

1986

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

WILDLIFE PROTECTION (REGULATION OF EXPORTS AND IMPORTS)

AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister  
for Arts, Heritage and Environment,  
the Hon Barry Cohen, M.P.)



## OUTLINE

The purpose of the Bill is to amend certain provisions of the Wildlife Protection (Regulation of Exports and Imports Act) 1982 (the Act) to address certain legal and administrative constraints which have surfaced in the course of administering the Act. The amendments can generally be grouped into four categories:

- (a) to make controls on export and import of certain specimens more appropriate to their status and circumstances under which they enter trade such as bringing conditions relating to the export of invertebrates into line with those applying to fish and providing transitional arrangements with respect to household pets being certain birds acquired before the commencement of the Act;
- (b) to simplify and improve administrative procedures where it has been established that this will not weaken the protection afforded to wildlife such as allowing permits to be issued in respect of the importation under certain circumstances of specimens acquired by individuals before the application of the CITES Convention, allowing multiple transaction authorities in certain circumstances and allowing an individual to apply for a permit in respect of specimens surrendered by that person which otherwise would have been forfeited;
- (c) to clarify certain enforcement provisions such as ensuring beyond doubt that the inspector may search all goods on a vessel, unaccompanied or otherwise, and ensuring that an inspector may seize an article which includes a specimen; and
- (d) to provide for increased protection for witnesses involved in proceedings under the Act.

## FINANCIAL IMPLICATIONS

It is anticipated that no extra costs will be incurred by virtue of the operation of these provisions.

## NOTES ON INDIVIDUAL CLAUSES

### Clause 1: Short title

The Wildlife Protection (Regulation of Exports and Imports) Act 1982 is also defined as the Principal Act.

### Clause 2: Commencement

The Bill is to come into operation on a day to be fixed by Proclamation.

### Clause 3: Interpretation

This clause amends the definition of "fish" in the Principal Act to include the class Agnatha.

This clause also omits sub-section 4(2) of the Principal Act and substitutes proposed new sub-sections 4(2) and 4(2A). These provisions are designed to deal with two separate problems viz. -

- (a) the problem arising from the fact that an article might consist of a single specimen, two or more specimens or a combination of specimen and non-specimen material; and
- (b) the problem that an article might consist of two or more specimens to which different provisions of the Principal Act apply.

Proposed sub-section 4(2) deals with the first problem by providing that a reference to specimens in the Principal Act includes articles which consist of material comprising two or more specimens or a combination of specimen and non-specimen material. For example this will enable seizure or surrender of an article of which a specimen to which the Principal Act applies forms a part. Proposed sub-section 4(2A)

deals with the second problem by providing that where an article comprises material from different specimens, the Principal Act will apply separately in respect of each of those specimens. For example, where an article comprises material from a specimen in Part 1 of Schedule 1 and Part 1 of Schedule 3, then the provisions of the Principal Act relating to the granting of a permit in respect of each specimen would have to be met for a permit under the Principal Act to be granted.

Clause 4: Act not to apply to certain specimens

Difficulties arose where a person could illegally import a specimen which if destroyed by quarantine officers could effectively preclude the importer from prosecution. Sub-section 8(5) of the Principal Act has been re-cast so as to remove any doubt under any circumstances that a quarantine officer could be the importer for the purposes of the Principal Act, or the operation of the Quarantine Act 1908 could affect the chain of events relating to that import, so as to preclude a would-be importer from being subject to the provisions of the Principal Act.

Clause 5: Inter zoological gardens transfer

This clause amends section 13 of the Principal Act to provide that live animal specimens can not only be sent from zoo to zoo but also from a zoo to a relevant approved institution which means an approved institution that is also a prescribed scientific organisation and vice versa. Thus section 13 is widened to provide for the transfer of specimens for example from Taronga Park Zoo to the Smithsonian Institute in Washington, so long as the other requirements of section 13 of the Principal Act are satisfied.

