Wildlife Legislation in Australia

Wildlife Legislation in Australia: Trafficking Provisions

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Foreword

THIS DISCUSSION PAPER HIGHLIGHTS THE IMPACT OF DIFFERENCES between legislation in Australian jurisdictions on effective enforcement of fauna trafficking provisions. Existing legislative loopholes present substantial opportunities for the laundering of illegally acquired animals. These loopholes also make the task of promoting and maintaining a legitimate trade in those jurisdictions with more effective regulatory mechanisms much more difficult

While it may not be appropriate for all jurisdictions to adopt uniform legislation for the regulation of flora and fauna trafficking, there are strong arguments in favour of complementary if not uniform licensing systems across the nation. Achievement of this goal would not only make the regulatory task much less frustrating, but would make the use of increasingly scarce regulatory resources more efficient and effective. Coordination of the responses from each jurisdiction to this proposal is likely to be achieved through Commonwealth action.

This Institute report was prepared as part of a major research project on flora and fauna trafficking in Australia conducted jointly with the Commonwealth Attorney-General's Department. It is hoped that a report will be published in the near future detailing the findings of this project and that at that time it may be possible to update this useful comparison of Australian wildlife legislation.

Duncan Chappell

Director
January 1994

Federal and State responsibilities for the regulation of the movement of wildlife

AUSTRALIA IS A SIGNATORY TO THE CONVENTION FOR INTERNATIONAL Trade in Endangered Species (CITES). Under this agreement, the Commonwealth has an obligation to ensure that the provisions of CITES are upheld in Australian legislation. The relevant legislation in Australia is the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* (Cwlth). This Act is administered by the Australian Nature Conservation Agency (ANCA), (formerly the Australian National Parks and Wildlife Service). The legislation primarily covers the movement of wildlife and wildlife products across the Australian customs barrier, and enforcement responsibilities which are associated with such traffic.

The major requirements which follow from the CITES provisions are that wildlife be classified under internationally recognised appendices, according to extent of commercial utilisation. Species which are classified under Appendix 1 are not to be utilised for primarily commercial purposes. A further requirement is that in order to import wildlife into a signatory country, a permit/certificate from the country of export must be issued and presented on import.

The Australian Customs Service (ACS) has the principal enforcement role at the barrier under the Act. ANCA, with the assistance of ACS, conducts prosecutions of illegal activities. ANCA also coordinates intelligence gathering activities, produces educational material for the public, and provides training for customs officers and scientific expertise in the conduct of prosecutions.

The Wildlife Protection (Regulation of Exports and Imports) Act was reviewed in 1992 (Ley 1992). The Review identified many problems with existing legislation, particularly with provisions relating to enforcement:

> . . . there are too many opportunities for the Act's requirements to be flouted and the achievement of its objectives thereby frustrated. Where this occurs it brings the Act into disrepute and disadvantages firms, individuals and institutions that strictly comply with its requirements (Ley 1992, p. xxii).

It is not intended to conduct a comprehensive analysis of the 130 recommendations presented in the Review. However, Recommendation 12:2 is particularly significant, as it relates to the present enforcement difficulty which arises when "fauna, particularly fish or birds, are in the possession of a person at a distance from the customs barrier" (Ley 1992, p. 198). Currently, prosecution of such persons is very difficult, since establishing proof of illegal importation is problematic once the person has passed through the barrier. Recommendation 12:2 reads thus:

> That, having due regard to constitutional constraints, a new offence under the Act should be formulated along the lines of the US Lacey Act, to the effect that it is an offence to import, export, transport, sell or acquire in interstate or foreign commerce, any fish or wildlife taken, possessed, transported or sold contrary to a law of any State or of any law.

In addition to Commonwealth legislation, each State and Territory in Australia has legislation administered by a State department, which licenses domestic activities involving wildlife, with penalties for conducting activities without official authorisation. Variations in legislation between jurisdictions, differences in licensing systems and enforcement practices create problems for overall monitoring of illegal activity and enforcement within Australia.

Organised international illegal trafficking is sometimes conducted across State and national boundaries. Close cooperation between State and Federal agencies is required to coordinate surveillance and prosecutions in such cases. Generally speaking, Federal penalties are stronger than State penalties, and consequently arrests of suspects may be delayed until suspects cross the customs barrier. While this practice may be strategically justified, State enforcement officers can find the surveillance role frustrating, since it may involve passively observing the destruction of nesting sites and the removal of eggs of endangered species.

The influence of historical antecedents on the development of wildlife legislation at the State level

THE EARLIEST WILDLIFE PROTECTION LEGISLATION IN NEW SOUTH WALES had, from the vantage point of the 1990s, a rather quaint, utilitarian, anthro-centric focus. Under the *Bird Protection Act 1881* (NSW), imported and native song birds, including the robin, starling, blue wren, Indian minah and the curlew were completely protected as "song-birds". Imported game birds were also protected. Until the last few decades, in all States, the definitions of "flora" and "fauna" were often confusing. Under the *Fauna Protection Act 1948* (NSW), for example, "fauna" was defined "as meaning any mammal or bird, and both "bird" and "mammal" were defined as meaning both native and introduced species" (Prineas 1987, p. 5).

The remnants of previous legislative emphasis still pervade legislation in some States. In New South Wales, the so-called "nineteen bird rule" is a historical relic from the days when poultry farming and other bird keeping was covered under the same legislation. Until the passage of the *Nature Conservation Act 1992* (Qld), many of the provisions of wildlife protection legislation arose from regulating the kangaroo skins industry in that State. Slowly, these vestiges are being removed as legislation is repealed.

More recently, tensions between those who abhor the notion of exploiting wildlife for commercial and/or recreational purposes and those who advocate sustainable development of species have come to the fore. These tensions are sometimes reflected in legislation, in the scheduling of species, for example. Arguably, complex licensing systems which make compliance difficult for aviculturalists could be seen as a de facto deterrent to exploiting wildlife through aviculture. Conversely, moves to simplify compliance can be viewed as unequivocal recognition of the entitlement of aviculturalists to conduct their activities.

In view of the particular historical and philosophical backgrounds to each jurisdiction's legislation, it is not surprising that some variation between the legislative responses has come about.

There appears to be a genuine commitment by state regulatory agencies towards the development of more uniform codes of legislation, at least with regard to the operation of licensing systems. However, recent amendments to legislation continue to demonstrate the strong influence of state priorities, particularly with regard to the powers of enforcement officers as demonstrated in the Queensland Nature Conservation Act.

