

# INFORMATION SHEET



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## Artwork made using Animal and Plant Material – Queensland Law

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For many artists, plant and animal material form a central part of the artworks that they create. This can raise unique legal issues, as certain plants and animals are subject to strict laws in Australia. This is a particularly important issue for Aboriginal and Torres Strait Islander artists who often use native seeds, feathers, skins, bones, grasses and woods in their artworks. It can also affect non-Indigenous artists wanting to create artworks using plant and animal matter.

For an example of how an artist's creative practice can be affected see Arts Law's interview with [Gerard Geer](#).

At the Commonwealth level, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) regulates the use of native species. For further information see Arts Law's Information sheet – – [Artwork containing native and threatened species – Commonwealth](#). However, each State and Territory also has its own legislation and even if a species can be used in an artwork without breaching the Commonwealth legislation, there may nevertheless be prohibitions under the relevant state laws. This information sheet focusses on the impact of laws in Queensland.

### What the laws in Queensland mean for artists

The protection of native plants and animals in Queensland is governed by the *Nature Conservation Act 1992* (QLD) (**Nature Act**), and the *Fisheries Act 1994*(QLD) (**Fisheries Act**). While there are several pieces of subordinate legislation made under these acts, the most relevant regulations are the *Nature Conservation (Wildlife Management) Regulation 2006* (QLD) (**Management Regulations**) and the *Nature Conservation (Wildlife) Regulations 2006* (QLD) (**Wildlife Regulations**).

These laws impact artists in two main ways as they:

1. Restrict the taking or use of threatened or protected plants and animals from places in Queensland unless:
  - a. a licence has been given; or
  - b. they are used in non-commercial, domestic activities performed by Aboriginal people; or
  - c. they are used in traditional non-commercial activities conducted by native title holders on their traditional lands; and

2. Require a licence to be obtained before exporting or importing artwork incorporating threatened or protected species into or out of Queensland.

As a consequence the law in Queensland will impact the types of plant and animal materials artists can use in their artwork. The regime may also create issues for artists wishing to exhibit their work in galleries within Queensland, or who wish to sell their artwork to buyers within Australia.

**Example 1 –Jennifer Trask, making artwork from Animal Bones**

Jennifer Trask is contemporary artist based in New York who carves intricate sculptures from animal bones.

[http://www.jennifertrask.com/Jennifertrask.com/Jt\\_Home.html](http://www.jennifertrask.com/Jennifertrask.com/Jt_Home.html)

If Jennifer was making these sculptures in Queensland she would need to consider what type of animal bones she was using. If she used the bones of an animal protected under the Nature Act, for example a common wombat, she would need to obtain a licence to collect, hold and use the bones. However using the bones of a dingo, which is unprotected, would not require any form of licence.

## Where did you find the plant or animal material?

### Was it in a Commonwealth area?

It is important to know where you found the animal or plant species you want to use in your artwork. Commonwealth law requires a permit to kill, collect or export, certain species of plants and animals (or their parts e.g. feathers, fur, bones and teeth). However, the regime operates only within “Commonwealth areas” where Queensland laws do not apply. For further information regarding the Commonwealth scheme please look at Arts Law’s [Commonwealth Information Sheet](#).

In Queensland, these are some Commonwealth areas:

- all publically owned airports including Townsville, Richmond and Winton;
- Commonwealth Marine Reserves in particular the Coral Sea Marine Reserve which covers 989,842km (visit Commonwealth Department of Environment Website for exact locations: <http://www.environment.gov.au/topics/marine/marine-reserves/coral-sea>);
- Queensland coastal waters extending 3 nautical miles out to sea (5.5km) as well as coastal estuaries and riverbeds; and
- Shoalwater Bay Military Training Area, Byfield.

Within these areas Commonwealth law protects:

- Certain species of possum, including the native Mountain Pygmy-possum and Leadbeater's Possum;
- Various species of plants, including Red Silky Oak (also known as the Queensland Waratah), Gympie Nut, Rough-shelled Macadamia tree; and
- Certain species of native Queensland grass such as *Dichanthium queenslandicum* (also known as King Blue-Grass), and *Eriocaulon carsonii* (Button Grass).<sup>1</sup>

If the plant or animal material is not taken or kept in a 'Commonwealth area' but is taken from elsewhere in Queensland, the state legislation will apply.