Clause 6: Export of household pets - native Australian animals

This clause amends section 16 of the Principal Act to allow the export (with a permit) of budgerigars under certain circumstances, viz. the budgerigar was bred in captivity, has been the exporter's household pet, the exporter is leaving Australia to permanently reside in another country and the exporter proposes to export no more than two. The clause also provides that the export of budgerigars, galahs and cockatoos may fall into the category of household pet under certain circumstances, viz. the exporter has owned and kept the animal as a household pet not less than 3 years before the export and before 1 May 1984, that the exporter was ordinarily a resident for not less than 3 years preceding the export and before 1 May 1984 and only 2 of the same species are intended for export. Thus those people who purchased such birds as household pets under the legal arrangements in force prior to the Principal Act coming into effect may be provided with permits to export, subject to conditions, until May 1987.

Clause 7: Export of household pets - other animals

This clause inserts a new section, proposed section 16A, into the Principal Act to provide for the export of non-Australian animals where the exporter has owned and kept the animal as a household pet and is leaving Australia or an external Territory with the intention to reside permanently elsewhere.

Clause 8: Requirements for permits to export live animals and live plants

This clause repeals section 27 of the Principal Act and inserts a new section which provides that the Minister shall not grant a permit to export a live animal unless the Designated Authority has advised the Minister that the Designated Authority is satisfied that the proposed recipient is equipped to and will provide suitable care for the animal and that the risk of injury, adverse effect on the health of the animal and cruel treatment of the animal is minimised. In respect of a permit to export a live plant, the Minister shall not grant a permit to export unless the Designated Authority advises that the Designated Authority is satisfied that the plant will be prepared and shipped so that the risk of injury and adverse effect on the health of the plant is minimised.

Clause 9: Requirements for permits to export - Schedule 1

This clause amends section 28 of the Principal Act in relation to the issue of a permit to export those specimens specified in Part 1 of Schedule 1 of the Principal Act as a consequence of the amendments relating to the transfer of animals from a zoo to an approved research institution and household animals, other than live Australian native animals (see Clause 6). The clause also amends section 28 to provide for the export of live native Australian animals of the sub-phylum VERTEBRATA for research purposes or for transfer from a zoo to a prescribed research institution subject to the preconditions specified in section 28 of the Principal Act. The amendment effectively enables the private or commercial trade of live captive-bred invertebrates specified in Part 1 of Schedule I.

Clause 10: Requirements for permits to export - Schedule 2

This clause amends section 29 of the Principal Act in relation to the issue of a permit to export those specimens specified in Part 1 of Schedule 2 of the Principal Act as a consequence of the amendments relating to the transfer of animals from a zoo to an approved research institution (see Clause 5) and household pets other than live Australian native animals (see Clause 7).

The clause also amends section 29 to provide for the export of live native Australian animals of the sub-phylum VERTEBRATA for research purposes or for transfer from a zoo to a prescribed research institution, subject to the preconditions already specified in section 29. The amendment effectively enables the private or commercial trade of live invertebrates that are captive-bred, taken under an approved management program and specified in Part 1 of Schedule 2.

Clause 11: Requirements for permits to export - native Australian animals and plants

This clause amends section 31 of the Principal Act to provide for, in addition to the export of fish, the export of invertebrates.

Clause 12: Permits to re-export

This clause amends section 32 of the Principal Act by omitting the requirement to obtain prior import permission from the overseas relevant authority for the export of specimens specified in Part I of Schedule 2 and native species not listed in Part I of Schedules 1 and 3.



Clause 13: Requirements for permits to import certain live animals and live plants

This clause amends section 35 of the Principal Act as a consequence of the amendment widening inter-zoological garden transfers to also apply to transfers between a zoo and an approved institution.