Diversity is likely to arise from the various consultative arrangements which operate in each jurisdiction in the development of amendments to legislation. These arrangements attempt to reconcile the wide range of sometimes conflicting interests which lobby government.

In Victoria, as in South Australia, a model for reconciliation has been developed, through the appointment of advisory committees with representation from trade and hobbyists as well as environmental conservation agencies. These committees are able to make recommendations to government about changes to licensing provisions, scheduling of species and so on. Such a system will work best where flexibility is built into legislation through, say, regular revision of schedules so that species can be rescheduled quickly if population vulnerability in the wild is detected.

The Victorian Regulatory Impact Statement process enables formal consultation with relevant organisations as well as the general public to occur as part of the process of developing effective regulatory mechanisms. Such a process is designed to produce a regulatory outcome which best meets the needs of the regulatory agency and those whose activities are directly affected by regulation. As previously pointed out, the regulatory process must have the support of all agencies concerned as far as possible, since good relationships between these parties are an important element in developing an intelligence network for the detection of illegal activity.

There is a need to develop a set of basic principles which can operate as a framework for consideration when legislation is amended, in recognition of the general goal of uniformity in particular aspects of legislation. These aspects relate to the movement of wildlife across State boundaries, and the maintenance of recognised identifiers of "clean" items for trade.

This booklet provides a comparison of wildlife legislation from State to State, within the context of the prevention of illegal trafficking. The existence of different and inconsistent legislation has the potential to facilitate the movement and laundering of illegally acquired wildlife. Inconsistencies are identified, and those features of state legislation which provide the most effective means of controlling and detecting illegal trade are highlighted.

The purpose of the regulation of wildlife transactions is to ensure that any such activity does not impact adversely on the survival of particular species in the wild, and that the taking, keeping and marketing of fauna and fauna products occurs without deleterious effects on the viability of species and the welfare of individual members of species. A regulatory regime which focuses on individual transactions of individual animals will offer limited protection to species in the wild without effective legislative management of species habitat, however (Prineas 1987).

Effective regulation of wildlife trade aims to control and monitor the who, where, when, how and what of all significant transactions involving wildlife. In theory, this can be achieved through the operation of an effective licensing system, requiring all agents to maintain and submit records of all transactions. In this way all agents and transactions can be monitored and traced. Illegal activity can thus be identified, and any high level of legal activity which threatens the survival of species can be acted upon through changes to the legal status of species or restrictions on the licensing of threatening activity.

The particular licence system should protect the viability of species by providing for a range of licence categories corresponding with a classification of species according to vulnerability in the wild, need for specialised care and danger to the public. Some species may be prohibited from possession under any type of licence.

Failure to comply with licensing requirements or engaging in unauthorised activities will constitute offences, punishable by fines and/or imprisonment. Penalties for obstructing enforcement officers in the discharge of their duties, or for providing false or misleading information in records kept or in response to authorised requests for information are also required.

The marketplace

THE TARGET OF REGULATION OF WILDLIFE TRANSACTIONS IS THE SUPPLY and consumption of wildlife as commodities. Regulation applies therefore to the taking, possessing, selling, consigning, displaying and processing of wildlife. Generally speaking, this marketplace is thinly spread and inconspicuous, with many transactions taking place in backyards where collectors keep their reptiles or aviaries of birds. In some transactions, money may not change hands if items are bartered. The commodities themselves are available in the wild, requiring little in the way of capital to acquire, except for a knowledge of habitat, and some means of capturing and keeping them. Once in a cage, it is very difficult to prove whether an animal is captive bred or wild caught, short of using DNA fingerprinting. With 9,000 permit holders in the state of South Australia alone, the task of effectively regulating the industry on a limited budget is challenging indeed.

Effectively regulating the marketplace

At Appendix 1 is a summary of legislative provisions which relate to the regulation of wildlife trade in each jurisdiction of Australia. Legislation is, of course, periodically subject to amendment, and while every endeavour to keep up-to-date with legislative changes has been made, any observations made herein may only be valid at the time of writing. At present, Queensland is undergoing a comprehensive review of their wildlife regulations, and the summary cannot take these amendments into account, since they have not yet been finalised.

The summary demonstrates that there are significant differences in each jurisdiction's legislation, with variation in the powers of enforcement personnel: to enter residential premises without a warrant; to require assistance from people in the vicinity of a suspected offence; to detain and/or seize vehicles; and, to compel someone to answer questions. There are also significant differences in the requirements of licence holders: to notify changes of address; to declare relevant criminal records and so on. Land-holders have powers to question persons found on their land regarding their identity and the purpose for which they are on land in some States but not in others. Maximum penalties vary quite widely for the same offence across jurisdictions.

Interestingly, only Queensland has specific provisions relating to corruption and conflict of interest, specifically disallowing regulatory and enforcement officers from being licence holders. In South Australia, senior regulatory and enforcement personnel have been involved in the avicultural industry for many years, and they argue that this personal background is critical to the development of successful regulatory strategies and developing close ties with the industry so that they can more readily keep informed of suspicious activity.

This discussion will only focus on the differences between legislation which could have a substantial impact on enforcement across State boundaries. It must be stressed that legislation is only part of the solution to ensuring that wildlife trade does not endanger the survival of species. Administrative practice is also critical, as will be demonstrated in the discussion which follows.

It should be noted that legislative provisions are not always an unequivocal indication of regulatory practice. Resource constraints and commonsense application of provisions mean that sometimes administrative decisions are made to ignore technical breaches.

For example, in Victoria, the definition of wildlife refers to "wildlife in any form, whether alive or dead or whether the flesh is raw or cooked or preserved or processed in any manner whatsoever and includes the skin, pelage, plumage, fur, or any other part thereof and the eggs thereof" (s. 3 (3) *Wildlife Act 1975*). Technically, the sale and possession of kangaroo meat in the form of canned pet food would require both the seller and purchaser to be licence holders. Similarly, the sale and purchase of items made from tanned kangaroo skin would be subject to licence requirements. In the interests of reasonable regulatory practice, an administrative decision has been made to limit licensing provisions to the first stage of processing of skins and to whole carcass transactions only. It has been decided not to alter the technical requirement, since that may inadvertently remove the capacity to control potentially harmful activities.

