

INFORMATION SHEET



Artwork made using animal and plant material: Victorian law

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.

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 Victoria.

What the laws in Victoria mean for artists

The protection of native plants and animals in Victoria is governed by three laws: the *Wildlife Act 1975* (Vic) (**Wildlife Act**), the *Flora and Fauna Guarantee Act 1988* (Vic) (**FFG Act**), and the *Fisheries Act 1995* (Vic) (**FA**). These acts impact artists in two main ways as they:

1. Restrict the taking or use of threatened or protected plants and animals from places in Victoria unless:
 - a. a licence has been given; or
 - b. they are used by Aboriginal people in accordance with a Natural Resource Agreement; 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 Victoria.

As a consequence the law in Victoria will impact on 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 Victoria, 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

If Jennifer was making these sculptures in Victoria she would need to consider what type of animal bones she was using. If she used the bones of an animal protected under the Wildlife Act, for example a Leadbeater possum, she would need to obtain a 'Wildlife Specimen' licence to collect, hold and use the bones. However using the bones of a fox, which is unprotected, would not require any form of licence.

Where did you find the plant or animal material?

1. Was it in a Commonwealth area?

It is important to know where you found the species. 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 Victorian laws do not apply. For further information regarding the Commonwealth scheme please look at the [Commonwealth Information Sheet](#).

In Victoria, these are some Commonwealth areas:

- Carlton Gardens;
- Melbourne, Essendon and Moorabbin airports;
- Various marine reserves located in the Bass Strait, including the Apollo, Boags, Beagle, Flinders and East Gippsland Commonwealth marine reserves (visit the Commonwealth Department of Environment for exact location: <http://www.environment.gov.au/topics/marine/marine-reserves/south-east>);
- Victoria's coastal waters extending from 5.5km from the shoreline;
- Puckapunyal Military Area, located north of Melbourne and south-east of Bendigo;
- Longlea, which adjoins Bendigo Regional Park; and
- Some 525 ha of Commonwealth property at Mangalore.

Within these areas, Commonwealth law protects:

- Certain species of possum, including the native Mountain Pygmy-possum and Leadbeater’s Possum;
- Various kinds of native Victorian wood, including Siah’s Backbone, Isaac Wood, Warby Range Swamp Gum and Strzelecki Gum; and
- Certain species of native Victorian grass, such a *Austrostipa wakoolica*, *Austrostipa metatoris*, Adamson’s Blown-grass, Hoary Sunray (also called Grassland Pepper-Daisy), River Swamp Wallaby-Grass (also called Floating Swamp Wallaby-grass), Narrow-leaf Bent-grass, Salt-lake Tussock-grass, and Feldmark grass.

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

2. Was it in a ‘protected area’?

Victorian law prohibits all taking of all species of plants and animals (whether native or non-native and whether or not listed as threatened or protected) from areas which are ‘protected’. Protected areas include ‘state wildlife reserves’,¹ and ‘nature reserves’.² This includes dead species as well as parts of plant and animal matter such as leaves, feathers and bones. Further, it is also an offence to take sand or soil from a Wildlife Reserve.³ The following areas in Victoria are protected areas:

- Alpine National Park;
- Agnes Falls Scenic Reserve;
- Tarra Bulga National Park;
- Tarago Reservoir Park; and
- Mount Worth State Park.

3. Was the species harvested before the commencement of the Acts?

The Victorian Department of Environment and Primary Industries (**DEPI**) has indicated that if the plant or animal species was collected or harvested before the relevant Act commenced operation, it may exercise a discretion not to prosecute. For example, it may elect not to pursue a person advertising to sell on Gumtree the skull of a whale if the skull was collected from a beach in Victoria in the 1960s before the FA commenced. However, examples in other states suggest that the time and expense involved in proving such matters and defending charges mean that it is always wise to seek advice from the DEPI in advance if possible.

¹ *Wildlife Act 1975* (Vic) s 20.

² *Ibid* s 21.

³ <http://agriculture.vic.gov.au/agriculture/farm-management/legal-information-for-victorian-landholders/biodiversity-management>.

Is it a protected or threatened species?

For plant or animal material collected outside Commonwealth areas and Victorian protected areas, the next issue to consider is whether the particular animal or plant species is protected or threatened under Victorian law. Each of the *Wildlife Act 1975* (Vic) (**Wildlife Act**), the *Fisheries Act 1995* (Vic) (**FA**) and the *Flora and Fauna Guarantee Act 1988* (Vic) (**FFG Act**) lists the species which are threatened or protected. If it is animal material that you are using, then the Wildlife Act is the place to look. Meanwhile, plants and fish are dealt with by the FFG Act, and some specific aquatic species are covered by the FA.