## 1. Was it in a 'Protected area'?

Queensland law prohibits the taking of natural and cultural resources from 'protected areas'.<sup>2</sup> The natural resources of a protected area include "the natural and physical features of the area, including wildlife, soil, water, minerals and air". Wildlife means "any taxon or species of an animal, plant, protista, procaryote or virus". This includes dead species as well as parts of plant and animal matter such as leaves, feathers and bones and applies regardless whether the species is protected or not.

The following areas in Queensland are protected areas:

- Daintree National Park;
- Noosa National Park;
- Whitsunday Islands National Park;
- Cooloola Recreation Area; and
- Inskip Peninsula Recreation Area.

## 2. Was the species harvested before the commencement of the Acts?

If the plant or animal species was harvested before the relevant Act commenced operation, there is some evidence to suggest that Queensland's Department of Environment and Heritage Protection (**DEHP**) may exercise its discretion not to prosecute. For example, it may elect not to pursue a person who is trying to sell on Gumtree the skull of a whale found on a Queensland beach in the 1970s. However, anecdotal evidence from other states suggests that the time and expense involved in defending charges and proving such matters to the Department's satisfaction mean that it is always wise to seek advice from the DEHP in advance if possible.

## Is it a protected or regulated wildlife species?

For plant or animal material collected outside Commonwealth areas and Queensland protected areas, the next issue to consider is whether the species is 'protected' or 'regulated' under Queensland law.

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<sup>1</sup> See <http://www.environment.gov.au/cgi-bin/sprat/public/publicthreatenedlist.pl?wanted=flora>.

<sup>2</sup> *Nature Conservation Act 1992* (QLD) s 62.

## 1. Protected Wildlife under the Nature Act

Generally, the Wildlife Regulations (subordinate legislation made under the Nature Act) will identify whether a specific plant or animal is protected in Queensland. However, if it's a marine animal, the position is more complex as the Fisheries Act also needs to be considered.

- a) 'Protected animals' - "protected animals" are animals prescribed by the Wildlife Regulations as being 'endangered', 'vulnerable', 'near threatened' or 'least concerned'.<sup>3</sup> Examples of protected animals include the blue-faced parrot-finch, common wombat and chestnut dunnart.<sup>4</sup> The term "animal" is given an expansive definition, so this protection will extend to feathers, hair, fur, skin, scales, shell, bones, horns, antlers, teeth or tusks,<sup>5</sup> and will include alive or dead animals or their eggs. Check the schedules of the Wildlife Regulations (see here: [http://www.austlii.edu.au/au/legis/qld/consol\\_reg/ncr2006400/](http://www.austlii.edu.au/au/legis/qld/consol_reg/ncr2006400/)). You can also check the conservation status of any animal in Queensland via this link: <http://www.ehp.qld.gov.au/wildlife/animals-az/>. Animals that are not listed, are not "protected", for example foxes, rabbits and cane toads.

Under the Nature Act, "animal" is defined to include coral, reptiles and fish. Accordingly, marine species such as sharks, whales, porpoises, dugongs, turtles, and dolphins are listed in the Schedules to the Wildlife Regulations. However, unlike plants and animals, marine species are regulated by several pieces of legislation and just because a marine species does not appear in the Wildlife Regulations does not mean it can be freely used.

- b) 'Protected plants'- Protected plants are those prescribed by the Wildlife Regulations as being 'threatened', 'near threatened' or 'least concern'.<sup>6</sup> For example, the following species are protected under Queensland law; shrubby she-oak, guinea flower, and climbing wattle.<sup>7</sup> This protection extends to parts of the flowers, seeds, or pollen of the plant (whether alive or dead, standing or fallen)<sup>8</sup>.

However, the definition of protected wildlife (plant or animal) excludes:

- processed plant or animal products 'made or derived from' the protected species<sup>9</sup> ;
- animal and plant products listed in Schedule 1 of the Management Regulations, such as crocodile skin, dead butterflies, and the eggs and feathers of emus; and

<sup>3</sup> Ibid (definition of "protected animal").

<sup>4</sup> Nature Conservation (Wildlife) Regulations 2006 (QLD) Schedule 5 ("near threatened wildlife").