The objectives of effective regulation

The Victorian Department of Conservation and Environment (1990), in their *Final Report*, identify the following objectives:

> - to control possession and trade so as to ensure that they have no detrimental effect on the conservation of wildlife species . . . (Australia-wide). (Such threats may come from illegal take from the wild, the inadvertent introduction of disease and the risk of escapees either establishing feral populations or genetically damaging endemic populations);
> - to recognise and provide for legitimate possession of and trade in legally taken or acquired wildlife, subject to legislative controls;
> - to establish and maintain a recording and monitoring system which controls and minimises the entry of illegal wildlife into

possession and trade and assists in ensuring the conservation of the species involved;

- to generate sufficient revenue to support the resources needed to administer possession and trade; that is, the system should be based on the user-pays principle (Department of Conservation and Environment 1990, p. 4).

Such a system needs to be easy to comply with and efficient to administer. Above all, it needs to make transactions as visible as possible, in spite of limited regulatory resources.

It is not possible to regularly inspect the premises of all permit holders to check if their activities comply with the requirements of their permit or licence. Nor is it possible, for example, to patrol all nesting sites of at-risk species to prevent the robbing of nests. However, all jurisdictions utilise a network composed of local police, park rangers and wildlife officers to monitor and detect any suspicious activities involving wildlife.

Since the resources to conduct regular inspections of all participants in wildlife trade are scarce, their use must be effectively targeted. The licensing system is intended to enable summary monitoring of all activities; to identify suspicious transactions, and to monitor trends in the marketplace. This information can assist in the effective targeting of regulatory and enforcement resources.

Legislative provisions for intra-state transactions in fauna

AFTER EXTENSIVE DISCUSSION WITH A RANGE OF REGULATORY AGENCIES, some basic principles have been isolated. While there may be some debate about the centrality of these principles, the fact that most have been enshrined in legislation or practice in at least one Australian State implies that they have recognised merit. The principles of effective regulation are identified here (in italics), and an assessment made of whether these principles are observed in legislation from in each jurisdiction. An effective regulatory system should require that:

- *licence holders keep and maintain up-to-date records of all transactions and changes in stock;*

All States require licence holders to keep and maintain such records of wildlife transactions.

- *all licence holders submit regular returns to the regulatory authority;*

All States require licence holders to submit regular returns of wildlife transactions.

- *some assessment of a licence applicant's suitability as a licence holder should be made, including whether the person has a record of offences against relevant wildlife legislation;*

All states, with the exception of Western Australia and the Australian Capital Territory require details of any such criminal record to be included in applications for a licence. The applicant's general suitability is assessed in Victoria, Queensland, Tasmania, the Northern Territory and the Australian Capital Territory.

- *strong penalties apply to failure to comply with record keeping requirements and submission of returns;*

All States provide for penalties for failure to comply with record-keeping requirements. In South Australia, the fine is automatic and issued by the computerised licensing system. In Victoria a $100 on-the-spot fine applies, along with provision for a maximum penalty of 20 penalty units ($2,000 fine) through the courts. Automatic fines will be issued by the computerised system which is being developed in Victoria.

- *strong penalties apply to the provision of false or misleading information in licence applications, documentation, or in response to queries by authorised officers;*

Specific penalties for the provision of false or misleading information apply in Queensland (maximum fine of $6,000), South Australia ($2,000 maximum fine for requirements under the Act and $1,000 for requirements under regulations) and Victoria (20 penalty units).

General penalties apply in all other States apart from the Northern Territory and the Australian Capital Territory.

· *licences should be issued to individuals only, so that responsibility for compliance is located in individuals rather than corporate bodies;*

Licences are issued to individuals only in Victoria, New South Wales and South Australia. A corporate body may be a licence holder in the Australian Capital Territory, Western Australia and Tasmania (except for licence to take (r. 3A Wildlife Regulations 1971 Tas.)). Permits may be issued "to a person or to a person and his servants and agents" in the Northern Territory (s. 43 (1) *Territory Parks and Wildlife Conservation Act 1977-92* NT).

· *all transactions and licensed activities should be restricted to licensed premises as far as possible, with only one licence applying per premises;*

South Australia, Victoria, New South Wales and Western Australia restrict licensed activities to licensed premises where appropriate. Tasmania does not appear to have clear cut restrictions on premises from which authorised activities can take place, except in the case of game farm licences and wildlife exhibition licences. The Northern Territory and the Australian Capital Territory do not have clear cut restrictions on the premises from which authorised activities can take place. It is not clear what the approach will be to this issue in the new Queensland regulations.

· *for all transactions, the names and licence numbers of both parties to each transaction should be recorded, to enable cross-referencing and verification of records submitted;*

All States, except for the Northern Territory, require that records stipulate the source of fauna and the identity of all parties to transactions. Details of progeny and deaths are required in records in South Australia, Tasmania, Victoria and the Australian Capital Territory. The information required for record keeping is not specified in Western Australian legislation.

· *where wildlife is consigned, the consignor must ensure that the licence number and name of both the sender and the receiver are clearly displayed, unless the consignee is a licence holder;*

New South Wales, Victoria and South Australia require such labelling of consignments. No labelling provisions apply to the consignment of live fauna in Western Australia, although consignments of fauna for export can only be accepted from a person licensed to export. No labelling requirements apply in Tasmania, the Northern Territory or the Australian Capital Territory. Provisions in the new Queensland regulations have not been finalised at the time of writing.

· *strong penalties should apply to unauthorised taking from the wild;*

In all jurisdictions, the penalty for taking from the wild varies with the conservation status of the species in question, with the highest penalty level applying to species in danger of extinction. Every State has a unique species classification system, so comparison of penalty levels is difficult. The highest penalty levels apply in Queensland, where the maximum penalty for taking from the wild is 3,000 penalty units (a fine of $180,000) and/or 2 years imprisonment. The jurisdiction with the lowest penalty level is the Northern Territory, where the maximum penalty for taking a specially protected animal is $4,000 and/or twelve months imprisonment. While maximum penalty levels in some jurisdictions are high, it should be noted that actual penalty levels are a small fraction of the maximum. In Queensland, for example, the maximum fine ever imposed is $24,000 which was lessened on appeal to $12,000. Only one prison sentence of 6 months has been handed down. In South Australia, where the maximum fine for unauthorised taking of endangered species is $10,000 and/or two years, average fine levels over the last two years are estimated to be around $300, with the highest actual fine of $3,100 and no goal sentences handed down. The low level of actual penalties compared with the prices available for some species means that fines could be considered as a mere tax risk on an otherwise tax-free income.

