



Office of  
Environment  
& Heritage

# Biodiversity Legislation Review

**OEH Paper 6: Wildlife Management**

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Published by:

Office of Environment and Heritage NSW

59 Goulburn Street, Sydney NSW 2000

PO Box A290, Sydney South NSW 1232

Phone: (02) 9995 5000 (switchboard)

Phone: 131 555 (environment information and publications requests)

Phone: 1300 361 967 (national parks, climate change and energy efficiency information, and publications requests)

Fax: (02) 9995 5999

TTY: (02) 9211 4723

Email: [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au)

Website: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

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## Summary

The NSW Government has regulated human–wildlife interactions for many years for a variety of social, economic and environmental reasons. Every Australian state and territory government intervenes in the management of wildlife as a result of strong community expectations around protecting people and their livelihoods, as well as the need to protect our unique native plants and animals for future generations.

The primary mechanism for managing wildlife in NSW is provided by the *NSW National Parks and Wildlife Act 1974* and the associated National Parks and Wildlife Regulation. The wildlife provisions in the National Parks and Wildlife Act evolved out of several stand-alone pieces of legislation dating back to the 1920s, when it was recognised that the activities of industries that relied on plant and animal products could lead to over-exploitation of these resources. The laws further evolved in the 1960s and early 1970s, when public sentiment as a result of the environmental movement grew regarding the need to protect native plants and animals for their own intrinsic value and to ensure positive welfare standards.

The wildlife provisions in the National Parks and Wildlife Act today remain largely unchanged since the Act's commencement 40 years ago. The basic approach to regulating people's interactions with wildlife was, and remains, one of prohibition and prescription: that is, interactions (taking, trading, keeping, moving, killing or harming) are banned unless otherwise permitted, generally via a licence. There are 12 different licence types provided for under the National Parks and Wildlife Act to regulate different activities that affect or relate to native plants or animals. Each licence type has a range of different conditions that must be complied with. The ability to enforce these conditions, as well as people's compliance with them, varies greatly.

This highly regulated approach reflects the origins of the National Parks and Wildlife Act, which historically was trying to sustainably manage the exploitation of wildlife. However, in practice, the legislation has not kept pace with the evolution of wildlife management or with modern regulatory approaches such as those used for pollution mitigation, and there has been almost total reliance on licensing as a tool for regulating interactions with wildlife. For example, there has been a significant increase in the keeping of native animals as a hobby; the commercial wildlife industry has expanded substantially and there is a growing need to manage human–wildlife interactions as a result of urban and rural growth.

As an example of the growth in popularity of native animal keeping, in the mid-1990s, the Office of Environment and Heritage's predecessor agencies licensed about 1000 individuals to keep native animals (predominantly reptiles) as a hobby; today there are about 20 000 licensed animal-keepers. An economic study commissioned by the Office of Environment and Heritage in 2007 put the annual value of the legal hobby of reptile keeping in NSW at \$47 million. In recognition of this rapidly growing activity and to address a major illegal trade in reptiles, in 2012 the Office of Environment and Heritage permitted the legal trade of reptiles in licensed NSW pet shops. This policy shift brought NSW in line with all other Australian jurisdictions. Pet shops are still required to obtain a fauna dealer's licence and comply with conditions, as are individual owners, who are required to obtain an animal keeper's licence.

The growth in all aspects of wildlife management, coupled with the lack of reforms to the regulatory approach, has led to an overly prescriptive and unrefined licensing system that is difficult (and in some cases impossible) to enforce. In particular, it fails to adequately differentiate between low- and high-risk activities and between individual and commercial pursuits. For example, a person who keeps two pet reptiles has the same licensing requirements as a person who runs a home business breeding and selling hundreds of reptiles.

In recent years, to support wildlife management in NSW the Office of Environment and Heritage has worked to deliver a number of Codes of Practice (around animal welfare, rehabilitation, and shooting for damage mitigation and commercial purposes), but these have tended to support licensing conditions rather than replace licensing of individual activities or operators.

This paper outlines the reasons for, the history of, and mechanisms used to manage wildlife in NSW. At a high level it also examines some of the issues that could be addressed to deliver more effective and efficient outcomes for biodiversity while reducing red tape.