<sup>5</sup> *Nature Conservation Act 1992* (QLD) Schedule- definition of "animal" includes 'the carcass or another part of an animal', and "carcass of an animal" is defined as flesh, organs, feather, hair, fur, skin, scales, shell, horns etc.

<sup>6</sup> NOTE: 'Endangered', 'vulnerable' and 'near threatened' plants are listed in Nature Conservation (Wildlife) Regulation 2006 (QLD) Schedules 2—6, meanwhile 'special least concern plants' are listed in Nature Conservation (Wildlife Management) Regulation 2006 (QLD) Schedule 3A.

<sup>7</sup> Nature Conservation (Wildlife) Regulations 2006 (QLD) Schedule 5 ("near threatened wildlife").

<sup>8</sup> Ibid.

<sup>9</sup> *Nature Conservation Act 1992* (QLD) Schedule-Dictionary.

- native plants that are not found ‘in the wild’<sup>10</sup> such as a protected plant that has been planted and maintained on private land, and an artist would be able to collect and use plant material of this kind without a licence<sup>11</sup> (although it may still be necessary to comply with Protected Plants Code of Practice’ see below). For further information on when a plant would be taken to be “in the wild” please see the following Operational Policy: <https://www.ehp.qld.gov.au/licences-permits/plants-animals/documents/op-protected-plant-wild.pdf>.

## 2. Regulated Fish and Protected Marine Species

Commonwealth law applies to waters extending beyond 3 nautical miles (5.5km) out to sea. The law in Queensland will govern to the low water mark and from the low water mark up to 5.5km out to sea.<sup>12</sup> Significantly, Queensland law will govern the tidal lands and waters in the Great Barrier Reef Coast Marine Park.<sup>13</sup>

If you are using marine animals or plants, such as sharks or dolphins, both the Fisheries Act<sup>14</sup> and the Nature Act may apply. Under these two regimes marine species are protected as either:

- a) **Regulated fish:** the Fisheries Act protects “regulated fish” which are species listed under the *Fisheries Regulations 2008* (QLD). Species listed will either be regulated by size and number taken, or will be prescribed as a “no-take” species. For example, blue spotted coral trout must be bigger than 50 cm to be taken, meanwhile Mary River cod, Bloomfield River cod, clam shells and female blue swimmer crabs can never be taken. The full list of ‘no-take species’ can be found on the Department of Agriculture and Fisheries website (see: <https://www.daf.qld.gov.au/fisheries/species-identification/protected-species>); and fish regulated by size can be found here: <https://www.daf.qld.gov.au/fisheries/recreational/rules-regulations/size-possession-limits-tidal>.
- b) **Protected marine species:** these are marine species listed under the Nature Act (mentioned above), and include whales, porpoises, dugongs, turtles, dolphins, and grey nurse sharks.

## What are the prohibitions?

If you are using a species which is protected or regulated under Queensland law, there are a number of strict offences that may apply.

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<sup>10</sup> *Nature Conservation Act 1992* (QLD) s 89 (offence of “taking” a protected plant only applies to plants “in the wild”) and schedule-Dictionary (definition of “in the wild”), see also operational policy <https://www.ehp.qld.gov.au/licences-permits/plants-animals/documents/op-protected-plant-wild.pdf>.

<sup>11</sup> Ibid.

<sup>12</sup> <https://www.environment.gov.au/system/files/resources/2e286b1a-c6e2-4e3d-95cf-c98a8dea60fd/files/profile-appendixb.rtf>

<sup>13</sup> [https://www.npsr.qld.gov.au/marine-parks/gbr\\_coast\\_marine\\_park.html](https://www.npsr.qld.gov.au/marine-parks/gbr_coast_marine_park.html).

<sup>14</sup> S 78 ‘regulated fish’.

## 1. Protected Animals (including protected marine species)

Under the Nature Act it is an offence to take, keep or use<sup>15</sup> a protected animal from anywhere in Queensland. This includes keeping or using any parts of these protected species to make an artwork. The penalty will depend whether it is a class 1, class 2, class 3 or class 4 offence. The “class” of offence will depend on the number of species taken as well as their conservation status.<sup>16</sup> For example, the unauthorised taking of 1 or more echidna, koala or platypus will be a class 1 offence. The fine for such an offence would be 3000 penalty units or 2 years imprisonment. As at 1 July 2016, one penalty unit is \$121.90 so the maximum fine would be in excess of \$365,000!

