research and is capable of undertaking that research; and
- (c) it is intended to publish or otherwise make available the results of the research involving that specimen.

#### Clause 5

Provides that the Bill does not substitute for, nor derogate from, Commonwealth laws. Sub-clause 5(2) ensures that a person who obtains a permit under this Bill is not exempted from complying with the requirements of other Commonwealth laws, such as the Customs Act 1901 and the Quarantine Act 1908.

#### Clause 6

Extends the Bill to every external Territory and applies its provisions both within and outside Australia.

#### Clause 7

Provides that the Bill will bind the Crown in right of the Commonwealth, the States, the Northern Territory and Norfolk Island.

#### Clause 8

Provides that the Bill does not apply to specimens in the course of transshipment or which are part of an aircraft's or ship's store. These exemptions are provided for in Article VII.1 of the Convention and Part VII of the Customs Act 1901, respectively.

Sub clauses 8(3) and 8(4) exempt from the Bill specimens which are to be used in diagnostic tests to identify diseases of humans, animals or plants or specimens to be used in treating persons or animals in emergencies involving danger to the life or health of a human or an animal. The regulations will prescribe the organisations and persons to whom sub-clauses 8(3) and 8(4) apply. It is envisaged that bodies such as State and Territory health and agricultural authorities will be prescribed.

Sub-clause 8(5) ensures that where, in accordance with the Quarantine Act 1908, a specimen is brought into Australia for purposes of quarantine, that specimen is not to be taken to have been imported into Australia.

#### Clause 9

Provides that the Minister may vary all Schedules, except Schedules 5 and 8, by declaration in the Gazette. This will allow the Schedules to be quickly amended in response to international or national concern in respect of any particular species or where it is no longer appropriate to apply the Bill to certain species. The present requirement for formal amendments to the Customs (Endangered Species) Regulations in order to reflect changes to the CITES appendices has proved unnecessarily time consuming with the result that Australia has often not been in a position to give legal effect to such changes for several years after they have been adopted by the Parties to CITES. This provision in the Bill will remedy that unsatisfactory situation.

Declarations under clause 9 must be tabled in both Houses of Parliament and will be subject to disallowance by either House of Parliament. Sub-clause 9(4) provides that Schedules, as varied by a declaration, are to be readily available to interested members of the public.

#### Clause 10

Provides that the Minister may approve management programs for the purposes of the Bill. The regulations will set out the matters to which the Minister is to have regard in approving such programs. The relevant criteria will be in accordance with the requirements established by the Commonwealth in consultation with the States and Territories and will be aimed



at monitoring the methods and level of take to ensure that the species does not become endangered.

The relevant provisions in the Bill relating to management programs are clauses 29(d)(iv), 31(b)(ii), 31(c)(iv), 31(d)(iii), 37(c)(iv), 37(d)(iv), 75 and 76.

#### Clause 11

Provides that the Designated Authority may approve organisations that are engaged in activities relating to live animals or live plants to be approved institutions. The regulations will set out the matters to which the Designated Authority is to have regard in approving such institutions. The relevant criteria will be in accordance with the requirements established by the Commonwealth in consultation with the States and Territories.

A system of approved institutions is necessary to ensure that exotic species of wildlife which are legally imported are confined in a secure manner to prevent introduction to the Australian environment. Under clause 76 the Minister is required to consult the relevant State and Territory Ministers in the process of determining the requirements to be met by such organisations.

This system provides that institutions trading in live animals will ensure that these animals do not die because of inappropriate housing and care and thus do not exert a constant depletion of wild populations.

The relevant provisions in the Bill relating to approved institutions are clauses 28(b), 29(b), 35, 36(b), 37(b), 41(4)(a), 42(5), 50(2)(a), 51(2)(a).

## Clause 12

Provides that the Designated Authority may declare a zoological organisation to be an approved zoological organisation for the purposes of the Bill. The regulations will set out the matters to which the Designated Authority is to have regard when approving a zoological organisation. The relevant criteria will be in accordance with Commonwealth policy and requirements as exist at present.

The criteria for approval under the regulations will include that -

- (a) the zoo is owned or controlled by a government or learned zoological society;
- (b) breeding or public exhibition is the major function;
- (c) the zoo is primarily non-commercial and non-profit making; and
- (d) the zoo does not engage in commercial trade in fauna other than captive bred animals.