1. Protected and Threatened animal species (including marine mammals)

Under the Wildlife act, there are two categories of fauna that are ‘protected’ throughout Victoria.

- a) ‘protected wildlife’ – ‘Protected wildlife’ includes *all* wildlife whether alive or dead, and any parts of such animals including eggs.⁴ This includes bones and skulls even if found on public land. However, pest animals are excluded (for example foxes, rabbits, feral pigs and feral goats), as are animals specified by order of the Governor in Council to be ‘unprotected’.⁵
- b) ‘threatened wildlife’ - those species of animals listed on the ‘threatened vertebrate and invertebrate fauna’ lists and this includes both alive and dead specimens. Further, this list includes specific marine mammals. For example, whales, seals and dolphins. The list of threatened species can be found on the Department of Environment and Primary Industries website via this link: <http://www.depi.vic.gov.au/environment-and-wildlife/threatened-species-and-communities/flora-and-fauna-guarantee-act-1988/ffg-listed-taxa-communities-and-potentially-threatening-processes>. While this list is made under section 10(1) of the FFG Act, the offences relating to threatened wildlife and marine mammals are contained in the Wildlife Act.

The main difference between ‘protected’ and ‘threatened’ animals is that the offences, while similar, will carry a much higher penalty when it is a ‘threatened’ animal that has been used.

2. Protected plant species

Meanwhile, under the FFG, “protected plants” include all flora (including seeds) indigenous to Australia that are included on the Protected Flora List.⁶ This list includes plants from three sources:

1. Plants listed as threatened under the FFG Act;
2. Plants that belong to communities of plants listed under the FFG Act; and

⁴ *Wildlife Act 1975* (Vic) s 3 definitions.

⁵ *Ibid.*

⁶ *Flora and Fauna Guarantee Act 1988* (Vic) s 3.

- Plants that are not threatened but are protected for other reasons (for example, highly popular species such as orchids are protected so that the removal of seeds from the wild can be controlled).

Unlike animal materials, there is no distinction between protected plants and threatened plants. The current protected flora list can be accessed here:

http://www.depi.vic.gov.au/_data/assets/pdf_file/0014/315401/201510-FFG-protected-flora-list.pdf.

Some key species that are protected under the Act are:

- Various species of native Victorian wood, including Yellow-wood, Willow needlewood, Northern sandalwood, Buff Hazelwood, several species of eucalypts (including Black gum, Lima Stringybark, Warby Range Swamp Gum, Buxton Gum, Kamarooka Mallee, Bellarine Yellow-gum, Little Desert Peppermint and Strezelecki Gum); and
- Several species of native Victorian grass, including Plump Swamp Wallaby-grass, Jericho Wire-grass, Rough-seed Wire-grass, Purple Wire-grass, Allied Bent-grass, Narrow-lead Bent-grass, Adamson’s Blown-grass, Purple Blown-grass, Wild-blown Tussock grass, Salt-lake Tussock-grass, Rock Tussock-grass, Slender Mud-grass, and Grey Grass-tree.

3. Protected fish species

Commonwealth law applies to waters extending beyond 3 nautical miles (5.5km) out to sea. The law in Victoria will govern from waters the low water mark up to 5.5.km out to sea.⁷

Fish species are protected if they are a ‘listed fish’ under the FFG Act.⁸ This includes Grey Nurse Sharks, Great White Sharks and Freshwater Catfish. The protection extends to all parts of the fish including teeth, alive or dead, and preserved in any manner.⁹ The full list can be accessed here: <http://www.depi.vic.gov.au/environment-and-wildlife/threatened-species-and-communities/flora-and-fauna-guarantee-act-1988/ffg-listed-taxa-communities-and-potentially-threatening-processes>.

4. Protected Aquatic and Priority Species under the Fisheries Act

Finally, there is a specific category of ‘Protected Aquatic Biota’ that are declared and regulated by the *Fisheries Act 1995* (Vic)(FA).¹⁰ This includes species of seahorses, sea dragons and pipefish. Disconcertingly, any fish or aquatic invertebrate listed under the FFG Act, is deemed to be ‘protected aquatic biota’ for the purposes of the FA.¹¹The position is unclear, but this potentially means that artists who use a fish species protected under the FFG Act may be liable under both Acts.

