

Importation / Exportation of Regulated Specimens Offences

(Cth) *Environment Protection and Biodiversity Conservation Act 1999*

s 303DD(1) Export of regulated native specimens

Maximum Penalty: 10y or 1000 penalty units

s 303EK(1) Import of regulated live specimens

Maximum Penalty: 10y or 1000 penalty units

s 303GN(2) Possession of illegally imported specimens

Maximum Penalty: 5y or 1000 penalty units

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	<p>Damien Sherry (22) NSWLC 2.9.2010</p> <p>CTH DPP Annual Report – 2010- 2011</p>	2 x s.303GN(2)	PG	\$3000			<p>Western Sydney man – kept six exotic snakes - 4 live Corn snakes and 2 Californian King Snakes</p> <p>Evidence in relation to Corn Snakes:</p> <p>species scored as serious establishment risk and declared Class 1 Pest animal in Queensland;</p> <p>if successfully naturalised in Queensland, detection and eradication would be unlikely;</p> <p>breeds freely and prolifically and has successfully naturalised elsewhere;</p> <p>illegal wild-type specimens can sell from \$500 and \$1000 in Australia, with selectively bred snakes being much more valuable;</p> <p>comparable biological attributes to Brown Tree Snake, which ranks as one of most destructive invasive animals in world due to irreversible impacts on native bird species in Micronesia;</p> <p>species' most likely invasion pathway into Australia is via illegal pet trade.</p>

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2.	Timothy Jackson NSWLC 31.5.2011 CTH DPP Annual Report – 2010- 2011	3 x s.303GN(2)	PG	\$2500			Found in possession exotic live reptiles, including a Veiled Chameleon, a Boa Constrictor and 2 Leopard Geckos – kept in living room
3.	Morgan (58) [2007] NSWCCA 8	s.303DD – attempt to export s.149.1 <i>Criminal Code</i> – hinder Cth official	PG	2y 18m <u>Total:</u> 2y 6m Released to recog after 18m	AA 2y 12m <u>Total:</u> 2y 3m Released to recog after 1y 3m	Short record	Intended to fly to South Africa carrying 9 Major Mitchell Cockatoo eggs, 8 Sulphur Crested Cockatoo eggs and 7 Galah eggs around waist – when advised would be strip searched smashed all but two eggs – taking eggs on behalf of another Contribution – some health issues
4.	Taylor (37) [2013] NSWCCA 157	2 x s.303GN(2) Receiving Dispose stolen property s.35(2) s.51D(2) Firearms Act Possess proh weapons Proceeds of crime Sched: 23 offences	PG (10%)	10m Recog after 6m 3y NPP 2y FT 2y 9m 3y NPP 2y 7y 6m NPP 4y 5y NPP 3y 5y NPP 3y <u>Total:</u> 12y NPP 8y 6m	AA To backdate some sentences – individual and total sentences unchanged	breached bond and bail	Twice found in possession of North American chameleons and corn snake – also possessed frogs, bearded dragons, water dragons and turtles (Scheduled offences – possess protected fauna) Other offences - received and disposed of stolen Harley Davidson motor cycle - disposed of another stolen motor cycle, received stolen helmet, dealt with \$12,770 in proceeds of crime and possessed prohibited drugs and prescribed restricted substance – domestic abuse of partner in front of children on multiple occasions - possessed 30 firearms, including 13 prohibited firearms and three pistols, ammunition, firearm barrel and loaded shortened firearm, crossbows, imitation pistols, Taser-like device, knuckle dusters, push dagger, slingshot and arrows t with (unspecified) proceeds of crime