The relevant provisions in the Bill relating to approved zoological organisations are clauses 13, 28(c)(i), 28(d)(i), 29(c)(i), 29(d)(i), 30(a)(i), 31(a)(i), 31(c)(i), 36(c)(i), 37(c)(i), 38(a)(i).

## Clause 13

Provides that for the purposes of the Bill the import or export of an animal specimen is to be taken to be an inter-zoological gardens transfer if, and only if, it meets the criteria set out in the clause.

#### Clause 14

Provides that the regulations may declare the circumstances in which a live animal is to be taken to have been bred in captivity for the purposes of the Bill. The relevant circumstances will be those agreed to by the Parties to CITES.

The circumstances under which a live animal may be taken to have been bred in captivity will include that the breeding stock -

- (a) has been established in a manner which was not detrimental to survival of the species in the wild;
- (b) is maintained without augmentation from the wild, except where such augmentation is necessary to prevent inbreeding; and
- (c) is managed in a manner which has been demonstrated as being capable of consistently producing successive generations of offspring in a controlled environment.

The relevant provisions in the Bill relating to breeding in captivity are clauses 28(d)(iii), 29(d)(iii), 31(b)(i), 31(c)(iii), 36(c)(iii), 37(c)(iii), 38(a)(iii), 43(6)(c)(i)(A).

#### Clause 15

Provides that the regulations may declare the circumstances in which a live plant is to be taken to have been artificially propagated for the purposes of the Bill. The relevant circumstances will be those agreed to by the Parties to CITES.

The circumstances under which a live plant may be taken to have been artificially propagated will include that the plant

was grown by humans from breeding stock which was established in a manner which was not detrimental to survival of the species in the wild and is managed in a manner designed to maintain the breeding stock indefinitely.

The relevant provisions in the Bill relating to artificial propagation are clauses 28(e)(ii), 29(e)(ii), 31(d)(ii), 36(d)(ii), 37(d)(ii), 38(b)(ii), 42, 43(6)(c)(i)(B).

#### Clause 16

Sets out the conditions under which live native Australian animals may be exported from Australia or an external Territory as household pets. The conditions are basically the same as those which currently apply.

#### Clause 17

Provides that there shall be a Designated Authority for the purposes of the Bill. The creation of a Designated Authority is required by Article IX.1(b) of CITES (there referred to as a Scientific Authority). The main function of the Designated Authority is to advise the Minister whether the requirements for permits to export and import specimens have been satisfied.

#### Clause 18

Provides for the constitution of the Designated Authority. Upon commencement of the Bill the Designated Authority will be the Director of National Parks and Wildlife.

#### Clause 19

Provides for the remuneration of the Designated Authority where appropriate.

#### Clause 20

Provides for the appointment of a person to act as the Designated Authority during a vacancy in the office of Designated Authority or during a period when the Designated Authority is absent from duty or is otherwise unable to perform his functions.

### PART II - REGULATION OF EXPORT AND IMPORT OF SPECIMENS

#### Clause 21

Prohibits the export of specimens specified in Schedules 1,2, and 3 and native Australian animals and plants not specified in Schedule 4 without a permit or authority granted under the Bill.

A maximum penalty of \$100,000 or 5 years imprisonment is provided where the offender is a natural person and \$200,000 where the offender is a body corporate.

Current penalties under the Customs Act are entirely inadequate given prices obtainable for illegally traded wildlife and indications of the participation of organised crime and drug traffickers in wildlife smuggling. The House of Representatives Standing Committee on Environment and Conservation in its 1976 Report on Trafficking in Fauna in Australia recommended increased fines and imprisonment for first offenders.

#### Clause 22

Prohibits the import of specimens specified in Schedules 1,2 and 3 and live animals and plants not specified in Schedules 5 and 6 without a permit or authority granted under the Bill.

A maximum penalty of \$100,000 or 5 years imprisonment is provided where the offender is a natural person and \$200,000 where the offender is a body corporate.

Current penalties under the Customs Act are entirely inadequate given prices obtainable for illegally traded wildlife and indications of the participation of organised crime and drug traffickers in wildlife smuggling. The House of Representatives Standing Committee on Environment and Conservation in its 1976 Report on Trafficking in Fauna in Australia recommended increased fines and imprisonment for first offenders.

