

Discussion paper on the
**Handling of forfeited
live exotic specimens
seized for enforcement of
Part 13A of the EPBC Act**

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Introduction

This paper describes DEH's proposed policy for handling live exotic specimens seized for enforcement of Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), where the specimens have subsequently become forfeit to the Commonwealth. Sections 444A and 417 allow authorized officers to seize a specimen if he or she has reasonable grounds to suspect that the specimen has been used or otherwise involved in the commission of an offence against Part 13A of the EPBC Act.

The Australian Government Department of the Environment and Heritage (DEH) administers the EPBC Act and as such regulates international trade in wildlife specimens. For live exotic wildlife specimens to be imported or possessed in Australia, a valid import permit, or evidence of legal importation in the past, must be provided. Where these requirements are not met, the live wildlife specimens may be seized under the EPBC Act. The Australian Customs Service enforces the EPBC Act at the border on behalf of DEH. DEH's Environment Investigation Unit also operates in collaboration with the Australian Federal Police and State government enforcement agencies on possession of exotic specimens within Australia. Live seized wildlife specimens include exotic fish, birds, reptiles, mammals, and plant species. Specimens may become forfeit to the Commonwealth under Sections 444H, 444J, 444K & 450(1A) the EPBC Act. Forfeited specimens may be permanently housed or disposed of in a manner considered appropriate under Section 451 of the EPBC Act.

It is the responsibility of DEH to appropriately dispose of any live animal or plant seized under the EPBC Act.

Background

Australia is a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and, along with nearly 170 other countries around world, regulates wildlife trade to minimize over-exploitation of species. Under CITES the most threatened species are listed in Appendix I to the Convention. Appendix I is afforded the most protection. Commercial trade of wild taken species is not permitted. Species listed in Appendix II are species that, although not threatened with extinction now, might become so unless trade in them is controlled, monitored and regulated. CITES Appendix II also includes some non-threatened species, in order to prevent threatened species from being traded under the guise of species that are similar in appearance. Commercial trade is permitted for Appendix II species subject to a range of permitting requirements.

CITES requires that confiscated individuals of species listed in the Convention's Appendices be returned to the 'State of export ... or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purpose of the Convention (Article VIII)'. Guidance on this Convention text is found in CITES Conference of the Parties *Resolution Conf. 10.7- Disposal of confiscated live specimens of species included in the Appendices*. The CITES document draws on the work of IUCN, in particular, the *IUCN Guidelines for the placement of confiscated animals*.

CITES Resolution Conf. 10.7 describes the objectives of disposal as to:

- maximise conservation;

- discourage illegal trade; and
- provide a humane solution.

The disposal options outlined in CITES Resolution Conf. 10.7 are:

- maintenance of individuals in captivity;
- returning the specimens to the wild; and
- euthanasia.

A copy of Resolution Conf. 10.7 can be found at: <http://www.cites.org/eng/res/10/10-07.shtml>.

Part13A and Part17 of the EPBC Act give effect to Australia's international obligations under CITES. Part13A of the EPBC Act sets out the regulatory scheme for wildlife trade. Key objectives of the Part13A provisions are to ensure Australia complies with CITES obligations, to promote the conservation of biodiversity, and to promote the humane treatment of wildlife. Part17 sets out the enforcement provisions including powers of search, seizure and disposal.

Regarding the handling of live exotic specimens seized under the EPBC Act, the Act allows DEH to dispose of seized specimens in a manner considered appropriate (see Section 451(2)). Appropriate disposal is not specifically described but may include placement in an appropriate institution with or without conditions, euthanasia, or sale of specimens. It is important to note, however, that under the EPBC Act a specimen can only be sold if the buyer will use the specimen for scientific or educational purposes (see Section 451(4)).

There is also an immediate disposal power that is contained within Section 449 of the EPBC Act. Under Section 449, the delegate may approve the immediate disposal of seized specimens if they pose a potential risk to Australian species or ecosystems or human health, or out of consideration for the welfare of the specimen itself.

