DOCUMENT 1

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STRATEGIC ASSESSMENT



1 OCTOBER 2012
61-2012/13/SA

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Illegal Trade in Wildlife and Links to Serious and Organised Crime in Australia

KEY POINTS

- Illegal trade in wildlife in Australia is a niche, transnational market, but the market is considered to be smaller in size compared to other countries. A small domestic market and high demand for native wildlife are likely to position Australia as a potential untapped market vulnerable to infiltration by overseas and Australian criminal entities. (P)
- s 47E(d) [redacted] s 47E(d) [redacted]

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AIM

1. The aim of this assessment is to provide a strategic outlook for the medium to long term (two to five years) in respect of the illicit wildlife market in Australia. It provides an overview of the key vulnerabilities and enablers within the illegal trade in wildlife market and an assessment of organised crime involvement in Australia. s 47E(d) [redacted]

INTRODUCTION

2. Internationally, environmental crime has been acknowledged by the United Nations Office on Drugs and Crime (UNODC) as an emerging crime.[1] s 47E(d) [redacted]

3. s 47E(d) [redacted]

CONTEXT

4. Illegal trade in wildlife is defined as the 'taking, trading, exploiting or possessing of the world's wild flora and fauna in contravention of national and international laws.'[4] (FOUO)

5. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international trade agreement between governments to protect the survival

[1] UNODC 'Activities of the United Nations Office on Drugs and Crime to Address Emerging Forms of Crime' CTOC/COP/2010/3, 4 August 2010.

s 47E(d) [redacted]

[4] Definition from the Interpol, Wildlife crime webpage, 15 June 2012.

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of animal and plant species in the wild. Australia formally became a party to CITES on 27 October 1976.[5] (FOUO)

6. All imports, exports and re-exports of CITES protected species require licensing certificates administered by the exporting country's management authority. For exports of CITES protected species from Australia the managing authority is the Australian Government Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC). Exports that require DSEWPaC issued CITES certificates must be declared on an Australian Customs and Border Protection Service (Customs and Border Protection) Export Declaration, including items sent through the mail. (FOUO)

THE ILLICIT WILDLIFE MARKET IN AUSTRALIA

7. The size and cost of the illegal trade in wildlife is difficult to agree on both nationally and internationally due to the illicit nature of this activity. s 47E(d) [redacted]

8. s 47E(d) [redacted]

9. Australia is considered a biodiversity hotspot with demand for native reptiles (snakes, lizards, turtles), birds (parrots), bird eggs, insects (scarab beetles) and spiders.[redacted]

[5] Further information about international and domestic regulations is available in Appendix 1
[6] Customs and Border Protection border seizure data was not included due to numbers including other products which do not fall under Part 13A of the EPBC Act 1999.
[7] Alacs, E., & Georges, A. (2008). Wildlife across our borders: a review of the illegal trade in Australia. Australian Journal of Forensic Sciences , Vol. 40, No. 2, 147-160.
[8] Bricknell, S. (2010). Environmental crime in Australia. Canberra: Australian Institute of Criminology.

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10. The couriering of prohibited wildlife through the post continues to be the most common mode of trade.[9] With Australia Post handling over five billion mail items a year it is difficult to detect illegal importation and exportations.[10] s 47E(d) [redacted]

11. s 47E(d) [redacted]

[redacted]

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[9] Ibid 8 and Dore, M. (2009). The illegal trade in wildlife across the Australian border. Canberra: Australian Customs and Border Protection Service.
[10] Australia Post, Annual Report 2010-11
[11] Customs and Border Protection: National Intelligence System, intelligence database.
[12] Russell,M. (2009) Authorities crack egg smuggling racket. WA Today, May 2.