#### Clause 23

Provides that a person may apply to the Minister for a permit to import or export specimens which are subject to the Bill.

Under sub-clause (4) the Minister may require additional information to that supplied by the applicant in his application where that information is necessary to enable the Minister to deal with the application.

Where, in considering an application, the Minister considers it necessary for a test to be carried out to enable him to deal with the application, the Minister may within 60 days of receiving the application inform the applicant of the nature of, the reason for, the estimated cost of, and the estimated time within which the results of the test would be obtained. The estimated cost of the test is to be borne by the applicant should the applicant wish to proceed.

#### Clause 24

Sets out the procedures to be followed in granting permits.

Where an environmental impact statement is directed under the Environment Protection (Impact of Proposals) Act 1974 in relation to a proposed export or import, a permit is not to be granted until all the provisions of the Administrative Procedures under that Act have been completed.

Permits remain in force for 6 months. This is in accordance with Article VI.2 of the Convention.

#### Clause 25

Provides that an export permit is not to be granted if the granting of the permit will be detrimental to, or contribute to trade which is detrimental to, the survival of any species or sub-species of animals or plants or of any of the populations of animals or plants specified in Schedules 1, 2 or 3.

#### Clause 26

Provides that an export permit is not to be granted where a specimen has been obtained in contravention of any Commonwealth, State or Territory law relating to the protection of animals or plants.

#### Clause 27

Provides that a permit to export live animals or plants shall not be granted unless the proposed recipient is equipped to house and care for the living specimen and that specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment.

#### Clause 28

Sets out the requirements for permits to export specimens specified in Schedule 1. Such specimens may only be

exported if -

- (a) the country to which the specimen is being exported has a relevant authority and that authority has given permission allowing the import of the specimen;
- (b) the exporter and recipient are approved institutions (where the specimen is a live animal); and
- (c) (i) the export is for scientific purposes or is an inter-zoological gardens transfer; or  
(ii) the specimen was artificially propagated; or  
(iii) where the specimen is not a live native Australian animal, the specimen was bred in captivity.

Schedule 1 consists of CITES Appendix I species and other endangered species which Australia considers require the strictest trade controls. In the case of Australian species, these include those identified by the Council of Nature Conservation Ministers.

#### Clause 29

Sets out the requirements for permits to export specimens specified in Schedule 2. Such specimens may only be exported if -

- (a) the country to which the specimen is being exported has a relevant authority and that authority has given permission allowing the import of that specimen;
- (b) the exporter and recipient are approved institutions (where the specimen is a live animal) or the export is



of a household pet (where the specimen is a live native Australian animal); and

(c) except in the case of a household pet -

- (i) the export is for scientific purposes or is an inter-zoological gardens transfer; or
- (ii) the specimen was bred in captivity or was artificially propagated; or
- (iii) the specimen was taken in accordance with an approved management program.

Schedule 2 consists of CITES Appendix II species, i.e. those which could become threatened with extinction if trade is not controlled.

#### Clause 30

Sets out the requirements for permits to export specimens specified in Schedule 3.

Exports of Schedule 3 specimens will only be allowed in exceptional circumstances and only for purposes of scientific research or as part of an inter zoological gardens transfer.

Schedule 3 provides for control of trade in species which, although not threatened or endangered, may require special protection on, for example, welfare grounds or in cases where the Government's policy on trade in certain species of wildlife is particularly strict, such as whales.

Clause 31

Sets out the requirements for permits to export specimens of native Australian animals or plants which are not specified in Schedules 1, 2 or 3 to the Bill. Native Australian animals and plants which are specified in Schedule 4 are not subject to the Bill and may be exported without a permit.

Native Australian animals and plants, or specimens of such animals and plants which are subject to the Bill, may only be exported -

- (a) if the animal, or plant, was bred in captivity or artificially propagated, as the case may be;
- (b) if the specimen was taken in accordance with an approved management program;
- (c) for purposes of scientific research;
- (d) as part of an inter-zoological gardens transfer; or
- (e) as a bona fide household pet in accordance with clause 18.

The Government's policy on trade in Australian wildlife has always been very strict and this Bill will continue and strengthen that policy. Schedule 4 consists of those species of Australian wildlife which are normally traded commercially and for which a permit is not required. All other exports of Australian wildlife and wildlife products will require a permit or authority.