## 2. Protected Plants

It is an offence to take<sup>17</sup> or use<sup>18</sup> protected plants ‘in the wild’ unless it is in accordance with an applicable conservation plan, or a licence has been issued, or some other exemption or defence applies. If the plant has been unlawfully taken, then it is an offence to keep or use it.<sup>19</sup> As above, the penalty for any of these violations will depend on the “class” of the offence. For example, a class 1 offence, involving 1 or more plants classified under the regulations as ‘extinct’ may result in a fine of 3000 penalty units or 2 years imprisonment (over \$365,000 as at 1 July 2016).<sup>20</sup>

### ***Example 2—Collecting and incorporating plants into an artwork***

An artist has been collecting parts of plants found in Daintree National Park and around her suburb. She is particularly interested in using Bunya Mountains bluegrass, a vulnerable plant and Thompson’s wire grass, an endangered plant, to weave sculptural artworks.

The Daintree is a ‘protected’ area in Queensland and all taking of native plant species is prohibited. Thompson’s wire grass is an endangered plant under Queensland law and cannot be collected, even if outside the park and found dead on the side of a footpath, without first obtaining a licence to do so. A licence to take and use an endangered species is only granted in very narrow circumstances and it will be very difficult to obtain a licence for artwork. This means that a plant like Thompson’s wire grass should probably be avoided and a substitute found.

<sup>15</sup> Nature Conservation Act 1992 (QLD) s 88. For protected areas see s 62.

<sup>16</sup> Ibid s 88(6).

<sup>17</sup> Ibid s 89.

<sup>18</sup> Ibid s 90.

<sup>19</sup> Ibid s 90A.

<sup>20</sup> Ibid s 89(1).

The artist may be able to collect and use Bunya Mountains bluegrass (which is a vulnerable plant) if it is found outside the Daintree National Park and:

- collected from the artist's own land, or from private land (with the owner's consent); and
- harvested or collected in accordance with the 'Protected Plants Code of Practice' (considering size or plant, amount taken and damage to plant).

If obtained legally, the artist could then weave with the Thompson's wire grass and go on to sell the artwork without needing to buy a licence.

### 3. Regulated Fish under the Fisheries Act

Meanwhile under the Fisheries Act, it is prohibited to take, possess, use or sell regulated fish.<sup>21</sup> This would include if any parts of these regulated fish (such as teeth or bones) were incorporated into an artwork.

#### ***Example 3 –Using roadkill and found animal materials***

An artist wants to make sculptures using some grey nurse shark teeth found at a local beach and some the quills and skull of an echidna, and the bones of a rabbit found by the side of the road.

The grey nurse shark is an endangered species and it is an offence to take and use the teeth without a licence. It is unlikely that an artist would obtain a licence to use parts of an endangered species. Meanwhile, the echidna parts are from a 'least concern' species and the artist will need to obtain a 'written authority' *before* collecting the specimen – even if found dead by the road. We recommend that the licence number be included on or with the finished artwork, particularly if the work is going to be sold.

However, because rabbits are not a protected species, the use of the bones of the rabbit would not require a licence and an artist would be able to take and use any part of a rabbit carcass found outside a national park or protected area to make an artwork.

<sup>21</sup> *Fisheries Act 1994* (QLD) s 78(1).

## Is there an exemption or defence that applies?

If you are using, or have incorporated into an artwork, any part of a plant or animal species which is protected or threatened under Queensland law, liability may be avoided if you fall within one of the exemptions, or if a defence can be established.

### 1. Exemptions for Aboriginal and Torres Strait Islanders

There are two key exemptions available for Aboriginal and Torres Strait Islanders.

Firstly, the Nature Act and Fisheries Act are both subject to the *Native Title Act 1993* which provides that holders of native title rights cannot be restricted by State law from engaging in certain activities on land over which native title has been granted.<sup>22</sup> To fall within this exemption, the native title holder must be exercising a native title right or interest (i.e. the use must have a traditional basis), and the resource must be taken for the purpose of satisfying the native title holder's personal, domestic or non-commercial communal needs. It is unclear if this could be relied upon to cover artwork made for commercial sale.