## 1 Purpose of this paper

The Minister for the Environment has commissioned the Independent Biodiversity Legislation Review Panel to undertake a review of the native vegetation, threatened species and related biodiversity legislation in NSW.

As part of this process, the Office of Environment and Heritage has prepared a series of six background papers. These are Office of Environment and Heritage papers, rather than a product of the panel. The panel has set out its views in its final advice to the Government.

This paper examines how the Government currently regulates interactions with wildlife in NSW and the contemporary issues facing this work that influence the regulatory system.

## 2 The case for NSW Government intervention

The NSW Government has a long history of regulating the management of wildlife. The Government intervenes in wildlife management for a number of reasons, including for biodiversity conservation; for biosecurity; for economic and commercial reasons; to mitigate damage by wildlife and protect human health and safety; to ensure the welfare of animals; to protect iconic animals; and to meet community expectations. For many of the same reasons, every Australian jurisdiction intervenes to regulate human–wildlife interactions.

### 2.1 Biodiversity conservation

NSW native plants and animals are threatened by overexploitation, uncontrolled culling and introduced species. The protection and survival of native wildlife is regarded by the Government as a priority in wildlife management, which must also balance the need to manage human/wildlife interactions. There are high community expectations that the Government will intervene to achieve this balance.

The management and protection of wildlife in NSW is principally provided for under the *National Parks and Wildlife Act 1974*.

One of the key objectives of the National Parks and Wildlife Act is the conservation of nature and biological diversity at the community, species and genetic levels. To achieve this, the activities managed under the wildlife provisions of the National Parks and Wildlife Act are:

- taking protected plants and plant parts (e.g. flowers and seeds) from naturally occurring stands
- taking protected animals from the wild
- keeping imported protected animals and their offspring (exotic and native species)
- killing, dispersing or relocating protected animals for damage-mitigation, pest-control or human-protection purposes
- maintaining the welfare of protected fauna (including sick and injured animals and captive native wildlife).

## **2.2 Economics**

### **Exploitation of native plants and animals**

The Government regulates interactions with wildlife to protect native plants and animals from overexploitation. Many native plant species have economic value driven largely by the demand for cut flowers and garden plants. Similarly, native animals have economic value created by the demand for native animals as pets, for animal products such as kangaroo meat and skins, and for recreational hunting opportunities.

The native plant industry has been estimated to have a value of between \$60 million and \$100 million a year (Office of Environment and Heritage 2013). The national whale-watching industry has an estimated value of over \$300 million a year (Sydney Morning Herald 2011). Commercial kangaroo harvesting has a national value of about \$270 million a year (Kelly 2013).

In the absence of regulatory controls there would be a significant risk of some native plant and animal species being overexploited. This is because the costs of collecting these resources from the wild are relatively low (e.g. kangaroos are abundant and cheap to shoot, and many reptiles and bird species are easy to catch) and the financial benefits can be very high (e.g. Australian parrot eggs can fetch up to \$30,000 each in overseas markets; Alacs and Georges 2008) and a single 3-metre-high native grass tree was recently advertised for sale for \$15,000.

Overexploitation of native plant and animal species can deplete wild populations and, on a large enough scale, may ultimately drive species to extinction. As a continent with many unique species, Australia is a target for illegal wildlife trade that globally has been estimated to be worth about \$8 billion to \$10 billion, making wildlife trafficking among the top five most lucrative forms of transnational organised crimes (Darby 2014). The risk is often greater for rare species, as they are valued more highly in illegal markets than common species. Taking plants and animals in large numbers from the wild can also severely damage the ecosystems in which they live, as habitat can be degraded and invasive species or diseases can be introduced. It is generally very difficult and expensive for governments to remedy these negative impacts once they have occurred.

### **Illegally imported reptiles**

There is an ongoing demand for exotic reptiles and native reptiles that have been bred overseas. These animals are frequently traded for thousands, and sometimes tens of thousands, of dollars. This demand encourages people to smuggle reptiles into NSW. Government intervention in this activity is intended to meet environmental, biosecurity and economic objectives. There is a high likelihood that some species of exotic reptiles will become invasive if released into the wild. Invasive reptiles pose a significant threat to the environment by preying on native species, spreading exotic diseases and competing for food and habitats. They can also cause substantial harm to the economy by reducing agricultural production and spreading diseases to captive reptiles (Henderson and Bomford 2011).