Exports of native Australian plants, which are not covered by existing legislation, will be controlled by the Bill.

#### Clause 32

Provides that the requirements of clauses 28 to 31 do not apply to re-exports of specimens although those requirements will continue to apply where the proposed re-export involves a live animal. Clauses 25, 26 and 27 continue to apply to re-exports.

A re-export permit will only be granted where -

- (a) the specimen was not imported in contravention of the law in force before the commencement of this Bill; or
- (b) the specimen was not imported in contravention of this Bill and the proposed country of export has a relevant authority and that relevant authority has granted permission to import the specimen.

#### Clause 33

Provides that a permit to import a specimen specified in Schedules 1, 2 and 3 is not to be granted if the granting of the permit will be detrimental to, or contribute to trade which is detrimental to, the survival of any species or sub-species of animal or plant or of any of the populations of animals or plants specified in Schedules 1, 2 or 3.

#### Clause 34

Provides that a permit to import a live animal or plant will not be granted unless the proposed recipient is equipped to house and care for that animal or plant and that animal or plant will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

Clause 35

Provides that a live animal or live plant not specified in Schedules 5 or 6 may only be imported by an approved institution.

Clause 36

Sets out the requirements for the grant of a permit to import a specimen specified in Schedule 1. Such specimens may only be imported into Australia if -

- (a) the exporting country has a relevant authority and that authority has given permission to export that specimen;
- (b) the proposed sender is an approved institution (where the specimen is a live animal); and
- (c) (i) the import is for scientific purposes or is an inter-zoological gardens transfer;
- (ii) the specimen was bred in captivity; or
- (iii) the specimen was artificially propagated.

Schedule 1 consists of CITES Appendix I species and other endangered species which Australia considers require the strictest trade controls.

Clause 37

Sets out the requirements for the grant of a permit to import specimens specified in Schedule 2. Such specimens may

only be imported into Australia if -

- (a) the exporting country has a relevant authority and that authority has granted permission to export the specimen;
- (b) the import is for scientific research or is an inter-zoological gardens transfer;
- (c) the specimen has been bred in captivity or artificially propagated;
- (d) the specimen is, or is derived from, an animal specimen that was taken under an approved management program;
- (e) the proposed exporter is an approved institution (where the specimen is a live animal).

Schedule 2 consists of CITES Appendix II species, i.e. those which could become threatened with extinction if trade is not controlled.

#### Clause 38

Sets out the requirements for the grant of a permit to import specimens in Schedule 3.

Imports of Schedule 3 specimens will only be permitted in exceptional circumstances and only where -

- (a) the importation is for scientific research or is an inter-zoological gardens transfer; or
- (b) the specimen was bred in captivity or was artificially propagated.

Schedule 3 provides for control of trade in species which, although not threatened or endangered, may require special protection on, for example, welfare grounds or in cases where the Government's policy on trade in certain species of wildlife is particularly strict, such as whales.

#### Clause 39

Provides that where an organisation applies for an authority to export or import scientific specimens, artificially propagated plants or specimens for the purposes of travelling circuses or exhibitions then the provisions of sub-clauses 23(4) and (5) and 24(2) and (3) apply in relation to that application.

#### Clause 40

Provides for the establishment of a register of scientific organisations for the purposes of clause 41. Prescribes the matters to be included in the register and provides that a scientific organisation in Australia or overseas may apply to the Designated Authority to have its name entered on the register.

#### Clause 41

Provides that a scientific institution which has been registered under clause 40 may apply for an authority to export or import scientific specimens. The authority is restricted to the non-commercial loan, donation or exchange between registered scientific institutions, of specimens, other than live animals, which carry an approved label. An authority under this clause remains in force while a scientific institution remains registered and facilitates scientific exchanges without a permit being required for each transaction.

This provision is provided for in Article VII.6 of the Convention.

Clause 42

Provides that a person may apply for, and the Minister may grant, an authority to -

- (a) export artificially propagated plants specified in Schedules 2 or 3; or to import artificially propagated plants specified in Schedules 2 or 3, or
- (b) export artificially propagated native Australian plants not specified in Schedules 1, 2 or 3.

This clause is designed to facilitate the expedient export/import of cut flowers and live plants where appropriate.

An authority to import live plants is not to be granted unless the recipient of the imported plant is an approved institution.