Policy principles

In accordance with objectives of Part13A of the EPBC Act, the handling of live exotic specimens is undertaken consistent with the following key policy principles:

1. Australian biodiversity is protected
2. conservation of endangered species through research, conservation breeding or education is maximised
3. illegal trade is not further stimulated
4. welfare of specimens is addressed
5. conservation benefits exceed costs of handling
6. consistency of treatment across all species seized for enforcement of Part13A of the EPBC Act

Each of these policy principles is described in more detail below.

1. Australian biodiversity is protected

Under Part13A of the EPBC Act, a key objective is to promote the protection of Australia's biodiversity. Australia is a signatory to the Convention of Biological

Diversity (CBD) and meets its obligations to CBD by preventing the introduction of exotic species that threaten the Australian environment. This is achieved, in part, by regulating the import of live specimens through the EPBC Act and other relevant legislation such as the *Quarantine Act 1908*¹. The EPBC Act provides for the establishment of a list of specimens suitable for live import (live import list). If a species is not on the live import list, it cannot be imported into Australia. Anyone can apply to amend the list to include a species. A new species can be added to the list only after the potential impacts on the environment have been fully assessed to the satisfaction of the Australian Government Minister for the Environment and Heritage. If the list is amended a permit may still be required to bring the species into Australia particularly if there are conditions attached to the nature of the import.

The potential for import of live specimens to pose disease and associated pest threats is assessed by Biosecurity Australia (BA) and managed at the border by the Australian Quarantine and Inspection Service (AQIS). An import permit will also be required from AQIS. Disease risks post-border are further managed by State Government quarantine officials.

Biosecurity risks have the potential to have significant adverse impact on the Australian environment and community. Seized exotic specimens may carry a range of diseases of concern to Australia.

CITES Resolution Conf. 10.7 states ‘Confiscated animals may serve as vectors for disease and, therefore, must be subject to extremely stringent quarantine. The potential consequences of the introduction of alien disease to a captive facility are as serious as those of introducing disease to wild populations.’

2. *Conservation of endangered species through research, conservation breeding or education is maximised*

CITES resolution 10.7 establishes that the primary consideration for handling of seized specimens is the conservation status of the species. Particular effort should be directed towards endangered species and the possible contribution to a conservation program.

Research, conservation breeding or education are considered to be the main methods of furthering the protection of endangered species. Under Article III.3 of CITES, Appendix I specimens can only be granted a permit for import where the purpose is not detrimental to the survival of the species and not primarily for commercial purposes. Research, conservation breeding and education are qualifying purposes. In particular, in the *Evolution of CITES* prepared by the Secretary-General of CITES (7th Edition, p69), suggests that the purposes that are non-detrimental to the survival of species include:

- research that enhances the reproduction and survival rates of species
- conservation breeding for reintroduction into the wild or to reduce the number of specimens that would otherwise be taken from the wild
- education and training including public display where it is connected to research or conservation breeding

¹ This is not an exhaustive list

3. Illegal trade is not further stimulated

CITES Resolution 10.7 cites a primary goal of disposal of live exotic specimens should be to discourage further illegal or irregular trade in species. The Resolution suggests that disposal of specimens to facilities, other than those with established conservation programs, may promote undesired trade. Resolution Conf. 10.7 states that ‘some authors have maintained that any transfer – whether commercial or non-commercial – of confiscated animals risks promoting a market for these species and creating a perception of the State’s being involved in illegal or irregular trade.’ For example, experience of selling seized animals in the United States suggests that it is virtually impossible to ensure that commercial dealers suspected of illegal trade are not involved with the purchasing of seized specimens. Under Resolution Conf. 10.7, ‘placing threatened species into commercial trade should not be considered because of the risks of stimulating unwanted trade.’ There is scope within Resolution Conf. 10.7 for consideration to be given to the sale of specimens into CITES registered commercial breeding facilities but any such program must be ‘carefully assessed and approached with caution’ as it may stimulate illegal trade.