All Australian jurisdictions manage the biosecurity risks posed by exotic reptiles by banning their importation and possession by private keepers.

## **2.3 Mitigating damage and protecting human health and safety**

The majority of interactions between the community and wildlife are positive and provide opportunities for enjoyment, education and appreciation of our natural values. However, in some cases native animals can cause economic and social harm by:

- consuming/damaging crops
- competing with livestock for food
- killing livestock
- damaging infrastructure
- creating a nuisance
- injuring people or spreading disease.

One management response under these circumstances is to kill or disperse the animals causing harm. Government intervention in these activities is intended to strike a balance between protecting life and property, and maintaining sustainable native animal populations.

In the absence of regulatory controls, it would be impossible to manage the cumulative impacts of localised culling by landholders on species or to determine whether culling activities could cause species to become threatened. This is because advances in lethal control methods (e.g. improvements in poisons for killing birds) enable large numbers of animals to be killed quickly and cheaply. On the other hand, the economic benefits for landholders who control native animals can be high (e.g. improved agricultural yields and lower infrastructure maintenance costs).

The management of the grey-headed flying-fox is an example of the need to balance these issues. This flying-fox is the only threatened species in NSW for which damage mitigation (shooting) licences are issued. The licensing of lethal control methods has continued because of the severe damage flying-foxes can cause to orchards. A limit on the total number of flying-foxes that can be killed each year has been established to ensure that the total impact of all licences issued in NSW does not constitute a serious threat to the long-term survival of the species. Between 2001 and 2013 the total number of grey-head flying-foxes authorised to be killed each year never reached the state-wide limit, and this limit represented less than 1% of the national population.

The negative impact that uncontrolled damage-mitigation and pest-control activities can have on native species is well documented. For example, the extinction of the Tasmanian tiger was caused in large part by farmers and bounty hunters shooting animals to protect livestock (Tasmania Parks and Wildlife Service 2010). As is the case with the problem of overexploitation, the ability of governments to repair damage to the environment by restoring locally extinct species in a way that enables them to perform their associated ecosystem functions is poor.

Markets are not considered capable of developing their own solutions to the problem of unsustainable damage-mitigation and pest-control activities, and public expectation around government intervention is high. Every Australian state intervenes to protect wild native animals at risk as a result of these activities.

## **Keeping dangerous animals**

Dangerous animals pose a threat to human safety if they are unregulated. This is one of the reasons NSW authorities do not permit private keepers to possess reptiles that have been imported into Australia. The illegal smuggling and trade of reptiles is considered to pose a significant, ongoing risk to the community, environment and economy. Many of the species seized from keepers have an extremely high risk of becoming aggressive if released.

Imported reptiles and their offspring also pose a significant biosecurity threat to NSW. The *Non-Indigenous Animals Act 1987* is the primary piece of legislation regulating the importation, movement and keeping of exotic reptiles. This Act is administered by the NSW Department of Primary Industries and is currently under review.

The National Parks and Wildlife Service is involved in enforcing the ban on keeping imported reptiles because of its role in regulating the reptile trade more generally. The National Parks and Wildlife Service officers regularly seize exotic reptiles and native reptiles whose legal provenance cannot be verified.

The number of exotic reptiles in private collections is not known, but the frequency with which they appear in wildlife intelligence and police-initiated inspections suggests that they are both abundant and diverse. Twenty-one different species of exotic reptile were seized, surrendered or stolen from private collections between 1999 and 2010 (Henderson and Bomford 2011). They included red-eared sliders, corn snakes, boa constrictors, Burmese pythons, veiled chameleons, leopard geckos and green iguanas.

Two fatal exotic diseases have been detected in captive reptiles. It is suspected that these diseases were introduced into Australia via illegally smuggled snakes. A number of reptile collections have been affected by these diseases. Eradication is unlikely, as the diseases have a long incubation period, some animals may remain asymptomatic, and illegally held exotic reptiles are a potential source of reinfection. It is not known whether these diseases have spread into wild reptile populations.