An authority under this clause remains in force for 12 months (or such lesser period as is specified in the authority) and the person granted the authority is to provide the Designated Authority with particulars of any exports or imports made by virtue of the authority.

Clause 43

Provides that a person may apply for and the Minister may grant, an authority to export or import a specimen as part of a circus or an exhibition which is temporarily taken out of Australia or is temporarily brought into Australia. A person granted such an authority must re-import or re-export the particular specimen before the authority expires. An authority

remains in force for 12 months or such other period as is specified in the authority.

An authority is not to be granted under this provision unless -

- (a) the recipient is suitably equipped to house and care for the animal or plant and the animal or plant will be prepared and shipped in such a manner as to minimise the risk of injury, damage to health or cruel treatment; and
- (b) the animal or plant -
  - (i) was bred in captivity or was artificially propagated; or
  - (ii) was acquired by the applicant before the Convention entered into force, before the specimen was included in an Appendix to the Convention, before this Bill came into force or before the provisions of this Bill applied to that specimen, as the case may be.

This clause continues the Government's existing policy and reflects CITES Article VII.7.

#### Clause 44

Provides that the Minister may grant an Authority to export or import a specimen when the strict conditions of the Bill cannot be entirely satisfied but nevertheless the export or import of the specimen would not be contrary to the object of the Bill and exceptional circumstances exist that justify the proposed export or import. Before granting such an authority the



Minister must give public notice that he is considering granting such an authority, invite written comments on the desirability of granting that permit and consider, and discuss with the Designated Authority, any comments received.

Clause 45

Provides that a person must produce a permit or authority before exporting or importing specimens covered by the Bill.

Clause 46

Provides for the variation, suspension and revocation of permits.

Clause 47

Provides that the Minister may, when granting a permit, or authority, impose conditions in respect of the permit or authority.

Conditions may be imposed in order to -

- (a) prevent trade which is contrary to the objects of the Bill;
- (b) ensure compliance with the reasons for granting the permit or authority;
- (c) ensure, where appropriate, that material imported does not enter into trade, for example specimens imported for scientific purposes.

Clause 48

Makes it an offence for a person to fail to comply with conditions imposed in respect of permits or authorities.

Clause 49

Provides that the holder of a permit may apply to the Minister to vary the operation of a permit or authority or to cancel the suspension of a permit or authority.

Clause 50

Provides that a permit or authority to import a live animal is subject to the condition that the importer will not sell, or otherwise dispose of that animal or its progeny and will not release that animal or its progeny from captivity without written approval of the Designated Authority.

This requirement is intended to prevent the introduction of animals into the Australian environment which may have adverse effects on Australian wildlife.

Breach of the condition is an offence punishable by a fine not exceeding \$100,000.

Clause 51

Provides a similar condition in relation to imported live plants as is provided in respect of imported live animals under clause 50.

Clause 52

Provides that particulars in relation to applications for permits, permits and authorities granted, permits and

authorities refused, and specimens exported or imported under permits and authorities are to be published in the Gazette.

#### Clause 53

It is widely recognised that there are substantial difficulties in preventing illegal importation of wildlife products. This problem was highlighted by the House of Representatives Standing Committee on Environment and Conservation in its 1976 Report on Trafficking in Fauna in Australia. Experience since that time has confirmed that the entry of wildlife specimens cannot be adequately controlled at points of entry alone. Clause 53 is designed to prevent possession of illegal imports once the material has entered Australia. Clause 22 is intended to cover the points of entry into Australia.

Clause 53(1)(a) provides that possession of illegally imported specimens is an offence against the Bill. Sub-clause 53(2) provides that it is a defence if a person charged with possessing an illegally imported specimen proves that he did not know, and had no reasonable grounds for knowing or suspecting that the specimen in his possession had been imported in contravention of the Bill.

Clause 53(1)(b) provides that it is an offence for a person to have in his possession a specimen which he knows, or has reasonable grounds for suspecting, has been illegally imported. Sub-clause 53(3) provides that it is a defence if the person proves that the specimen was not illegally imported. Also, it is a defence if the person proves that he did not know or had no reasonable grounds for suspecting that the specimen was illegally imported.