12. Criminal entities and serious and organised crime groups will continue to profit from Australian wildlife at the expense of biodiversity, biosecurity threats, and with little or no regards to threat of survival in the wild of these species. s 47E(d) [redacted]

LINKS TO SERIOUS AND ORGANISED CRIME IN AUSTRALIA

13. s 47E(d) [redacted]

14. s 47E(d) [redacted]

[redacted]

s 47E(d)

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[13] Hayman, G & Brack, D. (2002) International environmental crime: The nature and control of environmental black markets: Workshop report.
[14] Ibid 13.

s 47E(d)

18. s 47E(d)

s 47F(1), s 47E(d)

s 47E(d)

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s 47E(d)

Key vulnerabilities and enablers

19. s 47E(d) it is possible to identify some of the vulnerabilities and key enablers which may facilitate criminal exploitation. These include:

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s 47E(d), s 47F(1)

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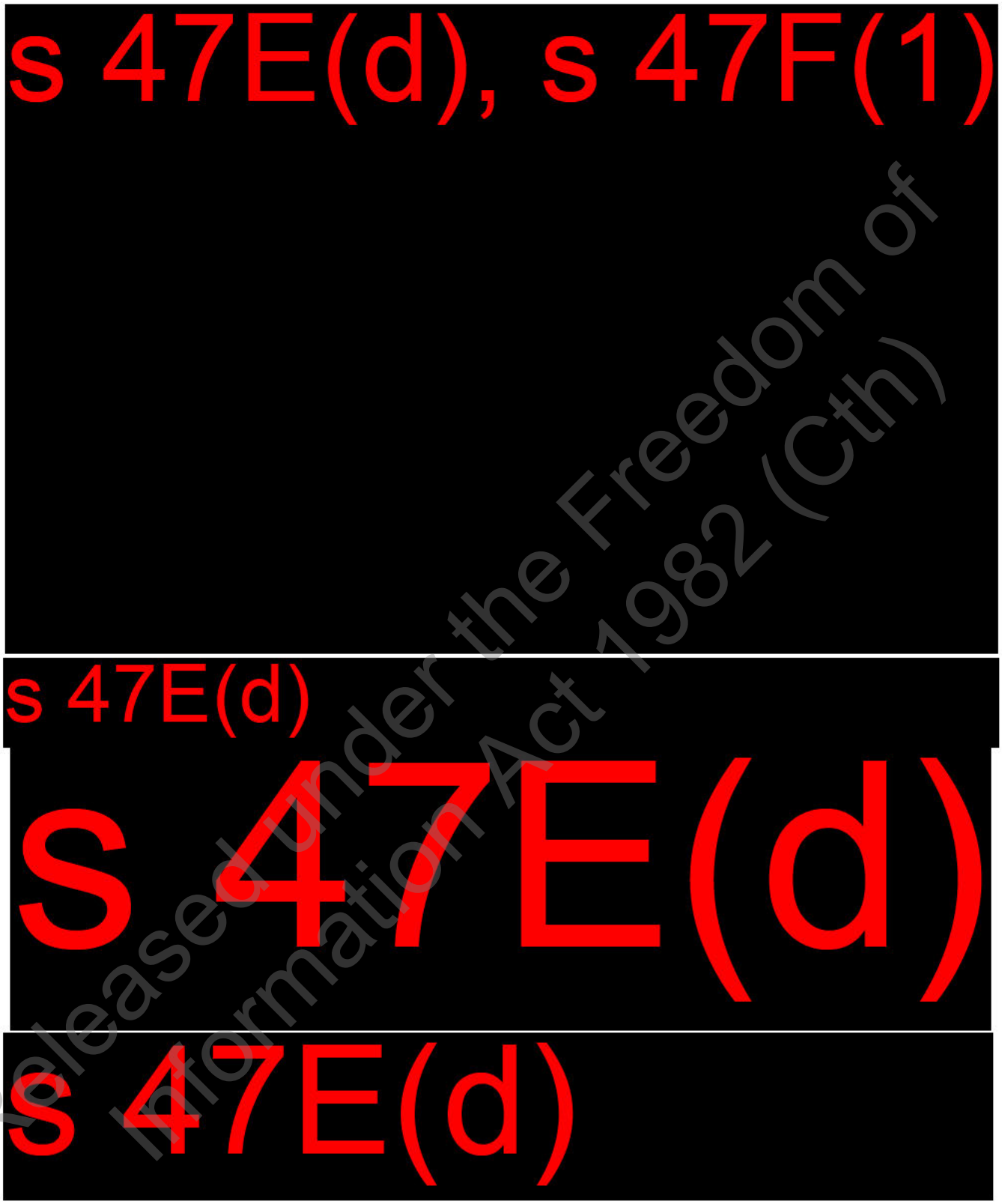
s 47E(d), s 47F(1)

s 47E(d)

s 47E(d), s 47F(1)

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[18] Wildlife products that pre-date the species listing by CITES may be certified with a pre-CITES certificate from the country of export and can be traded legally.
[19] CITES Trade database records from 2006 to 2009 were accessed on the CITES website.