- *strong penalties for knowingly being in possession of wildlife illegally acquired from any jurisdiction should apply;*

It is an offence to be in possession of wildlife acquired illegally in any Australian jurisdiction in Victoria, with a maximum penalty of 100 penalty units ($10,000 fine) for such possession or control. Similar offence provisions apply in South Australia where the maximum penalty ranges from $10,000 fine or 2 years imprisonment for endangered species to $2,000 fine or 6 months imprisonment); and, in Tasmania (penalty $5,000 fine). In New South Wales the offence applies to holders of an Aviary Registration Certificate and Exhibitor's Licence, with no penalty specified. In Western Australia, under s. 16A (*Wildlife Conservation Act 1950-1979* WA), possession of protected fauna "other than . . . lawfully acquired" is an offence, though there is no reference to other jurisdictions apart from Western Australia and the penalty is not specified. In the Northern Territory and the Australian Capital Territory such an offence is not specifically provided for. In Queensland it is not known if such a provision will be in the new regulations.

- *penalties for engaging in transactions with unauthorised persons should apply to all licence holders;*

Engaging in transactions with unauthorised persons is an offence in New South Wales (only for holders of a fauna dealer or fauna dealer (kangaroo) licence with no penalty specified); Victoria (all licences); Western Australia (for bird dealer licence holders with no penalty specified); South Australia (only for sales and gifts with no penalty specified). No specific provision occurs in legislation in Tasmania, the Northern Territory or the Australian Capital Territory. Whether such a provision will be included in new regulations in Queensland is unknown.

Legislative provisions for interstate transactions

An effective import-export control system should require:

- *authorisation from the outside State prior to the import/export transaction taking place;*

There is no specific reference to a requirement for prior authorisation from the outside State in New South Wales, Victoria, South Australia, Tasmania, the Northern Territory or the

Australian Capital Territory. However, in Victoria the Director General must be satisfied that the proposed transaction is not contrary to any law in another State before granting the permit. In Western Australia, export licences may not be issued until receipt of authorisation from the proposed destination State is received. There is no similar provision covering importation into WA.

- *notification and approval of exports and imports prior to the transaction taking place in the home state;*

The requirement to apply for and receive a permit in the home State prior to import/export applies in New South Wales (no penalty specified for non-compliance), Victoria (maximum penalty 50 penalty units - $5,000 fine for non-compliance), Western Australia (no penalty specified), South Australia (maximum penalty $2,000 fine) and the Australian Capital Territory (maximum penalty $1,000 or 6 months imprisonment for failure to comply). In the Northern Territory, import and export permits are required for vertebrate wildlife and import permits for importation of prohibited imports, (maximum penalty of $2,000 fine or imprisonment for 6 months for non-compliance). Export permits apply in Tasmania, with a requirement for permission in writing from the Director to import wildlife into Tasmania. Queensland provisions are not yet known.

- *proof of the legality of the source of wildlife or wildlife products in the state of origin to be demonstrated prior to the transaction taking place;*

While not specifically requiring prior demonstration of the legality of the source/destination of wildlife from the State of origin/destination, contravention of the laws of the State of origin/destination are grounds for refusal to grant an import/export permit/licence in New South Wales and Victoria. Proof of the legality of the source of wildlife is not specifically required prior to an export/import permit being issued in Western Australia. Apart from the provision of the name and address of the person who had possession of the fauna prior to importation into South Australia, no other proof of legality is required. Proof of the legality of the source of wildlife is not required in the Northern Territory prior to importation into the Territory. In the Australian Capital Territory notification of importation is required "not later than the working day following the day of importation" (s. 36), with no specific requirement to demonstrate the legality of the source of the wildlife.

- *mutual recognition between the state of origin and the state of destination re the classification of the wildlife species concerned.*

This issue has not been specifically addressed in legislation in any State or Territory. To be effective, this would require collaboration between all jurisdictions either to develop mutually recognised classification of species, or to provide for the licensing of unscheduled species within the destination State which have been imported from outside the State. Unless this occurs, wildlife may enter a State legally with the approval of the State of origin and if the classification of the species concerned is different or nonexistent in the destination State, problems could arise. For example, crocodiles may not be scheduled in all jurisdictions, since they are not naturally occurring in all jurisdictions, nor are they likely to pose a conservation risk. If they are legally imported with the approval of the State of origin, the existing licensing system in the destination State may not have a licence category which includes crocodiles.

Reverse onus of proof

Proof of wildlife trafficking offences is always a vexatious issue. Suspicions can be readily aroused quite reasonably by regulators with a well-seasoned nose for implausible accounts of the source of wildlife. In many cases, breaches of record-keeping requirements are fairly clear cut. However, it is very difficult to prove, say, that claims of high levels of breeding success are fraudulent, or that wildlife in someone's possession was illegally acquired. If the onus of proof is on the enforcement agency to prove illegality, this is particularly problematic for regulators. If the onus of proof is on the defendant to prove say, legal acquisition, the case for the prosecution may be a little simpler.

There is considerable difference between jurisdictions in the statutory provisions relating to onus of proof. Statutory provisions which attempt to redress this issue by reversing the onus of proof exist in some jurisdictions. In South Australia (s. 47, s. 48A, s. 60, s. 64, s. 68A, s. 68B, and, s. 75 *National Parks and Wildlife Act 1974*) the reverse onus of proof is particularly strong, and covers a wide range of provisions. It applies to claims that wildlife was not illegally taken or acquired. It also applies to the purpose of possession of illegal devices which may be used to take protected animals. In Victoria, the reverse onus of proof covers similar provisions (s. 68, *Wildlife Act 1975*). In New South Wales (s. 181 *National Parks and Wildlife Act 1974*), the onus of proof against the defendant is quite broad, and relates to any activity for which a licence is otherwise required, as well as documentary evidence as specified. In other States, the reverse onus of proof provisions are much more limited.