4. Welfare of specimens is addressed

As mentioned, welfare considerations are a key objective of the wildlife provisions in the EPBC Act. The Second Reading speech to introduce these wildlife provisions, by amendment into the EPBC Act, notes animal welfare considerations are given a higher priority and emphasis than occurred in the previous wildlife legislation.

Welfare considerations are also enshrined in the text of CITES. The Convention states that living specimens should be so handled as to minimize the risk of injury, damage to health or cruel treatment (Article IV.6.b). Resolution 10.7 states that animals maintained in captivity must be afforded humane conditions and ensured of proper care for their natural lives. The Resolution states that ‘euthanasia... may often prove the most appropriate and most humane’ option available.

5. Conservation benefits exceed costs of handling

The Second Reading speech to introduce these wildlife provisions, by amendment into the EPBC Act, emphasizes that the new amendments give an outcomes based approach so that resources can be focused on higher priority conservation measures.

As mentioned in CITES Resolution 10.7, the primary consideration for handling seized specimens will be the conservation status of the species. The task of finding or providing long-term accommodation for a specimen is difficult and expensive. For consistency with the objectives of the EPBC Act DEH investments must be focused on specimens of high conservation value.

6. *Consistency of treatment across all species seized for enforcement of Part13A of the EPBC Act*

Consistency ensures effective and efficient actions by personnel, equitable treatment and fairness for potential carers and clarity of processes for other government agencies that may be involved with handling of seized specimens.

Approaches to handling live exotic specimens

Possible approaches to handling live exotic specimens which have become forfeit to the Commonwealth include:

1. Transfer to Australian zoological gardens and aquaria meeting agreed standards
2. Re-export of specimens to overseas zoological gardens and aquaria
3. Euthanasia of specimens
4. Sale of specimens
5. Disposal of specimens to commercial enterprises or private individuals for breeding and/or sale in Australian markets
6. Transfer of specimens to private individuals or organisations to house specimens for life time care on behalf of the Commonwealth
7. Building a government-owned facility for housing specimens for life time care

Descriptions and assessments of the value of each approach are set out below. Advantages/disadvantages of each approach are measured against the policy principles described above.

1. Transfer to Australian zoological gardens and aquaria meeting agreed standards

CITES Resolution 10.7 notes that zoological gardens and aquaria are the facilities most commonly considered for disposal of seized specimens because they are best placed to meet the conservation and welfare requirements of CITES.

In Australia, specimens of conservation significance, whether approved for live import or not, would be initially offered to full institutional ARAZPA members for permanent loan for research, conservation breeding or education purposes. This would generally be done through the ARAZPA Taxon Advisory Group (TAG) convener.

The preference for the seized specimens to be housed with full institutional members of ARAZPA (Statutory government zoos in particular) is based on:

- Conservation breeding opportunities
- High quality facilities for animal welfare
- Security of the premises (escape minimized)
- A low risk of stimulating commercial trade in exotic species in Australia because these members would be constrained from selling or trading the specimens for commercial purposes

- Discourage opportunities to illegal trade by educating the community through displays and signage at zoos open to the public

Conditions would be placed on the use of the specimen, including that the specimen remain the property of the Commonwealth at all times. The receiving facility would be required to cover all costs of quarantine and housing.

In the event that full institutional members of ARAZPA are unable to take specimens, Associate members of ARAZPA would be considered by the TAG convener, in consultation with DEH. In this case, quarantine would still need to occur at an approved quarantine facility and associated costs would be covered by the receiving organisation.