For example, native title interests in Queensland include:

- The Muluridji People hold native title over approximately 12, 285 hectares of land and waters in the far north Queensland area;
- The Gangalidda and Garawa Peoples hold native title over 5,810 sq km of land located North-West of Burketown near the Gulf of Carpentaria (650km west of Cairns); and
- The Pitta Pitta People hold native title over 33,708 sq km in the Shire Councils of Boulia, Cloncurry, Diamantina and Winton.

Secondly, there are a number of exemptions under Queensland legislation allowing Aboriginal or Torres Strait Islander people to:

- a) take, use or keep protected wildlife (plant or animal) in accordance with tradition or custom<sup>23</sup> however, this exemption does not apply to protected wildlife in a 'protected area'<sup>24</sup> nor, if a conservation plan expressly excludes the taking, using or keeping of protected wildlife under Aboriginal tradition.<sup>25</sup> This exemption does not clearly cover an Aboriginal artist wanting to incorporate a protected species into an artwork for commercial purposes;
- b) take, use or keep fish or marine plants if they are taken for non-commercial communal needs using either a fishing apparatus which is prescribed under the Fisheries Regulations as either a recreational fishing apparatus or an Aboriginal or Island traditional fishing apparatus;<sup>26</sup>

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<sup>22</sup> *Native Title Act 1993* (Cth) s 211.

<sup>23</sup> *Nature Conservation Act 1992* (QLD) s 93(1).

<sup>24</sup> *Ibid* s 93(4).

<sup>25</sup> *Ibid* s 93(2).

<sup>26</sup> *Fisheries Act 1994* (QLD) s 14.

- c) move, keep and use an animal taken from a 'protected area' if it is taken in accordance with an Aboriginal tradition authority, for non-commercial communal needs;<sup>27</sup> and
- d) take, keep and use a protected marine turtle or dugong if they take the animal under Aboriginal custom in accordance with a permit.<sup>28</sup>

## 2. General exemptions for Plants

The *Nature Conservation (Wildlife Management) Regulation 2006 (QLD) (Management Regulation)* provides an exemption for the taking and use of protected plants without a licence as long as the amount taken is in accordance with the quantities allowed by the 'Protected Plants Code of Practice' (*the Code*).<sup>29</sup>

This exemption does not apply to plants in protected areas or to endangered plants.

This allows a person to take and use parts from a protected plant (other than endangered plant) from outside a protected area if:

- a) it is on land owned by the person collecting the species, or on private land (with consent from the landowner);<sup>30</sup> and
- b) the person takes quantities of the plant within the amounts allowed by the Code;<sup>31</sup> and
- c) the taking does not require disturbance of the soil the plant is taken from;<sup>32</sup> or
- d) the taking does not result in the death of the plant from which the part is taken.<sup>33</sup>

The quantities are very specific and vary depending on the size of the plant, so close attention should always be paid to the Code. For example, a person must not remove more than 20% of the flowers, fronds or foliage from any one plant in any 12-month period.<sup>34</sup>

A full copy of the Code can be accessed via this link: <https://www.ehp.qld.gov.au/licences-permits/plants-animals/documents/code-of-practice-protected-plants.pdf>.

### Is a licence or authorisation available?

Another way to avoid liability for an offence is to obtain a licence or authorisation. While there are some licences available, unfortunately obtaining a licence as an artist is not easy.

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<sup>27</sup> Nature Conservation (Wildlife Management) Regulation 2006 s 42.

<sup>28</sup> Ibid s 43.

<sup>29</sup> Nature Conservation (Wildlife Management) Regulation 2006 (QLD) s 261T.

<sup>30</sup> Nature Conservation (Wildlife Management) Regulation 2006 (QLD) s 261T(1).

<sup>31</sup> Ibid.

<sup>32</sup> Ibid s 243.

<sup>33</sup> Ibid s 243.

<sup>34</sup> 2.2.1.2

## 1. Licences for protected plants and animals

If the plant or animal used is a protected species listed under the Nature Act, there are several types of authorisations available. The type of licence or permit that an artist will need depends on the type of species, where the species was found, and what the species is being used for.<sup>35</sup>

### a) Holding, collecting or selling protected animal materials

There are a number of licences available for the use and collection of protected animals including protected marine species<sup>36</sup>, for example:

- a) A commercial wildlife licence;
- b) A collection authority;
- c) A museum licence; and
- d) A permit to use protected animals for scientific or educational purposes.

