

Attachment D

STATEMENT OF REASONS FOR DECISION UNDER SECTION 303A OF THE *ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999*

I, Ian Campbell, Minister for the Environment and Heritage, provide this statement of reasons under subsection 303A (7) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for my decision under subsection 303A (3) to exempt the Department of the Environment and Heritage from the application of the provisions of Part 13 of the EPBC Act in relation to the following action:

The re-export to Fiji of 16 items of traditional cultural Tabua (sperm whale teeth and other whale parts) seized by the Department as illegally imported items.

Legislation

Section 303A of the EPBC Act provides:

Exemptions from this Part

- (1) A person proposing to take an action that would contravene a provision of this Part apart from this section may apply in writing to the Minister for an exemption from the provision.
- (2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.
- (3) The Minister may, by written notice, exempt a specified person from the application of a specified provision of this Part in relation to a specified action.
- (4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.
- (5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency. This does not limit the matters the Minister may consider.
- (6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.
- (7) Within 10 business days after making the notice, the Minister must:
 - (a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations; and
 - (b) give a copy of the notice to the person specified in the notice.

Background

1. On 23 June 2004 I received a letter from the CITES Management Authority of Fiji requesting the return of Tabua items seized under the EPBC Act.
2. In accordance with section 303A of the EPBC Act I have decided to exempt the Department of the Environment and Heritage from the application of the provisions of Part 13 in order that they may return 16 Tabua items to the nation of Fiji.

Evidence or other material on which the decision-maker's findings were based

The evidence and other material on which my findings were based were contained in a brief from the Department of the Environment and Heritage (Sub 04/1540), which included details of section 303A of the EPBC Act, the continuing traditional importance of Tabua in Fijian society and the proposed educational use of the Tabua.

Findings on material questions of fact

1. I found that the EPBC Act under Part 13, which allows me to issue permits for import and export, does not specifically provide for the re-export of cetacean parts for cultural purposes that have previously been seized as items of illegal importation.
2. I found that the proposed re-export would meet Regulations 8.13 and 8.14 of the EPBC Act if the items were being considered as personal items.
3. I found that the re-export would be for educational purposes and not for any purpose of trade.

Reasons for decision

I found that it would be in the national interest to allow the re-export of the items for the purposes of education.



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MINISTER FOR THE ENVIRONMENT AND HERITAGE

2 / 8 / 2004