⁷ <https://www.environment.gov.au/system/files/resources/2e286b1a-c6e2-4e3d-95cf-c98a8dea60fd/files/profile-appendixb.rtf>

⁸ *Flora and Fauna Guarantee Act 1988* s 52.

⁹ *Fisheries Act 1995* (Vic) s 5 definition of “fish”.

¹⁰ *Ibid* s 69.

¹¹ *Fisheries Act 1995* (Vic) s 69.

What are the prohibitions?

If you are using a species listed as either protected or threatened under Victorian law, there are a number of strict offences that may apply.

1. Protected plants

Under the FFG Act it is an offence to take, trade in, keep, move or process protected flora without a licence or permit.¹² Currently, the fine is 50 penalty units, or \$7,583.50 (as at 8 July 2016).

2. Threatened and protected animals (including marine mammals)

Under the Wildlife Act it is an offence to hunt, take, destroy, trade in, keep, process, or display threatened wildlife or other protected wildlife (including marine mammals) without a licence or other authorisation.¹³ For example, an artist would not be able to collect threatened or protected species found dead by the side of the road. It is also an offence to take any wildlife from a State Wildlife Reserve¹⁴ or to export wildlife from Victoria to another State or Territory.

The offences for protected and threatened species are similar; however the penalties with respect to threatened species are much harsher. For example, keeping a protected animal can result in a penalty of 50 penalty units and/or 6 months imprisonment (with an additional 5 penalty units per head of wildlife). Meanwhile keeping a threatened animal will carry a penalty of 240 penalty units and/or 24 months imprisonment (with an additional 20 penalty units per head of wildlife). The current value of a penalty unit in Victoria is \$151.67 (as at 8 July 2015),¹⁵ which means a protected species may result a \$7, 583.50 fine compared to a \$36, 400.80 fine for threatened species.

Additionally, there are specific provisions under the Wildlife Act that deal with offences against Whales.¹⁶ As such, it is an offence to kill, injure, take or interfere with a whale,¹⁷ and any person who has in their possession a part of a whale, or product derived from a whale is guilty of an indictable offence.¹⁸ As with other threatened species, these offences carry very serious penalties and may result in a fine of \$151, 670. This means that an artist should be very careful about acquiring any part of a whale, such as bones or skull, to incorporate into an artwork.

¹² *Flora and Fauna Guarantee Act 1988*(Vic) s 47.

¹³ *Ibid* s 47(1) (Protected Wildlife) and s 45(1)(Threatened Wildlife).

¹⁴ *Wildlife Act 1975* (Vic) s 20(1).

¹⁵ <http://www.justice.vic.gov.au/home/justice+system/fines+and+penalties/penalties+and+values/>.

¹⁶ *Wildlife Act 1975* (Vic) ss 75—85A.

¹⁷ *Ibid* s 76(1)(a).

¹⁸ *Ibid* s 76(2).

Example 2–Collecting and incorporating plants into an artwork

An artist has been collecting parts of plants found in national parks and around her suburb. She is particularly interested in using Plump Swamp Wallaby-grass to weave sculptural artworks.

While it may be tempting to collect and use parts of these plants, caution should be exercised!

Plump Swamp Wallaby Grass is a protected plant under Victorian law.

The artist cannot cut or dig up the living grass anywhere in Victoria except from private property with the owner’s consent. However if she finds any dead grass such as grasses blown by the wind on the ground, she could safely collect and use these as long as she is not in outside a protected area. Otherwise she must either purchase specimens from a reputable nursery or florist who has the requisite licence to sell these species or get her own permit. If obtained legally, the artist could weave with the Plump Swamp Wallaby-grass and go on to sell the artwork without needing to buy a licence.

3. Protected fish species

If the artwork incorporates marine species protected under the FFG Act, including any parts such as teeth or bones,¹⁹ a licence may be needed. It is an offence to take, trade in or keep any ‘Listed Fish’ without a licence or unless authorised by order of the Governor General in Council.²⁰ This would include teeth from a Grey nurse shark. Currently, the fine is 50 penalty units (\$7,583.50 as at 8 July 2016).

4. Protected Aquatic and Priority Species

Finally, a person must not take, injure, damage, destroy, possess, keep, display for reward, release or sell Protected Aquatic Biota, without a permit or authorisation.²¹ The fine is 50 penalty units (\$7,583.50 as at 8 July 2016).

¹⁹ Definition of “fish” under *Fisheries Management Act 1995* (Vic) s 5.

²⁰ *Ibid* s 52(1).