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5.	Kennedy (25-26) [2019] NSWCCA 242	s.303DD – attempt to export s.303DD – attempt to export s.303EK(1) s.303EK(1) s.303GN(2) s.400.9(1A) <i>Criminal Code</i> – proceeds of crime	PG (25%)	<u>Indicative:</u> 9m 7m 15d 2y 2y 1m 15d 2m 7d <u>Aggregate:</u> 3y ICO	Crown AA <u>Indicative:</u> 1y 9m 1y 6m 3y 2y 6m 4m 3m <u>Aggregate:</u> 4y NPP 2y 6m		Paid male to post two packages to Sweden containing 24 live shingleback lizards and 10 live dinner-plate turtles – packages intercepted – 3m later two more packages intercepted containing total of 9 live shingleback lizards – used false names – means of exporting did not involve cruelty, animals survived and neither were endangered species Attempted to send packages containing live animals from Thailand - 23 live Chinese soft-shelled turtles, 15 live alligator snapping turtles, 10 live snakehead fish, 58 dead snakehead fish, 11 neo-tropical string rays, two live sugar gliders, 18 dead sugar gliders and 15 dead veiled chameleons – no undue cruelty – animals of little value in Thailand but posed some threat to Australian environment found in possession of two non-native pythons and \$43,550 cash – objective seriousness low All offences motivated by financial gain Struggled with mental health and financial issues after loss of sporting career – genuine remorse – importance of general and specific deterrence – excellent prospects of rehabilitation
6.	Lee (29-31) [2020] NSWCCA 307	s.303GN(2) s.142.2(1)(a)(iii) <i>Criminal Code</i> – engaging in conduct as Cth public official with intent to dishonestly obtain benefit s.400.6(1) <i>Criminal Code</i> – proceeds of crime Sched: s.303GN(2) s.142.2(1)(a)(ii)	PG (25%)	<u>Indicative:</u> 12m 2y 12m <u>Aggregate:</u> 3y Released after 18m	AD	Nil	Senior biodiversity officer used knowledge and position to facilitate importation of prohibited fish over 16 months – involved with second person to sell species – found in possession of four prohibited species as pets – also found in possession of \$10,500 case from proceeds of sales – admitted making \$40,000 from sales – abuse of trust – flagrant disregard for responsibilities – serious examples of offences – no evidence of actual threat to environment Made admissions and co-operated with investigation – some <i>Ellis</i> discount (unquantified) – low risk of re-offending Appeal: no error in application of principles – sentence not manifestly excessive

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	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
7.	Qiu [2022] NSWCCA 247	14 x s.303DD – attempt to export 5 x s.303GN(2)	PG (25%)	<u>Indicative</u> 9m – 18m 5m – 8m <u>Aggregate:</u> 5y NPP 2y 10m	AA <u>Indicative</u> 6m – 12m 3m – 4m <u>Aggregate:</u> 3y 10m NPP 2y	Nil	Over 14m attempted to export live reptiles to Taiwan and Hong Kong – all parcels intercepted – two deceased: 4 carpet pythons 9 shingleback lizards 5 saw-shell turtles Red-bellied black snake 3 eastern long-necked turtles eastern bearded dragon 10 eastern water dragons 11 common blue tongue skinks 4 blotched blue tongue skinks 2 diamond pythons Found in possession at home of 105 frogs and reptiles – motivated by need to financially support parents in China – principal offender – undue cruelty and actual harm to some species – planned and sophisticated Good subjective case – favourable prospects of rehabilitation – low risk of re-offending Appeal: sentence manifestly excessive when compared to guide of Kennedy – no import offences which can have bigger impact on Australian fauna
8.	Man Lung Ma (37) [2024] NSWDC 573 McGuire SC DCJ	19 x s.303DD – attempt to export	PG (25%)	<u>Indicative:</u> 3m / 4m / 6m / 2y 3m <u>Aggregate:</u> 3y 6m NPP 2y		nil	Attempted to export 99 native reptiles concealed in 29 packages to Hong Kong over four months 42 shingleback lizards 13 blue tongue lizards 2 leaf tailed geckos 2 monitor lizards 34 geckos 5 velvet geckos 1 yakka skink Total value of reptiles \$364,417 – offender to receive \$300 for each reptile – potential for significant harm to reptiles - significant role - premeditated, planned and executed with some limited degree of sophistication. Citizen of Hong Kong – remorse and insight – prior good character – positive prospects of rehabilitation – onerous conditions of custody due to isolation – effect on family

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Older Cases under now repealed Wildlife Protection (Regulation of Exports and Imports) Act 1982

Klein (1989) 39 A Crim R 332

Robinson (1992) 62 A Crim R 374

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