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[20] Christy, B. (2008). The Lizard King, The True Crimes and Passions of the World's Greatest Reptile Smugglers. New York: Grand Central Publishing.

s 47E(d)

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[21] Elliott, L. (2007). Transnational environmental crime in the Asia Pacific: an 'un(der)securitized' security problem? The Pacific Review, 20:4, 499-555.
[22] UNODC. (2011). Transnational Organized Crime in the Fishing Industry. Vienna: United Nations Office on Drugs and Crime.
[23] Department of Primary Industries. NSW Trade & Investment Annual Report 2010-11.



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s 47E(d)

s 47E(d), s 47F(1)

s 47E(d)

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[32] Ibid 7.



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47. s 47E(d) [redacted]

ACKNOWLEDGEMENTS

48. The findings of this report were made possible from the valuable feedback provided by Department Sustainability, Environment, Water, Population and Communities; Office of Environment and Heritage (NSW); Natural Resources, Environment, the Arts and Sport (NT); Department of Environment and Natural Resources (SA); Department of Environment Protection and Heritage (ACT); Australian Customs and Border Protection Services and Australian National University. (FOUO)

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APPENDIX 1

International regulations

1. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international trade agreement between governments to protect the survival of animal and plant species in the wild. Australia formally became a party to CITES on 27 October 1976. (FOUO)
2. All imports, exports and re-exports of CITES protected species require licensing certificates administered by the exporting country's management authority. For exports of CITES protected species from Australia the managing authority is DSEWPaC. Exports that require DSEWPaC issued CITES certificates must be declared on an Australian Customs and Border Protection Service (Customs and Border Protection) Export Declaration, including items sent through the mail. (FOUO)
3. Globally, there are approximately 5,000 animal species protected by CITES.[35] Protected species are grouped according to the level of protection and listed in either:
   - Appendix I – species is at risk of extinction, trade is banned or restricted by quota
   - Appendix II – species is under threat of survival if trade is unregulated, trade is closely regulated
   - Appendix III – species is protected in at least one country.[36] (FOUO)
4. In Australia 56 species of native animals are listed on Appendix I and 916 species on Appendix II.[37] (FOUO)

Domestic regulations

5. The EPBC Act is the Australian government environmental legislation that enforces adherence to CITES regulations, environment and heritage protection and biodiversity conservation. (FOUO)
6. A number of government agencies have the capability to exercise powers under this legislation and are responsible for the detection, investigation and enforcement of laws to protect wildlife:
   - Australian Federal Police (AFP) investigate criminal activities of national environmental significance
   - DSEWPaC investigate criminal activities of national environmental significance, and are the management authority for the administration of export certificates for all CITES protected species and species products being exported out of Australia. The

[35] Australian Geographic. (2011). Australia's wildlilfe blackmarket trade.
[36] Convention of International Trade in Endangered Species of Wild Fauna and Flora, website.
[37] Ibid 35.

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department works with state and territory wildlife authorities, Customs and Border Protection, AFP, overseas CITES management authorities, Interpol and some non-government organisations such as TRAFFIC

- Customs and Border Protection detect and investigate the illegal movement of protected wildlife species and species products across Australian borders
- Australian Fisheries Management Authority (AFMA) detect and investigate illegal activities by both domestic and foreign fishing boats in Australian fishing zone
- Department of Agriculture, Fisheries and Forestry (DAFF) - Australian Quarantine and Inspection Service (AQIS) screens and inspects mail parcels, baggage, ships, animals, plants and cargo containers entering Australia to prevent the introduction and spread of disease
- State government agencies are state regulators that manage and monitor compliance of state environmental legislation, and are the management authority for the administration of Recreational Wildlife Licence (RWL).[38] (FOUO)

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[38] RWL monitors the taking, keeping, using or moving wildlife for commercial, recreational or other purposes within Australia.