²¹ *Fisheries Act 1995* (Vic) s 71.

Example 3 –Using roadkill and found animal materials

An artist wants to make sculptures using found animal materials. This includes some Grey nurse shark teeth found at a local beach and some animal material found by the side of the road in particular, the quills and skull from the corpse of an echidna, and feathers from a Spotted Bowerbird.

As a ‘Listed fish’, it would be an offence to take and use the teeth of the Grey nurse shark without a licence. It is unlikely that an artist would obtain a licence to use a listed fish, so the teeth should be avoided. Meanwhile, the echidna parts are from a protected species and the artist will need to obtain a Wildlife Specimen licence *before* collecting the materials – even if found dead by the road. Further, the artist would need to clarify with the DEPI if a potential buyer would also need to obtain a licence to buy and hold the artwork incorporating the echidna parts.

However, the collection and use of the feathers of a protected bird species will fall within the ‘shed’ materials exemption if they were not taken from the body of a bird but were found separately having been ‘shed’ or discarded. Therefore, the artist would not require a licence to use of the feathers of the Spotted Bowerbird, nor would a licence be required to sell or exhibit the resulting artwork.

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 Victorian 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, all three Victorian Acts would be 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.²²To 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-

²² *Native Title Act 1993* (Cth) s 211.

commercial communal needs. It is unclear if this could be relied upon to cover artwork made for commercial sale.

For example, the following native title interests exist in Victoria:

- The Gunai and Kurnai People hold native title over 45,000 hectares of land located in Gippsland;²³
- The Gunditjmara People and the Eastern Maar People hold native title over Crown land in south-western Victoria;²⁴ and
The Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk Peoples hold native title over some Crown reserves along the banks of the Wimmera River.²⁵

Secondly, Traditional Owners who have entered into an out-of-court settlement of a native title claim with the Victorian government may also be exempt from the restrictions on dealing with protected flora and fauna if the settlement package includes a Natural Resource Agreement.²⁶ The purpose of a Natural Resource Agreement is to recognise Traditional Owners' rights to take and use specific natural resources and provide input into the management of land and natural resources generally.

Under sections 82 and 83 of the *Traditional Owner Settlement Act 2010* (Vic), the Governor in Council may, on recommendation of the Minister, authorise the members of a traditional owners group in relation to which a natural resource agreement has been entered into to:

- Take, keep, move or process protected flora for traditional purposes;²⁷
- Take, trade in, keep, move or process protected flora for a commercial purpose provided in the natural resource agreement (relevantly, this may include artistic activities);²⁸
- Take or keep protected species of fish for traditional purposes;²⁹ or
- Hunt, take or destroy wildlife (including protected and threatened species) for traditional purposes.³⁰

Information on natural resources agreements entered into pursuant to the *Traditional Owner Settlement Act 2010* (Vic) can be viewed on the DEPI's website (see here: <http://www.depi.vic.gov.au/forestry-and-land-use/managing-land/indigenous-land-management/agreements-with-traditional-owners>). Currently, there are five agreements in force. These are the:

- Gunaikurnai Settlement Agreement;
- Yorta Yorta Agreements;

²³ http://nativetitle.org.au/documents/VIC_Gunaikurnia.pdf.

²⁴ http://nativetitle.org.au/documents/VIC_EasternMaar.pdf.

²⁵ http://nativetitle.org.au/documents/VIC_BarengiGadjin.pdf.

²⁶ *Flora and Fauna Guarantee Act 1988* (Vic) s 48A (exemption for offences relating to protected flora); s 52A (exemptions for offences relating to fish); *Wildlife Act 1975* s 47B (exemption for offences relating to animals-including threatened animals).

²⁷ *Traditional Owner Settlement Act 2010* (Vic) s 82(1)(a).

²⁸ *Ibid* s 82(1)(b).

²⁹ *Ibid* s 82(1)(c).

³⁰ *Traditional Owner Settlement Act 2010* (Vic) s 83(1).

- Wimmera Settlement Agreement;
- Gunditjmara Settlement Agreement; and
- Dja Dja Wurrung Recognition and Settlement agreement.

Each agreement has unique conditions that will determine what a Traditional Owner can and cannot do with protected species. For example, the Dja Dja Wurrung people are able to hunt eastern grey kangaroos and common brushtail possums up to certain numbers per year.³¹ Details of all natural resource agreements can be viewed on the DEPI's website via the above link.

2. General Exemptions

There are also a number of exemptions available under the Acts.