Some guidance on the criteria for the operation of reverse onus of proof provisions may be gained from the *Review of Commonwealth Criminal Law: Final Report*. The Report suggests the following criteria for "a judgement as to whether there should be a reversal of the onus of proof in particular circumstances":

> (a) the severity of the penalty; the more severe the penalty, the greater should be the reluctance to provide for any transfer of the onus;
>
> (b) the significance of the particular element in relation to the whole of the elements of the offence; again the more significant this element, the greater the caution that should be exercised as to transfer of onus;
>
> (c) whether proof by the prosecution of a particular issue would be difficult or expensive, but proof by the defendant could be readily and cheaply provided, however, even if proof by the prosecution is difficult or expensive, the burden should not be cast on the defendant if it would be unduly onerous for the defendant to discharge it;
>
> (d) whether the matters are peculiarly within the knowledge of the defendant; and
>
> (e) whether enforcement of the particular law would not be rendered sufficiently effective if the onus of proof were not transferred (Final Report, p. 43).

As previously stated, many wildlife offences are particularly difficult to prove, with some defendants claiming simply that they do not know where wildlife were acquired from. That an activity is legal is often much more straightforward to prove by the defendant, requiring the production of receipts of purchase and so on. On the other hand, the maximum penalties available are very high in some states, and may include a goal sentence. In fact, penalties handed down are usually light in comparison with the market value of the wildlife concerned. It is significant that the state with the highest maximum penalties, Queensland, does not have strong reverse onus of proof provisions. Moreover, magistrates in Queensland have been reluctant to allow the use of existing reverse onus of proof provisions, arguing that such use is contrary to provisions laid down in the *Legislative Standards Act 1992* (Qld).

The range of species available for possession

Restrictions on the range of species which may be held vary widely between jurisdictions. In South Australia, licences may be issued for holdings of any species, although the category of licence varies depending on the species. In Victoria, licences are available only for the schedules of species specified. Some species are not scheduled.

Involvement of non-regulatory personnel in detection of trafficking

All jurisdictions report that available regulatory resources are inadequate for the task of effective monitoring of trafficking activities. Efficient targeting of available resources is paramount. One means of achieving this is to cultivate close relationships with the avicultural industry and other hobby groups as a means of establishing intelligence networks within the industry. Ideally, these groups will perceive that the maintenance of a clean industry is in the best interests of those who abide by the law. Whether this perception leads to active assistance in the regulatory process in the form of "tip-offs" will depend on the level of trust between regulators and those who are regulated. If the regulatory system is perceived to be unreasonably cumbersome for licence holders, it will be held in contempt by them. Trust will decline at best, or overt hostility will arise at worst. Either way, the potential utilisation of the industry as a source of intelligence will be lessened considerably.

Apart from utilising the industry itself as a source of information, regulatory officers usually try to develop relationships with local publicans, car hire operators, local police officers and others who may also be able to alert them to suspicious activities.

South Australia, Queensland and Tasmania have empowered land-holders to question any person who is found on their land, requiring them to identify themselves and state the purpose for which they are on the land. Failure to comply can result in a penalty; $1,000 maximum fine in South Australia and $9,000 maximum in Queensland. In these States and also in New South Wales, land-holders are also empowered to refuse consent to entry to land. These provisions provide an opportunity to extend the network of eyes and ears which may be able to detect nest-robbing and other illegal activity.

Idiosyncratic anomalies

In New South Wales the so-called nineteen bird rule is widely cited as a laundering loophole in interstate movement of wildlife. According to s. 108 of the National Parks and Wildlife Act, no licence or permit is required for holdings of less than 20 birds. No restrictions are placed on the species of bird. Since no licence or permit is required, there is no requirement to keep and maintain records for these birds, thereby rendering the bird-keepers, birds and any ensuing transactions invisible to the regulatory regime, apart from on the spot inspections.

Conceivably, hundreds of animals could pass through the hands of such keepers over the course of a year, as long as the maximum number allowable was not exceeded at any one time. If the species held were very valuable, the limit of nineteen birds would be a small inconvenience. In theory, such animals cannot enter trade since purchases and sales of protected fauna can only be undertaken by a person licensed to do so. Moreover, fauna dealers may only acquire animals from licence holders. However, concern arises from the potential for the development of a thriving underground trade, since, unless the non-licence holders are caught red-handed in the act of buying or selling animals, illegal sales are likely to be undetectable since there is no requirement to record the source of holdings. The legal barter trade together with the illegal cash trade arising from the rule creates pressures to take from the wild, and a de facto means of laundering such takings.

The "nineteen-bird" rule also creates a nightmare for controlling the movement of fauna across State boundaries out of New South Wales. Most States contain provisions disallowing importation of animals illegally acquired in the State of origin. In the absence of a record-keeping requirement, there is effectively no means of proving or disproving the legal status of birds from legal unlicensed holdings in New South Wales. Importation into "clean" states could not reasonably be disallowed. This loophole provides the opportunity for birds illegally taken in one state to be illegally consigned to New South Wales and "laundered" through this means, before legal re-importation as "clean" stock back into the state of origin.
Section 108 states:

> A person shall not have more than nineteen birds, being protected fauna, in his possession or under his control in or upon a structure, building, store, shop or other premises, unless:
>
> (a) an aviary registration certificate under section 128 is in force with respect to that structure, building, store, shop or other premises; or
>
> (b) that person is a fauna dealer licensed under section 124 and the structure, building, store or shop is, or the premises are, registered under section 124.

Does this mean that a person's spouse and children or some other consortium of bird holders could each have 19 birds in separate structures without a licence?

From this comparison of legislation it can be clearly seen that there is quite wide variation in some of the central provisions which could assist in the effective regulation of wildlife trade. In most cases, the least populous jurisdictions have more gaps in legislation; however, some larger states have significant gaps, as pointed out. The value of such provisions in confining responsibility for transactions to individual authorised persons; in confining transactions to authorised premises; and for recording of details of all parties so that transactions and changes in stock numbers can be traced and verified should be acknowledged and steps taken to close these gaps.

Non-legislative administrative provisions

Containment and monitoring of transactions provisions

THE RECORD-KEEPING SYSTEM CAN BE USED AS AN EFFECTIVE enforcement tool only up to a point. All jurisdictions have record-keeping requirements in legislation; however, the use made of records as an enforcement tool varies widely, depending on whether the handling of returns is computerised or not, and whether the system itself is efficient.

The single, most important indicator of the power of the licensing system as an enforcement tool is whether the system is computerised or not. Such a computerised system could be expected to issue licence renewals, reminders and infringement notices, collate returns and allow cross-referencing of licensing information. A card-based system is of very limited use as a compliance enforcement tool. Of course, the effectiveness of computerisation depends upon the appropriateness of the software available to the regulatory task, and whether the system is effectively maintained. "Garbage in—garbage out" applies to regulation as much as anything else. At the time of writing, only South Australia, the Northern Territory, Western Australia and Victoria have a fully computerised licensing compliance system which holds records of returns, with the facility to issue non-compliance notices.