However, very few of these would be applicable to an artist wanting to incorporate animal parts into an artwork. DEHP has indicated to Arts Law that generally no authorisation will be given to an artist to collect roadkill specimens.

There are two licences that might be relevant to artists enabling them to use, collect, hold or sell a limited scope of animal materials.

Firstly, if an artist was creating their own taxidermy specimens a 'Collection authority (dead protected wildlife)' would be required. This would allow the artist to obtain specimens and create taxidermy works for sale. Notably, this would not allow an artist to collect roadkill. Instead, the animals would need to be obtained from a licenced recreational/commercial seller, for example an emu farm. However, once an animal had been treated, declared to be a processed product and appropriately labelled, no licence would be required to hold or sell the artwork containing that specimen.

A further option would be a 'written authority' to collect naturally shed animal materials (for example snake skins or bird feathers).<sup>37</sup> Unlike the formal licencing scheme, these authorities are provided on an ad-hoc basis, via a direct, written application to the Department of Environment and Heritage Protection. This can be done via letter or email and will require the applicant to specify the type of species and proposed use. From discussions with the DEHP, Arts Law understands that such authorities will *only* be issued for the use of feathers and snakeskins. There is currently no fee for these authorities (as at 20 July 2016) and the duration will be assessed on a case-by-case basis.

Once an authorisation is obtained, a copy should be displayed on the final artwork. It is not clear whether it is sufficient, as in some other States, simply to write the authorisation number on the back of the artwork. This enables the artwork to be exhibited or purchased by third parties within Queensland

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<sup>35</sup> See: <https://www.qld.gov.au/environment/plants-animals/wildlife-permits/requirements/>.

<sup>36</sup> See full list here: <https://www.qld.gov.au/environment/plants-animals/wildlife-permits/requirements/>.

<sup>37</sup> *Nature Conservation Act 1992* (QLD) s 173P gives the Chief Executive a general power to do anything that they reasonably considers is necessary to administer, or achieve the object of the Act. This provision is often used to authorise interactions not provided for by other licence and permit types.

without requiring the exhibiting gallery or purchaser to obtain an additional authorisation. However, once the licence expires, it must be renewed so that the purchaser would be required to get their own licence in order to continue to hold the artwork legally in Queensland. All specimens must be named in the application and licences can be later amended to include additional species if required.

**Example 4 – Queensland artist Paige Garland, feathers from roadkill**

There is no doubt that feathers can make stunning artworks. This is certainly true of the artworks made by Queensland artist, Paige Garland.

Paige collects feathers from native birds, killed on southeast Queensland roads. Because these feathers are protected under the Nature Act, she has had to obtain a written authority. Generally speaking, these authorities will not allow Paige to collect the carcasses, but do allow her to take feathers from dead birds that she finds.

See more here: <http://www.couriermail.com.au/questnews/southeast/paige-garland-creates-beautiful-pieces-using-feathers-from-dead-birds/news-story/f629f534fdb190f18d764dd76833bc5>.

## b) Importing or exporting animal materials across state borders

There are three 'levels' of approval under the Nature Act for the movement of protected animals into or out of Queensland namely:

- Wildlife movement permits;
- Movement advices; and
- Chief executive's written approvals.

The type of approval required will depend on the type of species and where the specimen has originated from. Any plan to move wildlife into or out of Queensland should be discussed with the Permit and Licence Management branch of the DEHP (on 1300 130 372 or email palm@ehp.qld.gov.au ). However, DEHP has also put together a free 'electronic movement advice' service which can be used to ascertain which approval is required. This can be accessed here: [https://www.ehp.qld.gov.au/licences-permits/plants-animals/moving-wildlife/moving\\_native\\_and\\_exotic\\_wildlife.html](https://www.ehp.qld.gov.au/licences-permits/plants-animals/moving-wildlife/moving_native_and_exotic_wildlife.html).