The most relevant exemptions available for an artist who is making art incorporating threatened or protected plant species are:

- Specimens acquired from private land (provided consent from the landowner is obtained);³²
- Specimens found and collected from the ground on public land (however, not within “protected” public land such as national parks), for example dead leaves, bark or branches found by the side of the road;³³ or
- Specimens acquired from a licenced florist or nursery.³⁴

In all of the above instances, a licence will also not be required to sell, purchase or hold the artwork incorporating the protected flora.

The exemptions available for an artist who is making art incorporating threatened or protected animal species are:

- wildlife bred in captivity or from a particular source - The Wildlife Regulations contain exemptions where the wildlife has been bred in captivity or is from a source approved by the secretary.³⁵ This means that an artist does not need a licence to use protected animal products in an artwork if they are sourced appropriately. For example, an artist would be able to use the eggs or bones of an emu, without a licence, if these were obtained from a licenced emu farmer. Proof of purchase should be retained in these circumstances (for example, tax invoice or receipt).
- “shed” or “cast” animal specimens - collecting particular animal materials that have been “shed” won't be an offence or require a licence.³⁶ This includes, cast feathers, shed snake skins, and the

³¹ http://www.depi.vic.gov.au/_data/assets/pdf_file/0015/310335/Fishing-and-Hunting_Dja-Dja-Wurrung-Rights-On-Country.pdf.

³² Ibid s 47(2)(d).

³³ Informed of this during discussions with DEPI; s 3 definition of “flora”: means any plant-life which is indigenous to Victoria whether vascular or non-vascular and in any stage of biological development and includes any **other living thing** generally classified as flora.

³⁴ Ibid.

³⁵ Wildlife Regulations 2013 (Vic) Reg 49.

³⁶ Wildlife Regulations 2013 (Vic) Reg 53.

cast antlers of deer. This exemption also applies to the import and export of these items into Victoria.³⁷ However, if you are importing or exporting from another state or territory in Australia, the law in that state should be considered as you may be required to have a permit in that other state. Similarly, export outside of Australia may require a licence under the Federal legislation.

Is a licence available?

One of the main ways of avoiding liability for an offence is to obtain a licence. While there are some licences available, unfortunately obtaining a licence as an artist is not easy.

1. Licences for protected plants

Under the FFG Act, the secretary may issue a licence or permit to take, trade in, keep, move or process protected flora.³⁸

Indeed, if an artist wishes to collect specimens from a live plant on public land (for example picking flowers or leaves) a permit will be required to do so. Application forms for a permit or licence can be found via this link: http://www.depi.vic.gov.au/_data/assets/pdf_file/0018/205560/Application-for-Permit-to-Take-Protected-Flora.pdf. Currently, there is no fee required for this permit (as at 12 July 2016).

2. Licences for protected and threatened animals (including marine mammals)

There are several categories of commercial licences available.³⁹ However, Arts Law's discussions with DEPI suggest that the majority of these licences will not be awarded to an artist wanting to incorporate animal parts into an artwork.

There are two types of licences that may be applicable to an artist using animal materials.

Firstly, if an artist was collecting species for the purpose of personally performing taxidermy processes, a Wildlife Taxidermist Licence would be required.⁴⁰ Not only would the licence need to be obtained *before* the specimens were collected, but it will only apply to wildlife listed in Schedules 2, 3, 4 and 7 of the Wildlife Regulations. Additionally, all Wildlife Taxidermist Licences are subject to a number of conditions,⁴¹ including that prior written approval of the secretary must be obtained before using the

³⁷ Ibid Reg 54(b).

³⁸ *Flora and Fauna Guarantee Act 1988* (Vic) s 48.

³⁹ See: <http://www.depi.vic.gov.au/environment-and-wildlife/wildlife/keeping-and-trading-wildlife/commercial-wildlife-licenses>.

⁴⁰ Wildlife Regulations 2013 (Vic) Reg 18.

⁴¹ Ibid reg 73.

specimen in a commercial film.⁴² Because this particular licence is aimed at commercial taxidermists, it is more expensive than most, currently costing \$567.36 per year (as at 8 July 2016).