## 2.4 Animal welfare and community values

Community attitudes regarding animal welfare laws are varied and constantly evolving. Prohibitions against animals suffering unnecessarily are widely supported. In recent years, there has been an increasing view that governments should be promoting positive welfare outcomes for animals. Self-regulation of welfare standards does occur in some industry sectors, but it is not widespread. All Australian states have laws protecting animal welfare.

Captive native animals include animals that are bred and traded by businesses, animals that are kept as pets, and wild animals that are rescued because they are sick, injured or orphaned. Native animals in the wild can be subject to harvesting or damage-mitigation activities. They can also be affected by recreational activities. Government intervention in the management of these animals aims to meet community values and expectations regarding animal welfare.

Community expectations for captive animals can reasonably be met by ensuring that they are maintained in a good state of welfare, meaning that the animals are healthy, comfortable, well nourished, safe, able to express their innate behaviours, and free from unpleasant states such as pain, fear and distress (World Organisation for Animal Health 2014). Similarly, community expectations for wild animals can be met if sick, injured and orphaned animals are rehabilitated, if harvesting and lethal control methods are humane, and if animals are not harmed by recreational activities (e.g. whale and dolphin watching). Recreational hunting activities are regulated to ensure that animals do not suffer.

In an unregulated environment, the frequency and magnitude of poor welfare outcomes for native animals may reach a point where an activity's 'social licence' to operate is threatened. This has arguably occurred for some activities in the exhibited animal, pet animal and livestock sectors (circuses, private zoos and live export are all examples).

As noted, NSW regulates the welfare of native animals in captivity and in the wild under the National Parks and Wildlife Act. The Department of Primary Industries, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) and the Animal Welfare League deal with serious welfare breaches and incidences of cruelty under the *Prevention of Cruelty to Animals Act 1979*. However, in NSW these organisations generally do not have a strong involvement in welfare issues associated with wildlife rehabilitation.

Via the National Parks and Wildlife Act, the Government promotes positive welfare outcomes in captive native animals by:

- setting or adopting mandatory minimum standards for housing and husbandry (via regulation or licence conditions)
- setting minimum levels of experience for people keeping species that are difficult to maintain in captivity or dangerous (via policy)
- giving people directions to house or care for their animals in ways that meet the animals' welfare needs (via statutory powers)
- enforcing provisions on the caging and confinement of protected fauna (National Parks and Wildlife Regulation).

Via the National Parks and Wildlife Act, the Government promotes positive welfare outcomes for wild native animals by:

- intervening and supporting volunteer fauna rehabilitation groups, zoos and fauna parks to intervene in situations where animals are suffering or at risk
- setting mandatory minimum standards for rescue, rehabilitation and release (via licence conditions)
- managing harmful human–animal interactions (via direction powers and provisions in the National Parks and Wildlife Act and Regulation)
- setting or adopting mandatory minimum standards for humane killing (via licence conditions).

It is important to note that although fauna rehabilitation is primarily focused on the welfare of individual animals it also contributes to conservation outcomes. When natural disasters occur, the return of rehabilitated animals to the wild can help with population recovery, especially where fragmented landscapes limit re-colonisation (e.g. in the case of flying-foxes that become stressed during heat waves).

Rehabilitators have a role in disease and pollution surveillance and in identifying major causes of injury and death (e.g. fauna rehabilitation groups have helped the Environment Protection Authority during pollution incidents affecting wildlife). Knowledge gained by rehabilitators on husbandry techniques for common species can be applied to threatened species. Finally, rehabilitators often serve as environmental advocates who educate their communities about the value of wildlife (Booth and Curtis 2014).

### **Fostering appreciation and enjoyment of wildlife**

The objects of the National Parks and Wildlife Act that are related to fostering appreciation and enjoyment of wildlife are generally stated to be related to natural and cultural heritage. Although there are many other agencies and organisations that are involved in wildlife management they do not share this statutory objective. Overall, the current approach to fostering appreciation and enjoyment of wildlife is through regulation (e.g. owning a native animal or caring for a native animal through a licensing process) rather than through community education and engagement. There are some examples of where members of the community have embraced the opportunity to share their experiences and passion for wildlife through modern social platforms (e.g. the Wild About Whales app and website). The digital content available from wildlife encounters is highly appealing to the community and suits modern media channels. Using modern media channels also provides access to a younger demographic that will need to be engaged in order to build the constituency that will advocate for the protection of wildlife into the future.