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OPERATIONAL ANALYSIS



27 NOVEMBER 2012

94-2012/13/OA

s 37(1)(b), s 47E(d)

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Vulnerabilities Concerning the Role of Antique Dealers in the Wildlife Artefact Market

KEY JUDGEMENTS

- Antique dealers are self-regulated but yield considerable influence in the wildlife artefact market. They are solely responsible for overseeing auctions, valuations, setting reserve prices, preparing the listing information for auction catalogues and are the primary authority for pre-convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) certificate applications. (P)
- s 47E(d) [redacted]
- s 47E(d) [redacted]

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AIM

1. The aim of this Operational Analysis Report is to provide advice on the involvement of antique dealers in the wildlife artefact market s 47E(d) [redacted]

BACKGROUND

2. Project AEROSTAR was approved by the Australian Crime Commission (ACC) on 29 September 2011 as a joint ACC and Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) investigation. The aim of this project was to gain a greater understanding of the methodology and links between international trafficking syndicates of endangered species and serious and organised crime (SOC) groups. (FOUO)

s 47E(d) [redacted]

CONTEXT

s 37(1)(b), s 47E(d) [redacted]

[redacted]

[4] The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international trade agreement between governments to protect the survival of animal and plant species in the wild.

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5. Industry experts such as antique dealers in Australian auction houses claim specialist knowledge within the fine art categories. These expert antique dealers view items for auction, value and set reserve prices, prepare the listing information for auction catalogues and are the authority for pre-CITES certificate applications. (FOUO)

ANALYSIS

6. Expert antique dealers do not require formal qualifications and expertise is acquired through self learning and experience. (FOUO)

7. The industry body, Australian Antique and Art Dealers Association (AAADA), has a Dealers Voluntary Code of Practice which includes the following statement about describing goods: *the member shall not attempt to confuse or mislead the customer or falsely describe any of the goods he/she offers for sale or seeks to purchase.* s 47E(d) [redacted]

[redacted]

s 47E(d)

Making an illicit wildlife artefact a legal commodity for trade

[redacted]

S 47E(d)

11. Fraudulent behaviour by antique dealers is a criminal offence as stated in Section 25 on the pre-CITES application form in the declaration section that states 'Giving false or

[5] Wildlife products that pre-date the species listing by CITES may be certified with a pre-CITES certificate from the country of export and can be traded legally.
[6] Application for a Pre-CITES Certificate or a Certificate of Origin under Part 13A of the Environment Protection and Biodiversity Conservation Act 1999 as cited on the DSEWPaC website, 26 July 2012.