#### Clause 54

Provides that where the personal effects or household goods of tourists to Australia include specimens which are subject to the Bill, and for which no permit has been issued, those specimens must be surrendered to an inspector upon arrival in Australia. Where a specimen has been so surrendered an inspector must give the visitor a written notice identifying the specimen, specifying when and where the specimen was surrendered, setting out the visitor's proposed departure date, specifying an address where changes to the proposed departure date may be sent and setting out the visitor's rights under the Bill.

Surrendered specimens are to be stored in an approved storage place and are to be released to the visitor when he leaves Australia from the port at which he surrendered the specimen on the date notified by him. Alternatively, a visitor may, within 3 months after surrendering a specimen, make arrangements to have the specimen consigned at his own expense to a place outside Australia.

Where a specimen has been surrendered by a visitor and has not been released within 12 months of that surrender or within 3 months of the visitor's proposed departure date as notified to an inspector, the specimen is to be forfeited to the Commonwealth.

All costs in respect of a surrendered specimen are to be borne by the visitor and a specimen is not to be released until such costs are paid to the Commonwealth.

Where a specimen has been forfeited to the Commonwealth it is not to be disposed of in any way that would result in it becoming an object of trade.

Clause 55

Provides that where the personal effects or household goods of intending residents of Australia include specimens which are subject to the Bill, and for which no permit has been issued, those specimens must be surrendered upon arrival in Australia.

Where an intending resident has surrendered a specimen in accordance with the Bill he may, within 3 months of that surrender, make arrangements for the specimen to be consigned, at his expense, to a place outside Australia. Where such arrangements are not made within 3 months the specimen is forfeited to the Commonwealth. All costs associated with the surrendered specimen are to be borne by the intending resident and a specimen is not to be released until such costs are paid to the Commonwealth.

Where a specimen has been forfeited to the Commonwealth it is not to be disposed of in any way that would result in it becoming an object of trade.

Clause 56

Provides that where the personal effects or household goods of Australian residents returning to Australia include specimens which are subject to the Bill, and for which no permit has been issued, those specimens must be surrendered upon arrival in Australia.

Where a specimen is so surrendered a person is deemed not to have imported the specimen but the specimen is forfeited to the Commonwealth. A forfeited specimen is not to be disposed of in any way that would result in the specimen becoming an object of trade.

Clause 57

Provides that where there is uncertainty as to the nature or origin of a specimen that has been, or that is proposed to be, exported or imported, an inspector may ask persons whom he believes on reasonable grounds to have information regarding the specimen any question regarding the nature or origin of the specimen.

Where, after considering the answers to any questions regarding the nature or origin of the specimen, there is still uncertainty as to the nature and origin of the specimen the Minister may declare that the specimen is a Schedule 1 specimen and the provisions of the Bill relating to Schedule 1 specimens apply accordingly.

PART III - ADMINISTRATION

Clause 58

Provides that the Minister may appoint inspectors for the purposes of the Bill.

Clause 59

Provides that officers of Customs, and members of the Australian Federal Police and members of the external Territory police forces are inspectors ex officio.

Clause 60

Provides that arrangements may be made with the States and the Northern Territory for State and Territory officers, employees and police to be inspectors.

Clause 61

Provides for the issue of identity cards to inspectors.

Clause 62

Provides that, for the purposes of policing the Bill, an inspector may board vessels, aircraft or platforms or stop and detain vessels or aircraft. This power only extends to Australian vessels, aircraft or platforms or foreign vessels or aircraft that are in Australia or an external territory or in Australian waters.

For the purposes of the Bill, Australian waters extend for 12 nautical miles which conforms with current Customs jurisdiction.

Clause 63

Empowers an inspector to enter premises for the purpose of exercising his functions under clause 64 either with the consent of the owner of the premises or in pursuance of a warrant issued by a Justice of the Peace.

Clause 64

Sets out the functions of an inspector under the Bill.

Clause 65

Provides that an inspector may, without warrant, arrest any person, if he has reasonable grounds to believe that the person is committing or has committed an offence against the Bill and proceedings against the person by summons would not be effective. A person so arrested must forthwith be brought before a Justice of the Peace or other proper authority.

Clause 66

Provides that persons in charge of any vessel, aircraft or platform boarded, or premises entered, by an inspector must, if so requested by an inspector, provide reasonable assistance to the inspector in the performance of his functions.

Clause 67

Provides that inspectors may search baggage and may seek information regarding specimens in that baggage.

Clause 68

Makes it an offence for persons to obstruct or hinder an inspector in the exercise of his powers.