The reliability of record-keeping systems as an enforcement tool depends upon the following administrative issues:

- Is the information on the recording system up-to-date? This in turn depends upon the level of compliance in the client community, which, in turn depends upon whether non-compliance is visible within the system and acted upon and whether penalties attach to non-compliance. Ideally, if the system is computerised, non-compliance warnings and fines notices should be issued automatically;

- Is it well maintained? Sufficient, trained staff must be available to input information into the system, in a uniform format, using standardised procedures, so that effective searching on keywords is possible. If this does not occur, and operators, say, use differing terms to describe individual animals, for example parrot vs eclectus parrot vs *Eclectus roratus*, confusion will result;

- Is the information contained on the records comprehensive? The system must require participants to submit information to the system routinely, usually on an annual basis. The information provided should enable tracking of transactions, so that if dealer A buys a particular bird from Ms Citizen, who bought it from dealer B, and so on, it should be possible to trace and check the bona fides of each transaction. Of course, the speed and ease with which such transactions may be traced will depend upon the software used. In all cases in Australia, the computer systems in use are fairly basic, and where tracing such transactions is possible, more sophisticated software would vastly enhance the utility of record-keeping as an enforcement tool;

- Is the retrieval software sophisticated? Does it allow searching and cross-referencing of data, so that patterns of transactions can be identified for particular species, regions, individuals and so on?

An effective computerised licensing system could be expected to be revenue self-supporting, with income from licence fees and fines.

Potential for laundering of illegal activities through a record-keeping system

NO MATTER HOW WELL MAINTAINED, A RECORD-KEEPING SYSTEM WILL never totally protect against laundering of wildlife. In fact, it is sometimes argued that the record-keeping system can lead to a false sense of security for regulatory agencies, if laundering is low key. It may be that all that can be realistically hoped for is the prevention of wholesale and indiscriminate illegal activity. Since uncovering of illegal activity relies upon detection of suspicious patterns of transactions or improbable levels of breeding success, low levels of illegal activity are unlikely to be conspicuous. The use of record keeping as a monitoring tool is usually accompanied by strategic unannounced inspections of holdings. However, when there are many thousands of licence holders in a given jurisdiction, it is an enormous task to effectively scrutinise large numbers of transactions.

Regulatory agencies frequently observe that claims of high levels of breeding success often coincide with local availability of birds in the wild. This "coincidence" suggests that attempts to launder wild caught birds as captive bred may be taking place. To the experienced eye, recently wild caught birds are distinguishable from captive bred birds since they are more unsettled and distressed, and their tail feathers may be less damaged than cage bred birds. They are also more muscular than cage bred birds. These suspicions are very difficult to prove, however, without actually observing the taking of birds from the wild, or having access to some means of testing the relationship between parent birds and claimed offspring, such as DNA profiling.

As efforts to kerb the entry of wild caught birds into trade become more successful, the success rate for captive breeding of previously difficult species has increased significantly. Breeders have had to refine their skills, develop new forms of feeding formula for rearing baby birds, even importing special formula from the United States. Ironically, while this has taken the pressure off wild stocks, it may simultaneously create a window of opportunity for laundering birds which have been illegally taken from the wild. Breeders could now claim higher levels of breeding success for species previously unable to be bred in captivity and arouse less suspicion if birds are in fact wild caught.

An additional anxiety for regulatory agencies is the possible establishment of very large aviaries with large numbers of breeding pairs. This would provide an opportunity to claim high levels of captive breeding success. Thus wild caught birds could be laundered through such large holdings. An upper limit on the number of breeding pairs for species which are vulnerable in the wild per licence holder may need to be considered to avoid such regulatory nightmares.

Most States distinguish between dealers and fanciers. Fanciers are restricted in the number of transactions they can engage in. Fanciers sometimes have more flexibility in the conduct of transactions, and may, for example, conduct transactions at hobbyist's bird fairs in local scout halls. Sales from such ad hoc premises are more difficult to monitor than registered shop-front premises. Some States (South Australia and Victoria) have imposed minimum time periods between transactions in an effort to slow down fancier trade to a more readily monitored level.

One perverse consequence of record-keeping requirements for native Australian birds has been an increasing trend towards keeping exotic birds in the avicultural industry. Holders of exotics are not required to maintain and submit records. For regulators, this presents another set of problems, since skills in the identification of the hundreds of exotic species and sub-species in the marketplace take many years to develop. Regulators report sightings of advertisements in trade magazines of species for which there is no record of entry into the country. It is possible that increased movements of exotic species into Australia will generate pressures to engage in illegal bartering of native eggs and live birds into overseas trade.

Thus far, an attempt to identify the features of best practice in wildlife trade regulation has been made, accompanied by a State by State analysis of the extent to which the practices are observed in legislation and administrative practice. While rapid progress towards these goals has been made in the last five years, there are still some problems which need to be addressed.

It is important to take note of weaknesses in regulatory regimes, since it is likely that those who wish to engage in illegal activity will exploit the differences between the jurisdictions to launder illegally acquired wildlife. Statutory provisions are, of course, only part of the solution. If the provisions are not effectively enforced, laundering opportunities are created.

The development of uniform legislation across jurisdictions remains an illusory objective for historical and philosophical reasons. While a commitment to uniform legislation is often expressed, each new piece of legislation reflects each jurisdiction's drafting priorities. It is well known that illegal wildlife activity does not respect State boundaries, and often involves international transactions. Involvement of interest groups in changes to legislation is important for the maintenance of goodwill between regulators and industry. However, unless recognition is also given to the need to develop consistent and effective legislative provisions in each jurisdiction according to recognised principles, the task of combating illegal activity will remain frustrating and opportunities for illegal activity will be fostered.