### **3 History of wildlife management in NSW**

In the late 1800s, policymakers became concerned that the commercial trade in plumage, furs and live animals would lead to their extinction and the demise of these industries. These sentiments led to the introduction of the first legislation designed to regulate the exploitation of native animals.

This first series of laws protected a limited number of native bird species. Over the following years, the motivation to protect native birds and mammals became driven increasingly by the community's desire to conserve natural values rather than by economic considerations. This shift in priorities led to the enactment of the *Wild Flowers and Native Plants Protection Act 1927*.

Further recognition that improved protection was required to conserve native birds and mammals drove the development of the *Fauna Protection Act 1948*. The Fauna Protection Act continued the system of protecting native birds and mammals from earlier legislation unless they were listed in a schedule of unprotected fauna.

The National Parks and Wildlife Act is today the principle legislation guiding the protection and care of native plants and animals in NSW, and it establishes goals, principles and processes for this purpose. The first National Parks and Wildlife Act was introduced in 1967 as the first legislation of its kind in Australia. One of the key statutory functions of the Act is the conservation and protection of wildlife (s.12). 'Wildlife' in the National Parks and Wildlife Act is defined as fauna and native plants.

The strong bipartisan support for the creation of the National Parks and Wildlife Act reflected a growing environmental consciousness in Australia and globally during the 1960s, as well as the increasing influence of environmental politics. The NSW national parks model was strongly influenced by the American model.

In 1974 a new National Parks and Wildlife Act was introduced to address a number of limitations which had become apparent in the original legislation. The new Act consolidated the *National Parks and Wildlife Act 1967*, the *Fauna Protection Act 1948* and the *Wild Flowers and Native Plants Protection Act 1927*.

Most of the wildlife provisions created in the National Parks and Wildlife Act have not changed substantially over the past 40 years. Rather, the Act has been amended through ongoing piecemeal additions and revisions, including the following:

- Special provisions for marine mammals (Part 7A) were created by the *National Parks and Wildlife (Marine Mammals Protection) Amendment Act 1986*.
- Amphibians became protected fauna through the enactment of the *Endangered Fauna (Interim Protection) Act 1991*.
- The *Threatened Species Conservation Act 1995* amended the National Parks and Wildlife Act by adding offences against threatened species, populations and ecological communities, and their habitats, and critical habitat (Part 8A).

### **4 Current mechanisms for wildlife management**

#### **4.1 The National Parks and Wildlife Act and Regulation**

The National Parks and Wildlife Act is the principal legislation guiding the protection and management of wildlife in NSW. The scope of the Biodiversity Legislation Review includes Parts 7 through 9 of the National Parks and Wildlife Act (Part 7 – Fauna; Part 7A – Marine

mammals – special provisions; Part 8 – Native Plants; Part 8A – Threatened species, populations and ecological communities, and their habitats, and critical habitat; and Part 9 – Licensing in respect of fauna, native plants and threatened species) and all associated regulations and policies.

The National Parks and Wildlife Act's objects and responsibilities set the Government's broad goals for wildlife management. They are:

- the conservation of nature, including the conservation of biological diversity at the community, species and genetic levels (Object)
- the conservation of features (including biological diversity) of cultural value within the landscape, including features of significance to Aboriginal people (Object)
- fostering public appreciation, understanding and enjoyment of nature (Object)
- the Director-General shall be the authority for the protection and care of fauna (s.92)
- the Director-General shall be the authority for the protection of native plants (s.114).

Any amendments to the current mechanisms for the management of wildlife in NSW should take into consideration whether the objects and responsibilities under the National Parks and Wildlife Act would also need to be changed.

### **Protection of native plants and fauna**

One of the key statutory functions of the National Parks and Wildlife Act is the conservation and protection of wildlife (s.12). *Wildlife* in the National Parks and Wildlife Act refers to fauna and native plants.