The above licence will only apply to an artist undertaking the preserving process themselves. Instead, if an artist wanted to use, hold or sell species including bones, roadkill, or taxidermy specimens, then the artist will require a 'Wildlife Specimen Licence'.⁴³ Unlike the licencing scheme mentioned above, there is no official application form available and permission is granted on an ad-hoc basis. Individuals would need to apply directly to DEPI, and this should be done in writing (either letter or email). Arts Law's discussions with the DEPI indicate that these licences are granted occasionally, but each application is considered on a case-by-case basis. Factors that will be relevant to the DEPI's decision include if the use of the animal specimen is "necessary" (for example, this may not be the case if an alternative species could be used), and if the use is consistent with the objectives of the act. These objectives are:

- The protection and conservation of wildlife;
- The prevention of wildlife from becoming extinct; and
- The sustainable use of an access to wildlife.⁴⁴

Further, a similar case-by-case approach is used with respect to licencing requirements for the purchase, exhibition and sale of works incorporating protected species. Although DEPI may not always require licences to purchase and hold artworks incorporating protected species, however this is far from a guarantee and artists should seek guidance from the department prior to selling or purchasing such artworks.

Currently the Wildlife Specimen Licence costs \$13.94 for 1 year, or \$6.47 for 1 year for individuals who are eligible for concession prices⁴⁵ (as at 8 July 2016). For more information, please see: <http://www.depi.vic.gov.au/environment-and-wildlife/wildlife/keeping-and-trading-wildlife/private-wildlife-licences#advanced>

3. Licences for protected fish

A licence may be granted to take, trade in or keep listed fish.⁴⁶ However, it appears that these licences will only be granted in narrow circumstances, for example, for scientific purposes: <http://www.depi.vic.gov.au/environment-and-wildlife/forms-for-wildlife-national-parks-and-the-flora-and-fauna-guarantee-act>.

4. Licences for protected Aquatic and Priority Species under the Fisheries Act

Under the Fisheries Act there are several licences available. Most relevantly:

⁴² Ibid reg 73(1)(a).

⁴³ *Wildlife Act 1975* (Vic) s 28A; *Wildlife Regulations 2013* (Vic) Reg 24.

⁴⁴ Ibid s 1A.

⁴⁵ For example students or anyone currently holding a current Commonwealth Health Card (see <http://www.dhs.vic.gov.au/concessions>).

⁴⁶ *Wildlife Act 1975* (Vic) s 53.

1. A licence to receive for sale any fish of a priority species;⁴⁷ or
2. A general permit to take, possess or sell any species of fish.⁴⁸

However, Arts Law’s discussions with the Commercial Fisheries Licensing Office suggest that as long as the animal material has been obtained through a legal source, such as an aquarium, and proof of purchase retained, a licence to hold or incorporate an aquatic species into an artwork will not be required. Again it would be prudent to check with Licensing Office in case this policy has changed.

5. Permit for import and export of plants and animals

Under the Wildlife Act, a permit to import and export protected wildlife to and from Victoria must be obtained.⁴⁹This would include the movement of any artworks that incorporate such materials into and out of Victoria.

There is no prohibition on the import and export of protected plants under the FFG. However other legislation may impose restrictions such as if the plant material poses a ‘biosecurity’ risk.

Arts Law’s discussions with the Plant Standards Branch (**PSB**) of the Department of Economic Development, Jobs, Transport and Resources suggest that restrictions on the interstate movement of plant material into Victoria will depend on where the material has come from. For example, vegetable seedlings may be permitted to be imported from NSW but not from QLD. Further, some species coming from any state (except TAS) will 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 PSB directly, prior to the transportation of any artwork incorporating plant species. While the department is re-named quite frequently, as at 20 July 2016 the best contact is (03) 8401 6900 or plant_standards@ecodev.vic.gov.au .

Meanwhile, the exportation of an artwork from Victoria to another state in Australia will also require consideration of the laws in the receiving state.

Further information on the import and export of materials between states in Australia can be accessed via this website: <http://quarantinedomestic.gov.au/destination-victoria.html> .

Example 4 –The exhibition

An artist has successfully obtained a Wildlife Specimen Licence to incorporate the bones of a protected Western Barred Bandicoot into two sculptural works that are included in an exhibition in Melbourne. At the show, both works are purchased with one being bought by an individual who lives in Tasmania and another who lives in London.

⁴⁷ *Fisheries Act 1995* (Vic) s 41.

⁴⁸ *Ibid* s 49.

⁴⁹ *Wildlife Act 1975* (Vic) s 50.

A licence would be required to transport the artworks interstate and overseas. For interstate export to Tasmania, an export licence under the Wildlife Act would be required. Additionally, the law in Tasmania would need to be considered and most likely an import licence under Tasmanian law would also be required.

Because the Western Barred Bandicoot is also listed as a ‘threatened species’ under the Commonwealth EPBC Act, a federal licence to export that work overseas will also be required.

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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