Clause 69

Sub-clause 69(1) provides that upon conviction for an offence the court may order the forfeiture to the Commonwealth of any article used or otherwise involved in the commission of the offence.

Where an inspector believes on reasonable grounds that an article has been involved in an offence or may afford evidence of the commission of an offence he may seize the article and retain it for 60 days or, where proceedings are instituted within that period, until the proceedings are terminated. Where an article is seized by an inspector the Minister may authorise its release to the owner either unconditionally or subject to conditions.



Where a person is convicted of an offence the costs associated with the custody of any seized specimen involved in the offence are a debt due to the Commonwealth.

Sub-clause 69(7) ensures that the progeny of any animal or plant which has been involved in the commission of an offence and which is in the possession of the offender are to be taken to have been involved in that offence also.

#### Clause 70

Makes it an offence for a person, in connection with an application for a permit or authority, to make false or misleading statements or present information that is false or misleading. Similarly, it is an offence to make false and misleading statements to inspectors performing their duties under the Bill.

#### Clause 71

Sub-clause 71(1) provides that offences against clauses 21, 22, 50, 51 or 53 are indictable offences. Notwithstanding this provision, sub-clause 71(2) provides that such offences may be dealt with summarily if the court is satisfied that it is proper to do so and the defendant and the prosecutor agree.

#### Clause 72

Provides for any record kept in pursuance of the regulations or other Commonwealth or State law, or a certified copy of an entry in that record to be admitted as prima facie evidence in proceedings for an offence against the Bill. Documents purporting to be a record or a certified copy will be taken as such unless the contrary is proved.

Clause 73

Provides that the Minister may appoint an analyst for the purposes of the Bill and that a certificate of such an analyst stating the result of his analysis or examination is admissible as prima facie evidence. Documents purporting to be certificates shall be taken as such unless the contrary is proved. A certificate is not to be taken as evidence until the person charged is given a copy of the certificate and given notice that the certificate is to be used as evidence.

Clause 74

Provides that the Minister may delegate his powers under the Bill. Instruments of delegation are to be in writing signed by the Minister. A delegation by the Minister does not prevent him from exercising his powers under the Bill.

The Minister will not be able to delegate his powers under -

- (a) clause 9 (power to vary Schedules);
- (b) clause 24 (power to grant permit to export or import specimens specified in Schedule 3);
- (c) clause 44 (power to authorise export or import in exceptional circumstances); and
- (d) clause 74 (power of delegation).

Clause 75

Provides that the Minister may make arrangements with State Governments, or foreign Governments or organisations or

persons in relation to management programs, research, statistics and information for the purposes of the Bill.

Clause 76

Provides for consultation with relevant State, Northern Territory and Norfolk Island Ministers where appropriate.

Clause 77

Provides that fees to be paid in respect of the application for, or the grant of, a permit may be prescribed by the regulations.

It is intended that any fees charged will not exceed a level necessary to achieve cost recovery. No fees will be charged initially until experience determines the level at which fees should be set.

Clause 78

Invests the Administrative Appeals Tribunals with jurisdiction to review certain decisions by the Minister or the Designated Authority.

Clause 79

Provides that the Governor-General may make regulations prescribing matters required or permitted by the Bill.

Clause 80

Repeals the Customs (Endangered Species) Regulations and makes appropriate savings and transitional provisions.

#### Schedule 1

Lists those species specified in Appendix I to CITES which are threatened with extinction as well as certain other endangered species which Australia considers require the strictest trade controls. In the case of Australian species these include those identified by the Council of Nature Conservation Ministers.

#### Schedule 2

Lists those species specified in Appendix II to CITES which are not necessarily endangered but which may become threatened with extinction if international trade in such species is not regulated.

#### Schedule 3

Lists those species which, although not threatened or endangered, may require special protection.

#### Schedule 4

Lists those native Australian animals and plants which are not subject to the Bill.

#### Schedule 5

Lists live animals and live plants which may be imported into Australia without a permit. This Schedule may only be altered by an amendment to the Act.

#### Schedule 6

Lists other live animals and live plants which may be imported into Australia without a permit. Amendment of Schedule 6 is subject to clause 9 of the Bill.

#### Schedule 7

Lists those native Australian animals which are household pets for the purposes of the Bill.

#### Schedule 8

Sets out the text of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).