The National Parks and Wildlife Act gives the Director General<sup>1</sup> broad responsibility for the protection and care of fauna and native plants (s.92 and s.114). The Chief Executive of the Office of Environment and Heritage in turn delegates some of these responsibilities. How this responsibility is then translated into programs and activities is strongly influenced by government priorities and community expectations.

Under the National Parks and Wildlife Act, protected native plants are those species listed in schedule 13 and protected fauna are mammals (any species except domestic species and non-native rats and mice), birds (native and migratory species), reptiles (any species) and amphibians (native species) of a species not listed in schedule 11.

Schedule 11 lists only those classes of mammal that occur outside Australia (except dogs), which means that all native mammals (including marine mammals) except dingos, all native birds, all native amphibians, and both native and exotic reptiles are all protected and therefore subject to regulation.

Any protected fauna, other than prescribed fauna, is deemed to be the property of the Crown until captured or killed in accordance with the National Parks and Wildlife Act. Prescribed fauna includes animals that, at the time of their birth, are in the lawful possession of any person; it also includes animals imported into NSW (s.97).

There are no specific provisions to guide the fostering of public appreciation, understanding and enjoyment of nature. This is generally approached by forming partnerships with communities to experience and conserve plants and animals in their local areas.

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<sup>1</sup> Currently the Chief Executive of the Office of Environment and Heritage

## **Offences**

The National Parks and Wildlife Act defines offences against protected fauna and native plants. These offences cover a wide range of different activities:

- It is an offence to harm protected fauna (s.98), where ‘harm’ is defined as hunt, shoot, poison, net, snare, spear, pursue, capture, trap, injure or kill. (This does not include harm by changing the habitat.)
- It is an offence to buy, sell, possess or control protected fauna without an authority (s.101).
- It is an offence to harm protected fauna for the purpose of sale and to carry on the business of a fauna dealer without an authority (s.103 and s.104).
- It is an offence to import, export, deal in, exhibit or liberate any protected fauna (s.105, s.105A, s.106, s.107 and s.109).
- It is an offence to carry out the business of an emu breeder without a licence (s.105A).
- It is an offence to pick, possess or sell any protected native plant or plant part (s.117 and s.118).

Higher penalties are provided for offences involving plants or animals that are threatened species, endangered populations or part of an endangered ecological community (Part 8A).

There are penalties for harming protected fauna, for harming threatened animals or damaging their habitat, or for picking threatened flora, without an appropriate licence, consent or approval (s.98, s.118A and s.118D).

It is an offence to conduct research within a National Parks and Wildlife Act reserve without the consent of the park authority (cl.23, National Parks and Wildlife Regulation 2009).

The comprehensive nature of the native plants and fauna offences means that almost any activity that involves or affects native plants and fauna requires approval. In practical terms, many of the activities associated with the offences are also very difficult to monitor.

The National Parks and Wildlife Act also provides authorised officers with extensive powers to regulate people’s interactions with protected fauna. It is an offence to fail to comply with such directions. An officer may give a direction to a person:

- to stop any activity that is causing, or is likely to cause, distress to protected fauna (s.99A)
- who keeps protected fauna in confinement with respect to the welfare of the animal/s (s.102).

## **Defences**

The National Parks and Wildlife Act provides for defences against prosecution for alleged offences relating to protected native plants and protected fauna. These defences can take a number of different forms and include an authority conferred by a licence or development consent.

Aboriginal people are exempt from prohibitions on harming protected fauna and picking or possessing protected plants if the purpose of the activity is domestic use (Part 7 of the National Parks and Wildlife Regulation 2009).

## **4.2 Licensing**

Human activity has the potential to threaten the survival of wildlife species or populations. To mitigate this, certain human activities are managed under the wildlife provisions of the National Parks and Wildlife Act through the issuing of licences. Conditions or restrictions can be attached to a licence. Failure to comply with a licence condition or restriction is considered an offence.

The licensing system established in Part 9 of the National Parks and Wildlife Act allows for the regulation of a wide range of activities involving protected fauna and native plants. The Act provides for 12 licence types:

- eight for protected fauna
- three for protected plants
- one for scientific purposes.

Licences are issued for commercial activities (e.g. harvest and trade), keeping native animals as pets, damage mitigation and pest control, fauna rehabilitation and research.