Clause 14: Requirements for permits to import - Schedule 1

This clause amends section 36 of the Principal Act in relation to the import of specimens specified in Part 1 of Schedule 1 so as to specify the requirements of import of a specimen in that category which is also a pre-CITES specimen that will not be an object of trade e.g. where it forms part of the household goods or personal effects of the proposed importer, or is imported by way of gift or inheritance. The clause also amends section 36 as a consequence of the amendments relating to inter-zoological garden transfers (see clause 5).

Clause 15: Requirements for permits to import - Schedule 2

This clause amends section 37 of the Principal Act in relation to the import of specimens specified in Part 1 of Schedule 2 so as to specify the requirements of import of a specimen in that category which is also a pre-CITES specimen that will not be an object of trade e.g. where it forms part of the household goods or personal effects of a proposed importer or is imported by way of gift or inheritance. The clause also amends section 37 as a consequence of the amendments relating to inter-zoological garden transfers (see clause 5).

Clause 16: Authority to export certain specimens

Currently the import of biological control agents, and the export of live fish, sea shells and wildflowers requires the grant of a permit for each shipment. This clause amends the Principal Act by inserting a new provision, proposed section 42A, providing for an authority to export certain specimens. Proposed section 42A provides that in respect of a prescribed class of specimens (not being one specified in Part I of Schedules 1 and 3 or derived from live plants that are artificially propagated), the Minister may on the recommendation of the Designated Authority issue an authority in respect of that class to remain in force for no longer than 12 months. The Designated Authority shall maintain a register containing the description of the class.

The proposed new section also provides that an application for a "multiple shipment" export authority shall be in a form approved by the Minister, who, subject to advice from the Designated Authority that the specimens are bred in captivity, artificially propagated or taken in accordance with an approved management program, may issue the authority. The clause also provides a requirement for the person to produce particulars of the specimen to be exported to the inspector at each instance of export on the basis of that authority.

This clause also inserts a new provision into the Principal Act in relation to "multiple shipment" imports, proposed section 42B, which uses the same terminology as proposed section 42A. However it differs in that the requirement is not to produce particulars of the specimen to an inspector but to advise the Designated Authority in writing within 7 days of import of particulars of specimens imported.

Clause 17: Authority for Designated Authority to export or import specimens

The Principal Act, at present, does not provide for transactions to occur between the Designated Authority and relevant authorities overseas even for those circumstances where specimens are required for comparative identification, for training to facilitate investigations in relation to trade and wildlife or for educational purposes.

The proposed new section 43A provides that the Designated Authority may make an application, in writing, to the Minister for an authority to export or import. The Minister shall not give an authority to export to the Designated Authority unless the Minister is satisfied that the recipient of the specimen is a relevant authority (defined elsewhere in the Principal Act) and that the specimen will be used for the identification of a specimen, or for education or training. The Minister may also issue an authority to the Designated Authority to export where the specimen the subject of the application has been seized and will be used to facilitate investigations outside Australia in relation to trade in wildlife.

The proposed clause also provides that the Minister shall not give an authority to import to the Designated Authority unless the Minister is satisfied that the specimen will be used by the Designated Authority for the purposes of the identification of a specimen, that the sender of the specimen will be a relevant authority of a country and the specimen will be used for the purpose of education or training, or the specimen will be used to facilitate investigations within Australia in relation to trade in wildlife.

An authority granted to the Designated Authority to export or import as the case may be, shall be in writing, shall come into force on the day on which it is given and subject to the general provisions relating to revocation of permits granted under the Principal Act, remains in force for 12 months or as specified in that permit whichever is the lesser.

Clause 18: Permit or authority to be produced

This clause amends section 45 of the Principal Act by requiring that the general provision relating to the production of a permit or authority is to be read subject to the proposed provision on release of surrendered specimens (see clause 23).

Clause 19: Matters published in Gazette

This clause omits paragraph 52(1)(a) and sub-section 52(4) of the Principal Act as they are considered to be superfluous. The matters which should be published in the Gazette are adequately catered for in paragraphs 52(1)(b) and 52(1)(c) of the Principal Act.