Advantages

- Conservation is maximized by using full institutional ARAZPA members that have expertise in wildlife research, conservation breeding and education
- Minimises biosecurity risks as these facilities have very high levels of security.
- High quality quarantine facilities and veterinarian expertise to ensure disease risks are identified and minimised
- These institutions may also have programs for returning specimens to the wild further adding value to species conservation.
- Prevents specimens from entering markets in Australia and thus reduces the likelihood of stimulating illegal trade.
- Statutory government zoos provide high quality facilities to ensure the welfare of specimens.

Disadvantages

- There are a limited number of institutions and relevant conservation programs. Availability of long term housing is likely to be constrained and reserved for the most endangered species only.
- There are transport, veterinary and housing costs that will need to be met.

2. Re-export specimens to overseas zoological gardens and aquaria

There are equivalent institutions to full institutional members of ARAZPA located in countries around the world. The World Association of Zoos and Aquaria (WAZA) has a large membership with ideals and philosophies similar to that of ARAZPA.

Advantages

- Minimises biosecurity risks as these facilities have very high levels of security
- Conservation is maximized by using overseas institutions that have expertise in wildlife research, conservation breeding and education.
- These institutions may also have programs for returning specimens to the wild further adding value to species conservation.
- Prevents specimens from entering markets in Australia and thus reduces the likelihood of stimulating illegal trade.
- WAZA institutions provide high quality facilities to ensure the welfare of specimens.

Disadvantages

- There are a limited number of institutions and relevant conservation programs. Availability of long term housing is likely to be constrained and reserved for the most endangered species only.
- Welfare concerns for some animals eliminates transport overseas as an option.
- Often very expensive with a need to negotiate cost sharing with the receiving country.

3. Euthanasia

As referred to in CITES Resolution 10.7, euthanasia is often the most appropriate and humane way to deal with seized specimens. Often there is no identifiable conservation advantage for retaining a specimen.

Advantages

- Eliminates biosecurity risks.
- Strongly discourages illegal trade as the specimens are removed entirely from trade.
- Often, euthanasia is in the best interest of the welfare of the specimen.
- Dead specimens can be used for natural history museum reference collections for research and future enforcement assistance with identification of species.
- It is a low cost disposal method.

Disadvantages

- In cases where there may be potential for conservation breeding, the specimens are lost.

4. Sale

CITES Resolution 10.7 allows for sale of animals, but clearly discusses risks and specifically states it should not occur where there is any risk of stimulating further illegal trade. The Resolution indicates that Appendix I specimens not be considered for commercial trade, therefore, this option would be limited to CITES Appendix II specimens.

In accordance with the CITES Resolution 10.7 and the specified risks, the EPBC Act limits the sale of seized specimens. Under Section 451, a specimen can only be sold if the buyer will use the specimen for scientific or educational purposes. The purchaser would need to demonstrate they would use it for scientific or educational purposes.

If a specimen were to be sold in Australia, it would still need to undergo the full quarantine period in an approved quarantine facility at the cost of the purchaser.

Advantages

- Provide a source of funding to recoup enforcement costs and assist with the care of seized specimens.

Disadvantages

- May be difficulties in ensuring that quarantine and disease concerns are addressed as ownership has been transferred from DEH.
- Does little to assist with conservation programmes as specimens entering commercial trade market in Australia would be unlikely to ever be involved in programmes to return species to the wild.
- Risk of creating perception that the government is benefiting from illegal trade.
- Could stimulate illegal trade and create a ‘laundering’ system, particularly for species not on the live import list or recorded as being present in Australia.
- Difficult to check purchasers to ensure they are not involved in wildlife crime.
- Difficult to ensure welfare of animals after sale.

5. Disposal of specimens to commercial enterprises or private individuals for breeding and/or sale in Australian markets

Specimens would be transferred to commercial enterprises or private individuals with no conditions of use. Resolution Conf 10.7 indicates that Appendix I specimens should not be considered for direct commercial trade. For conservation breeding purposes, CITES Appendix I specimens could only be transferred to a facility that has been registered with CITES as a breeding facility. Therefore, in the most part, this option would be limited to CITES Appendix II specimens.