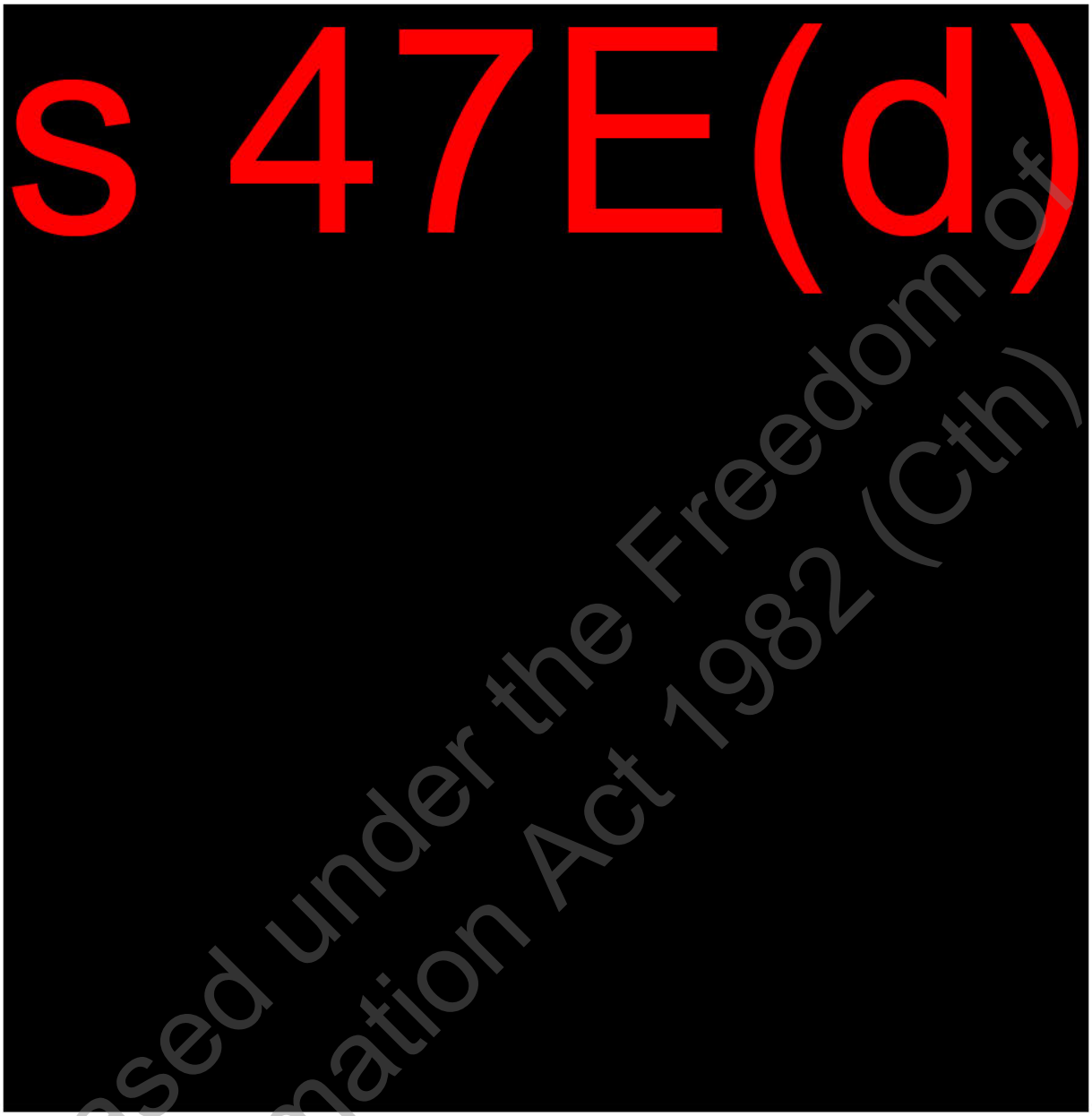
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misleading information is a serious offence (Criminal Code – Division 137)'. The penalty for this offence is imprisonment for 12 months (Appendix 1). (FOUO)

Influencing the market value of wildlife artefacts

12. s 47E(d) [redacted]