**Example 5 – The exhibition**

An artist has successfully obtained a 'written authority' to incorporate feathers from the endangered Glossy Black-Cockatoo into sculptural works that are included in an exhibition in Brisbane. At the show, one work is bought by a collector who lives in

Tasmania and another by a collector who lives in London.

It is likely that an export licence under the Nature Act will be required to ship the artwork to the collector in Tasmania. Additionally, the law in Tasmania will need to be considered and an import licence under Tasmanian law may also be required.

Because the Glossy Black-Cockatoo is also protected under the EPBC Act, a licence to export the work overseas will also be required. See the Commonwealth fact sheet [here](#).

### c) Licences to grow and harvest protected plants

There are two type of licences available to harvest protected plants in the wild. These are the:

- Protected plant harvesting licence; and
- Protected plant growing licence.<sup>38</sup>

The most applicable licence for an artist wishing to collect and use parts of protected plants found in the wild, would be the 'Protected plant harvesting licence'. The applicant would need to prove that the proposed harvest was sustainable, and must meet the requirements of the protected plants assessment guidelines (see here: <https://www.ehp.qld.gov.au/licences-permits/plants-animals/documents/protected-plants-assessment-guidelines.pdf>).

Under the Nature Act there is no prohibition against importing or exporting plants to or from Queensland and no permit required. However, an artist wanting to move an artwork containing plant material into or out of Queensland will still need to consider if the material used poses a biosecurity risk in which case other legislation may impose restrictions.

The requirements for importing plant material will depend upon where the material has come from. For example, the movement of flower seedlings from Tasmania into Queensland is not restricted but plant material from Victoria may require a Plant Health Certificate. Given the complexity and ad hoc nature of the requirements for the import of protected plants, the best option is to contact the Department of Agriculture and Fisheries (**DAF**) directly, prior to the transportation of any artwork incorporating plant species (contact number: 13 25 23).<sup>39</sup>

The export of an artwork from Queensland to another state in Australia will require consideration of the laws in the receiving state. Further information on the import and export of materials between states in

<sup>38</sup> See here: <https://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/>.

<sup>39</sup> See also <https://www.business.qld.gov.au/industry/agriculture/land-management/restrictions-moving>.

Australia can be accessed via this website: <http://quarantinedomestic.gov.au/destination-queensland.html>.

## 2. Licences for regulated marine species under the Fisheries Act

The Fisheries Act does allow for licences to perform actions that might otherwise harm a threatened marine species or its habitat. There are a number of licences available, depending on what type of regulated species is involved and where it was found.

The most applicable permit for artists wanting to use material from protected marine species would seem to be the 'general fisheries permit'. Each application is considered on a case-by-case basis and the scope of the permit will be determined by the number of the species, types of species and consistency with the objects of the Fisheries Act. These permits currently cost \$305.85 per year (as at 22 July 2016) and application forms can be accessed here: <https://www.business.qld.gov.au/industry/fisheries/commercial-fishing/licences-and-fees/commercial-fishing/licences/fishing-permits>.

For more information see:

- Arts Law's information sheets on [Artwork Made Using Plant and Animal Material – Australia, New South Wales, Victoria, South Australia](#)
- Arts Law's articles "Elcho Island – Part 1" and "Elcho Island Arts Centre – Part 2: Export Exemption to Benefit Indigenous Artists" <http://www.artslaw.com.au/art-law/entry/elcho-island-arts-centre-part-2-export-exemption-to-benefit-indigenous-arti/>
- Arts Law's Interview with [Gerard Geer](#)
- The Australian Government's Department of Environment website <http://www.environment.gov.au/epbc/about/epbc-act-lists>
- The Queensland [Department of Environment and Heritage Protection website](#)
- The Queensland Department of Agriculture and Fisheries website <https://www.daf.qld.gov.au/fisheries/species-identification/protected-species>
- Queensland Protected Plants Code of Practice <https://www.ehp.qld.gov.au/licences-permits/plants-animals/documents/code-of-practice-protected-plants.pdf>

If you have questions about any of the topics discussed above please [contact Arts Law](#).

## Need more help?

Contact Arts Law if you have questions about any of the topics discussed above. Telephone: (02) 9356 2566 or toll-free outside Sydney 1800 221 457. Also visit the [Arts Law website \(www.artslaw.com.au\)](http://www.artslaw.com.au) for more articles and information sheets.

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