However, as Section 451 specifies sale should only occur where the buyer will use the specimen for scientific or educational purposes, transferring specimens to individuals/organizations for commercial sale could be viewed as undermining the intent of Section 451.

The recipient of transferred specimens would still need to subject the specimens to the full quarantine period in an approved quarantine facility at their cost.

Advantages

- Gives an economic value to the specimens and as such increases interests and incentives for commercial enterprises or private individuals to agree to care and house specimens over the long term.

Disadvantages

- Potentially undermines the intent of the EPBC Act, specifically Section 451.
- May be difficulties in ensuring that quarantine and disease concerns are addressed as ownership has been transferred from DEH.
- Risk of escape into the environment greater as more people will have access to the specimens.
- Does little to assist with conservation programmes as specimens entering the commercial market in Australia would be unlikely to ever be involved in programmes to return the species to the wild.
- Little control of persons owning specimens or progeny. Extremely difficult to check purchasers to ensure they are not involved in wildlife crime.
- Welfare/quality of life of specimens and progeny will be difficult to monitor.
- Could stimulate illegal trade and create a ‘laundering’ system, particularly for species not on the live import list or recorded as being present in Australia.

- Impose a resource cost to establish and run an equitable system of transferring to enterprises and individuals (e.g. ballot system).

6. Allow private individuals or organizations to house specimens for life time care

The current reliance on ARAZPA institutions to house exotic animals could be expanded to private individuals. Exotic animals would be provided to individuals for life time care. Strict criteria and checks would be required to minimize the likelihood of people of poor character or lacking expertise from obtaining the specimens. This option would not allow sale of specimens. Consideration could be given to allowing breeding for conservation purposes (but not for commercial sale).

The recipient of transferred specimens would still need to subject the specimens to the full quarantine period in an approved quarantine facility at their cost.

Advantages

- Increases the pool of available long-term housing for CITES specimens and as such may assist in maximizing conservation. Breeding for conservation purposes may be considered if it is demonstrated to assist with the status of a species.

Disadvantages

- May be difficulties in ensuring that quarantine and disease concerns are addressed.
- For exotic animals not on the live import list or known to be in Australia, there is an increased risk of escape into the environment. Reptiles in particular are unlikely to be suitable for private holdings. State governments are refraining from issuing licenses to private individuals to hold reptiles. This creates issues of consistency across species.
- The holding of specimens by private individuals may increase market interest in the specimens and thereby stimulate illegal trade.
- There will be enforcement difficulties of ensuring birds and progeny are not sold or traded by private individuals over the life time of the specimen.
- The welfare of the animals may be difficult to ensure over the life time of the animal.
- The establishment of an appropriate network of private individuals suitable to hold exotic specimens over the long term will be resource intensive.

7. Purpose built, government owned, facility

This option would see the development of a purpose built facility by the Australian Government. The facility would be the equivalent of a zoo but be specifically for the housing of a range of specimens seized under the EPBC Act. The facility could be open to the public for education purposes. For specimens to be housed for the full quarantine period, an approved facility would need to be built or other suitable facilities found.

Advantages

- Public exhibition of the specimens could assist with conservation education.
- Immediate accommodation needs can be met.
- Discourages illegal trade as the specimens are isolated from trade.
- Welfare of specimens can be assured.
- Some costs could be defrayed by charging fees for public entry.

Disadvantages

- High infrastructure costs.
- Not necessarily any conservation benefit for the high costs involved.
- Significant costs of on-going care for the life time of specimens.
- Unpredictable nature of seizures means facilities may be under-utilized or not sufficient to meet demand.
- Due to the wide range of specimens requiring housing and care, having the necessary experts available would be unlikely or extremely costly.
- The ability to transport specimens may limit the usefulness of one facility (i.e. distance to travel from Perth to Sydney).