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State and Territory Legislation

Appendix 1

New South Wales

- National Parks and Wildlife Act 1974, No. 80 (May 1991 Reprint)
- Fauna Protection Regulations 1949 (February 1992 Reprint)
- Native Plants Protection Regulation [NPPR] 1975 (February 1984 Reprint)

Victoria

- The Wildlife Act 1975 (March 1989 Reprint)
- Wildlife (Protection of Whales) Act 1981
- Wildlife Amendment Act 1990
- Flora and Fauna Guarantee Act 1988
- Wildlife Regulations 1992
- Wildlife (Game) Regulations 1990 [WGR]

Queensland

- Nature Conservation Act 1992, No. 20 of 1992

Western Australia

- Wildlife Conservation Act 1950-79 (53/1980)
- Acts Amendment (Conservation and Land Management) Act 1984
- Wildlife Conservation Amendment Act 1985 (No. 58 of 1985)
- Conservation and Land Management Act 1984 (No. 126 of 1984) [CLM]
- Conservation and Land Management Amendment Act (No. 20 of 1991)
- Wildlife Conservation Regulations 1970 (January 1992 Reprint)

South Australia

- National Parks and Wildlife Act 1972-74
- National Parks and Wildlife Act Amendment Act 1978, 35/78
- National Parks and Wildlife Act Amendment Act 1981, 19/81
- National Parks and Wildlife Act Amendment Act (No. 2) 1981, 54/81
- National Parks and Wildlife Act Amendment Act 1987, 94/87
- Regulations under the National Parks and Wildlife Act 1972 - the Wildlife Regulations 1990, 217/90
- Hunting Regulations 1975 [HR]
- National Parks and Wildlife Endangered, Vulnerable and Rare Species (Amendment of Schedules) Regulations 1991 [EVRSR]
- Kangaroo Sealed Tag Regulations 1990

Tasmania

- National Parks and Wildlife Act 1970 (July 1982 Reprint)
- National Parks and Wildlife Amendment Act 1984, 9/84, 10/84
- National Parks and Wildlife Amendment Act 1986, 18/86
- National Parks and Wildlife Amendment Act 1992, 52/92
- Wildlife Regulations - Statutory Rules 1971, No. 241
- National Parks and Reserves Regulations 1971
- Amendments too numerous to list

Northern Territory

- Territory Parks and Wildlife Conservation Act 1977-92
- Territory Parks and Wildlife Conservation Amendment Act 1988
- Territory Wildlife Regulations June 1991

Australian Capital Territory

- Nature Conservation Act 1980 (June 1991 Reprint)
- Nature Conservation Regulations, 1991 (Reprint)

Comparison of State and Territory Fauna and Flora Trafficking Provisions as at June 1993

Appendix 2

Field	NSW	VIC Penalty Unit (p.u.) = $100	QLD Penalty Unit (p.u.) = $60	WA
Recognition of another State's laws	Birds and exhibited fauna	Yes	No	Other State approval for export
REQUIREMENTS OF LICENCE/PERMIT HOLDERS				
Applicant's criminal record noted	Import/Export only	Yes	Yes	No
Applicant's suitability assessed	No	Yes	Yes	No
Show Licence/Permit on request	Yes	Yes 5 p.u. penalty for non-compliance $60 on the spot (o.t.s.)	Yes	Yes
Notify change of address	Yes/dealers	Yes all lic 2 p.u. $60 o.t.s.		
Must keep records	Yes/almost all licence holders	Yes all lic $100 o.t.s.		Yes
	Penalty $500	$1,000 max regs penalty		$2,000 penalty regs
Must submit regular returns of stock/transactions	Yes/dealers	Yes all lic $100 o.t.s.		Yes
Provision to track transactions	Yes/dealers; aviaries, exhibitors consignments	Yes all licence holders		
POWERS OF WILDLIFE OFFICERS				
State/prove full name and address	Yes	Yes	Yes	Yes
Penalty for non-compliance	$500	20 penalty units	100 Penalty units	Offence
Penalty for false information	$500	False information 20 p.u.Game Licence 10 p.u. False/misleading info $100 o.t.s.	100 Penalty units	False name and address False statement in return
Removal of persons acting suspiciously		No		Yes Penalty $2,000

Field	NSW	VIC Penalty Unit (p.u.) = $100	QLD Penalty Unit (p.u.) = $60	WA
Enter land without a warrant	Yes	Yes	Yes	Yes
Enter search non-res premises w/o warrant	Yes	Yes	If Licensed premises etc or occ consent	Yes
Enter residential premises w/o warrant	No	No	No	No
Break into container /premises				
Warrant issue		Justice		
Magistrate	Yes		Magistrate	
JP	Employed at Local Courts			Upon a sworn oath
Telephone	No		Yes	
Fax	No		Yes	
Stop and search vehicles	Yes	Yes	Yes	Yes
Request assistance			Yes Penalty 50 or 165 p.u.	
Detain vehicle & controller			Yes	Yes
Penalty for refusal to comply			Penalty 165 penalty units	Penalty $2,000
Seize goods/documents	Yes	Yes	Yes	Yes
Seize wildlife	Yes	Yes	Yes	Yes
Seize vehicle	No		Detain owner and vehicle	
Powers of arrest	Yes	Yes	Yes by Special Cnsrvtn Officer	
Other powers	Constable			
		POWERS OF LANDOWNERS		
	Can refuse consent to entry etc		Consent required to enter land take wildlife Penalty 165 p.u. State purpose/identity 165 p.u.	

Field	NSW	VIC Penalty Unit (p.u.) = $100	QLD Penalty Unit (p.u.) = $60	WA
OFFENCES				
Forgery of documents				Yes
Impersonating a licence holder		Yes 50 p.u. penalty		Yes
False, misleading statements in document	Import/Export Licence	Yes $100 o.t.s. 50 p.u. penalty	Penalty 100 p.u.	Yes
False, misleading information	Yes	Yes $100 o.t.s.	Penalty 100 p.u.	Yes
Impersonating a conservation officer	Yes		Penalty 50 p.u.	
Refusal to answer relevant questions			Penalty 100 p.u.	
Prevent someone from being questioned			Penalty 165 p.u. a/o 1 year	
Resisting and/or obstructing an officer	Yes	Penalty 50 p.u.	Penalty 165 p.u. a/o 1 year	Yes
Inciting resistance or obstruction	Yes		Yes indirectly - hinder/obstruct	Yes
Use of abusive language	Yes	Penalty 10 p.u.	Penalty 165 p.u. a/o 1 year	Yes
Offering bribes	$1,000			
Maximum General Penalty Act	$2,000	Act noncomply lic/perm 50 p.u.		Act $4,000 maximum
Maximum General Penalty Regulations	$500	Regs 50 p.u.		Regs $2,000 maximum
Proceedings for offences	Summary/Local		Indictable = 3,000 p.u. a/o 2 y Other Summary max 165 p.u. or indictable	Summary/ Court of Petty Sessions
Onus of proof on defendant	Yes	Yes in favour of wildlife off.; Yes upon defendant	Yes - limited	Yes
Statute of limitation	2 yrs		2 yrs	
Cancellation of licence on conviction	Import/Export Licence	Yes	Yes	
Payment of compensation by offender	Yes	Yes		
Provisions for Offences by corporations	Yes	No	Corporate reputation assessed	
Penalties for corporations		No	5 times maximum for individual	