Clause 20: Specimens in personal effects of visitors to Australia

There are currently insufficient safeguards in section 54 of the Principal Act where a deliberate attempt is made to illegally import a specimen by a visitor as part of household goods or personal effects and the person avoids the operation of the Principal Act by surrendering that specimen. This clause amends section 54 of the Principal Act which provides for those circumstances where a visitor purports to import a specimen as a personal effect or as household goods without the necessary import permit or authority, to be subject to proposed section 56A (see clause 23).

Clause 21: Specimens in personal effects of intending residents of Australia

There are currently insufficient safeguards in section 55 of the Principal Act where a deliberate attempt is made to illegally import a specimen as part of household goods or personal effects by an intending resident of Australia and the person avoids the operation of the Principal Act by surrendering that specimen. This clause amends section 55 of the Principal Act which provides for those circumstances where an intending resident purports to import a specimen as a personal effect or as household goods without the necessary import permit or authority, to be subject to proposed section 56A (see clause 23).

Clause 22: Specimens in personal effects of residents of Australia

There are currently insufficient safeguards in section 56 of the Principal Act where a deliberate attempt is made to illegally import a specimen as part of household goods or personal effects by a resident of Australia and the person avoids the operation of the Principal Act by surrendering that specimen. This clause amends section 56 of the Principal Act to provide that where an Australian resident imports goods as personal effects or household items without the necessary import permit or authority but discloses the existence of that specimen to an inspector as soon as practicable after arrival in Australia, that person shall not be taken to have imported that specimen.

The inspector shall give a notice in writing to that person setting out the name and address of the person, the identification of the specimen, the date on which the specimen was surrendered and the right to apply for an import permit as if the specimen had not been imported and the specimen was proposed to be imported from the country from which it was imported. The clause also provides that the specimen to which section 56 of the Principal Act applies will be subject to forfeiture at the expiry of one month from the date of surrender if the necessary permits are not sought and granted.

This clause also omits sub-section 56(4) of the Principal Act as a consequence of the proposed amendments in clause 3.

#### Clause 23: Release of surrendered specimens

This clause amends the Principal Act by inserting a new provision, proposed section 56A, relating to the release of surrendered specimens.

Proposed sub-section 56A(1) provides that where an intending visitor, would-be resident or actual resident (see clauses 20, 21 and 22) surrenders a specimen not being forfeited to the Commonwealth, that person may apply for a permit to import that specimen.

Proposed sub-section 56A(2) provides that an application may be made and dealt with as if the specimen had not been imported and the specimen was proposed to be imported from the country it in fact was imported from.

Proposed paragraph 56A(3)(a) provides that the Minister shall not grant a permit for import unless the Designated Authority advises the Minister that the Designated Authority is satisfied that the specimen, being an animal specimen, was taken in accordance with an approved management program, or bred in captivity and that the country from which it was imported has a relevant authority which issued the relevant permit or certificate allowing for export from that country.

Proposed paragraph 56A(3)(b) specifies that the Minister shall not grant an import permit unless the Designated Authority has advised the Minister that the Designated Authority is satisfied that -

- (a) where the specimen is a plant specimen, the specimen is, or is derived from, a live plant that was artificially propagated, or taken in accordance with a management program;
- (b) the country from which the specimen was imported has a relevant authority; and
- (c) a permit or certificate from the authorising authority of that country was issued before that export.

Proposed paragraph 56A(3)(c) provides in respect of a pre-CITES specimen that the Minister shall not grant a permit for import where the specimen has been surrendered unless the Designated Authority advises that the Designated Authority is satisfied that the country from which the specimen was imported has a relevant authority which has issued a pre-CITES certificate in respect of that specimen.