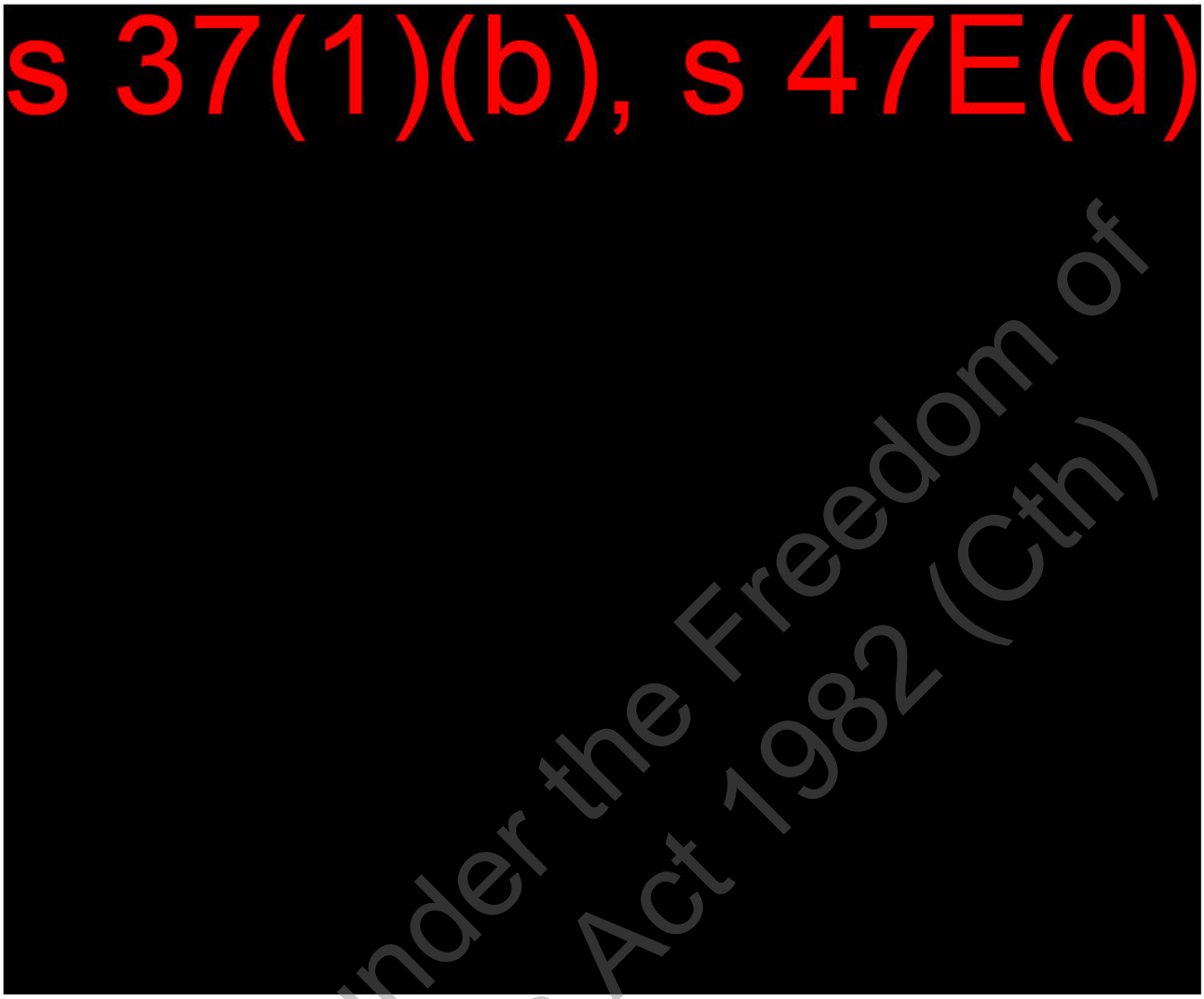
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s 47E(d) [redacted]



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IMPLICATIONS

15. Non-traditional professional advisers such as antique dealers are self-regulated and yield considerable influence in the wildlife artefact market. They are solely responsible for overseeing auctions, valuations, setting reserve prices, preparing the listing information for auction catalogues and are the primary authority for pre-CITES certificates applications. (P)



s 47E(d)

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APPENDIX 1

Criminal Code Act 1995

Division 137 -- False or misleading information or documents

137.1 False or misleading information

(1) A person is guilty of an offence if:

(a) the person gives information to another person; and

(b) the person does so knowing that the information:

(i) is false or misleading; or

(ii) omits any matter or thing without which the information is misleading; and

(c) any of the following subparagraphs applies:

(i) the information is given to a Commonwealth entity;

(ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;

(iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

(4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if, before the information was given by a person to the Commonwealth entity, the Commonwealth entity did not take reasonable steps to inform the person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3).

(5) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if, before the information was given by a person (the ***first person***) to the person mentioned in that subparagraph (the ***second person***), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

(6) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:

"Giving false or misleading information is a serious offence".

137.2 False or misleading documents

(1) A person is guilty of an offence if:

(a) the person produces a document to another person; and

(b) the person does so knowing that the document is false or misleading; and

(c) the document is produced in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

(a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and

(b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

137.3 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction--category D) applies to each offence against this Division.

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