Field	NSW	VIC Penalty Unit (p.u.) = $100	QLD Penalty Unit (p.u.) = $60	WA
ACCOUNTABILITY PROVISIONS				
Corruption	Yes Bribery $1,000 a/o 1 yr	No	No	No
Confidential information declaration	No	No	Yes	
Offence of disclosure of confidential information	No	No	Yes Penalty 165 p.u.	
Conflict of interest	No	No	Yes Penalty 50 p.u.	
Unlawful constructions eg landing strips	No	No	No	Penalty $2,000
FAUNA				
Definition of animal	Any but not fish	Any	Any dead or alive	Any living non-human/plant
Definition of fauna	Vertebrates w/o fish	Indigenous verts and inverts	Indigenous and migratory	Indigenous/migratory + carcass
Classification of fauna		Controlled game protected noxious endangered notable	Protected, presumed extinct, endangered, vulnerable, rare, common and international and prohibited	Protected
Property in wildlife	Crown		State	
Take and kill equivalent	Yes	Yes	Yes	Yes
Taking penalty	Protected $2,000 a/o 6 mths; Endangered, special concern; vulnerable and rare; threatened; in imminent danger of extinction; protected; unprotected, $10,000 a/o 2 yrs; Other endangered $4,000 a/o 1 year marine mammal $100,000	$100 o.t.s.; State wildlife reserve 25 p.u.; State wildlife sanctuary 25 p.u.; Other 20 p.u. plus 2 p.u./head; Notable 50 p.u. plus 5 p.u./head; Endangered 100 p.u. plus 10 p.u./head; Whale 1,000 p.u.	3,000 p.u. a/o 2 yrs	Penalty $10,000; Nature Reserve $2,000; Wildlife Sanctuary $2,000
Taking provisions	Licence/Permit	Licence/Permit	Licence/Permit	Licence/Permit
Taking w/o landholder's consent			Penalty 165 p.u.	Offence

Field	NSW	VIC Penalty Unit (p.u.) = $100	QLD Penalty Unit (p.u.) = $60	WA
Entering w/o landholder's consent			Penalty 165 p.u.	
Provision to possess	Licence/Permit	Licence/Permit	Licence/Permit	Licence/Permit
Unauthorised possession of fauna	Protected $2,000 a/o 6 mths; Endangered $4,000 a/o 1 year; Threatened $10,000 a/o 2 yrs; Birds and exhibited fauna	Protected 20 p.u. plus 2 p.u./head; Notable 50 p.u. plus 5 p.u./head; Endangered 50 p.u. 10 p.u./head, $100 o.t.s.	3,000 p.u. a/o 2 yrs	
Wilful molestation /insufficient care		Penalty 20 p.u.		Offence
Provision to farm		Yes game bird/deer		Yes
Offences of killing (see taking)				
Provision to kill				
Unauthorised Substance use	$3,000 a/o 6 mths or $500	Destructive unauth use 50 p.u.; Unauthorised use 20 p.u. $100 o.t.s.		Offence
Unauthorised Device use	$500	General 10 p.u. penalty; Penalty 20 p.u. game hunting $100 o.t.s.; Illegal dog use 50 p.u.; Possession/use sanctuary 25 p.u.		Offence
Provision to kill destructive fauna	Yes	Yes		Yes
Provision to sell/trade	Licence/Permit	Licence/Permit	Licence/Permit	Licence/Permit
Unauthorised fauna trade	Protected $2,000 a/o 6 mths; Endangered $4,000 a/o 1 year; Threatened $10,000 a/o 2 yrs	$100 o.t.s.; Protected 20 p.u. plus 2 p.u./head; Notable 50 p.u. plus 5 p.u./head; Endangered 100 p.u. plus 10 p.u./head	Penalty 3,000 p.u. a/o 2 yrs	Offence
Transactions with unauthorised persons	By Fauna dealers (kangaroos); By Aviaries; By Exhibitors	Yes Protected wildlife fanciers; Yes Protected wildlife dealers		Consignors; Bird dealers licence
Transactions on unauthorised premises		Trade unauth premises 15 p.u.; $100 o.t.s. unauth premises		Yes

Field	NSW	VIC Penalty Unit (p.u.) = $100	QLD Penalty Unit (p.u.) = $60	WA
Unauthorised importing and exporting	Yes	Penalty 50 p.u.		Offence
Provision to import and export	Yes	Permit	Licence	Yes
Unauthorised consignment	Conveyor liable	$100 o.t.s. Consignor /conveyor liable; Inadequate labelling 5 p.u.; Insecure container 10 p.u.	Penalty 3,000 p.u. a/o 2 yrs	Conveyor liable/labelling req
Provision to consign	With label	With label		
Unauthorised taking of game		$60 o.t.s. Penalty 2-10 penalty units		Penalty $2,000
Provision to take game	Yes	Yes		Yes
Unlawful liberation	Offence	$100 o.t.s. Penalty 50 p.u.	3,000 p.u. a/o 2 yrs	Offence
Provision to liberate	Yes			
Unlawful processing of fauna		$100 o.t.s.		Penalty $100 + $5-20 per day
Provision to process				Yes
Identification of fauna	Tags for carcass; Fauna Yes	Tags carcass Penalty 5-10 units	Failure to comply offence	Tags for fauna products
Notification of progeny				Birds
		FLORA		
Classification of flora		Protected		Protected or rare
Unlawful picking/possession	Yes	Penalty 50 units or 40 penalty units contravene licence	3,000 p.u. a/o 2 yrs	Penalty "Rare"
Provision to pick	Licence/owner's consent	Licence/Permit		Licence/Permit
Unlawful selling	Yes	Penalty 50 units		
Provision to sell	Licence grow and pick	Licence/Permit		Licence/authorisation of source
Transact with unauth persons				Offence
Provision to grow	Licence			
Unlawful release into wild	No			
Marking of flora	Yes	Yes penalty 40 units		Yes
Records to be kept by licensee	Yes			Yes
Submit annual returns				