Proposed paragraph 56A(3)(d) provides that the Designated Authority be satisfied prior to the Minister issuing a permit for the import of a specimen where CITES is in force in the country of export of that specimen and the export is not contrary to the laws of that country and the applicant acquired the specimen - either (a) prior to CITES being in force, (b) prior to CITES being in force with respect to a species from which the specimen is derived (c) prior to the commencement of the Principal Act and the species from which the specimen is derived is non-CITES or (d) prior to the commencement of the Principal Act and the application of CITES.

Proposed sub-section 56A(4) provides that the inspector shall release the specimen to the holder of the permit (subject to a visitor or would-be resident paying all costs incurred by the Commonwealth in relation to the custody of the specimen) on production of a permit being granted in respect of an application made under this section.

Proposed sub-section 56A(5) provides that where a specimen is released to a person the specimen shall be deemed to have been imported in accordance with the permit at the time the specimen was released.

Proposed sub-section 56A(6) provides that a release of the specimen shall not be granted until all costs, including transportation costs, incurred by the Commonwealth with respect to custody of that specimen have been paid by the applicant.



Proposed sub-section 56A(7) provides that where an application has been made for a permit by a visitor or would-be resident and that application is still under consideration at the expiry of the period at the end of which, under sub-sections 54(7), 55(5) or 56(2), the specimen would have been forfeited to the Commonwealth, that specimen will not be forfeited to the Commonwealth.

Proposed sub-section 56A(8) provides that after the application is finally disposed of or withdrawn without the issue of a permit and the time periods specified in sub-sections 54(7), 55(5) or 56(2) have elapsed, the specimen is forfeited to the Commonwealth and may be disposed of in accordance with the direction of the Designated Authority other than by way of being an object of trade.

Proposed sub-section 56A(9) provides that where a permit has been granted in respect of an application made under proposed sub-section 56A(1), and the specimen would have been forfeited except for the operation of proposed sub-section 56A(7), and the specimen is not released within one month after the grant of the permit because the applicant fails to pay accrued custodial costs to the Commonwealth, the specimen is forfeited and may be disposed of in accordance with the directions of the Designated Authority.

Proposed sub-section 56(10) provides that a specimen shall not be disposed of in a way that could result in the specimen becoming an object of trade.

Clause 24: Power to search baggage

This clause amends sub-section 67(1) of the Principal Act by allowing the search of any goods that are to be, are being or have been taken on or off a prescribed vessel.

Clause 25: Seizure and forfeiture of specimens

This clause amends section 69 of the Principal Act by omitting sub-section 69(8) as a consequence of the clarification of the definition of "article" (see clause 3). This clause also amends sub-section 69(8) of the Principal Act by omitting "could" and substituting "would".

Clause 26: Separation of certain articles

This clause amends the Principal Act by inserting a proposed new section 69A to allow for the separation of a specimen from an article which, prior to that separation, attracts the operation of the Principal Act. Once the specimen is separated from the article, then the Principal Act in its operation follows the specimen and ceases to apply to the article that no longer contains the specimen.

Proposed sub-section 69A(1) provides that where an article has been surrendered (see clauses 20, 21 and 22) or seized or comes into being by an action taken under this section and consists of a specimen and other material, 2 or more specimens or 2 or more specimens and other material, the inspector may comply with a request from a person whom the inspector is satisfied is the owner, to allow the separation of that specimen from that material, to allow the separation of one of those specimens from other

specimens or to allow the separation of one or all of those specimens from other material or from the rest of the article as the case may be so long as it is practicable to comply with that request without significant cost to the Commonwealth.

Proposed sub-section 69A(2) provides that where such an article is separated then that article no longer comprising the specimen as defined, thus no longer attracting the Principal Act, shall be returned to the owner by the inspector and that part of the separated article which is a specimen for the purposes of sections 54, 55, 56 or 69 (surrender and forfeiture) shall be taken to have been involved in the commission of an offence and further, shall be taken to be seized and liable to forfeiture thus subject to the provisions of section 69 of the Principal Act.

The clause also provides in proposed sub-section 69A(3) that no action or other proceedings shall be instituted to recover damages because of the separation of the specimen from an article under this section.

Clause 27: Seizure and forfeiture of goods involved in offences

This clause amends section 71 of the Principal Act by omitting sub-section 71(5) and substituting a new sub-section which provides that an inspector may seize any goods that the inspection believes will afford evidence of a commission of an offence. The proposed sub-section also provides for the retention of such goods until such time as the expiry of 60 days after seizure or, if proceedings are instituted, at the expiry of proceedings in which the goods are used as evidence.

The clause also defines "goods" for the purposes of section 41 of the Principal Act to include "documents".

The clause also provides for a savings of goods seized under the repealed sub-section, viz. such goods shall be treated as if they were seized under proposed sub-section 71(4).

Clause 28: Rescuing goods

This clause amends the Principal Act by inserting a new provision, proposed section 71A, which provides that a person who rescues goods that have been seized under the Principal Act or staves, breaks or destroys goods (which includes specimens) in order to prevent the seizure of goods, the securing of goods, or the proof of an offence under the Principal Act, is guilty of an offence punishable upon conviction by a fine not exceeding \$5000 or imprisonment for a term not exceeding 2 years.

This proposed new section also applies to the destruction of documents relating to goods which could be used as evidence.

Clause 29: Indictable offences

This clause amends section 73 of the Principal Act to provide that an offence against proposed new section 71A (see clause 28) is an indictable offence, which may in the circumstances described in section 73 of the Principal Act, be heard in a court of summary jurisdiction.

Clause 30: Evidence of examiner

This clause amends section 75 of the Principal Act by omitting sub-section (1) and substituting a new sub-section to provide that the Minister may appoint appropriately qualified persons to be examiners for the purposes of the Principal Act. The section originally was expressed in terms of analysts which proved restrictive given the context of the operation of the Principal Act and the clause makes the appropriate amendments by also providing for the term "examiner" to be used in place of "analyst" and such examination to be of "substance, matter or thing". The clause also provides, in sub-clause (2) that a person who is an analyst under the current sub-section is deemed to be appointed as an "examiner" on the commencement of the amending provision.

Clause 31: Protection of witness

This clause amends the Principal Act to provide for a provision, proposed new section 75A, which is designed to provide protection in court proceedings to a witness' confidential sources of information. The proposed new sub-section 75A(1) provides that a witness shall not be compelled to disclose the fact that the witness received any information, the nature of any information received or the name of the person who gave the witness the information. Proposed sub-section 75A(2) provides that an inspector who is a witness shall not be compelled to produce any report that was made or received by the inspector in confidence in the capacity of inspector or that contains confidential information.

Clause 32: Delegation by Minister

This clause amends section 76 of the Principal Act to provide that the Minister may not delegate the Minister's authority to permit the Designated Authority to export or import specimens under proposed section 43A (see clause 17).

Clause 33: Delegation by Designated Authority

This clause inserts a new provision in the Principal Act, proposed section 76A, which provides that the Designated Authority, with the approval, in writing, of the Minister, may, whether generally or as otherwise provided by the instrument of delegation, delegate all or any of the Designated Authority's powers under the Principal Act to an officer or employee of the Australian National Parks and Wildlife Service.

The clause also provides that a power so delegated shall be deemed to have been exercised by the Designated Authority and also provides that a delegation does not prevent the exercise of the power by the Designated Authority.

Clause 34: Review of decisions

This clause amends section 80 of the Principal Act by providing that the decision of the Minister under proposed sub-sections 42A(7) and 42B(9) or section 44 or sub-section 56A(3) are subject to review by the Administrative Appeals Tribunal. This clause also provides that a determination by the Minister for the purposes of paragraphs 42A(8)(c) and 42B(10)(c) also is to be subject to review by the Administrative Appeals Tribunal.

Clause 35: Amendments relating to sexist language

This clause refers to a Schedule in the Bill which contains amendments relating to sexist language, in conformity with current drafting practice.