### **Licences related to fauna**

#### **General licence (s.120)**

Under the National Parks and Wildlife Act, a general licence can be issued to authorise certain activities that would otherwise be considered an offence under the Act. These activities include authorising a person:

- to harm or obtain fauna
- to hold or keep in possession or under control fauna, such as keeping fauna as pets: over 440 species of native birds, reptiles, frogs and mammals may be kept as pets by licence holders
- to own a preserved specimen or allow taxidermy
- to exhibit protected fauna
- to dispose of (whether by sale or otherwise) fauna harmed, obtained, held, kept or exhibited
- to sell fauna (other than as a fauna dealer or skin dealer)
- to harm fauna in carrying out development or specified activities.

General licences can have a number of conditions attached to them to provide more details around what the person or people are authorised to do. General licence conditions are designed to ensure that:

- animals are maintained in a good state of welfare
- animals are kept at the nominated or registered premises
- the Office of Environment and Heritage has a record of all persons authorised under the licence
- animals are acquired from, and disposed of to, appropriately licensed persons
- the Office of Environment and Heritage has a record of all acquisitions and disposals
- rescued animals are not a source of animals for keeping, trade or public exhibition
- the Office of Environment and Heritage has a record of all rehabilitation activities
- only animals that have fully recovered are returned to the wild, and they are returned to their original populations.

The general licence, especially for keeping native animals as pets, is one of the licences that are issued most regularly.

**Killing, dispersing or relocating protected fauna.** General licences can be issued to authorise people to kill, disperse or relocate protected fauna for:

- damage mitigation
- pest control
- the protection of people.

A small number of species make up the bulk of applications to kill, disperse or relocate protected fauna. They are:

- red kangaroo, eastern grey kangaroo, western grey kangaroo and wallaroo (killed to mitigate damage)
- wombats (killed to mitigate damage)
- common brushtail possum, common ringtail possum (relocated because of nuisance)
- grey-headed, black and little red flying-foxes (killed to mitigate damage or dispersed because of nuisance)
- corellas, sulphur crested cockatoos and galahs (killed to mitigate damage)
- magpies, plovers, butcherbirds and kookaburras (killed to protect people)
- ibis (killed because of nuisance)
- various species of venomous snake (relocated to protect people).

Applications to kill protected fauna are assessed to determine whether lethal control is warranted. If it is warranted, the licence will authorise a maximum number of animals that can be killed. When this number is set, the scale and severity of the species' impact are considered. The cumulative impact of damage mitigation, pest control or human protection on the sustainability of the local population is also considered if there is baseline data available against which to assess this.

Most of the species impacted by these activities remain common and widespread. There is no evidence that their populations have been threatened by damage mitigation, pest control or human protection activities. As noted already, the grey-headed flying-fox is the only threatened species (listed under the Threatened Species Conservation Act) for which licences are issued to kill, and there are specific legislative provisions that must be met in order to allow this. This is discussed further as a case study later in this paper (see page 21).

Licences are also issued to disperse (not kill) grey-headed flying-foxes from their camps in exceptional circumstances (under s.91 of the Threatened Species Conservation Act). The stress caused by disturbing animals can sometimes result in injuries or fatalities, with female flying-foxes sometimes known to abort unborn young or abandon dependent juveniles. The overall impact of these activities on the flying-fox population is not known.

The National Parks and Wildlife Service also licences individuals and companies who want to provide possum or snake relocation services. Licence conditions are designed to ensure that animals are released at an appropriate location.

**Taxidermy.** The definition of protected fauna in the National Parks and Wildlife Act includes eggs, skin, feathers and any other body part (s.5). A person who buys, sells or possesses parts of a protected species without an appropriate authority is committing an offence (s.101).

This provision enables the National Parks and Wildlife Service to regulate the trade in native animal products.

The National Parks and Wildlife Service uses the general licence (s.120) or scientific licence (s.132c) provisions in the National Parks and Wildlife Act to authorise taxidermists and people who own preserved specimens, depending on the intent of the activity. The licensing system aims to conserve native wildlife by restricting their collection from the wild for the purposes of preservation.

The National Parks and Wildlife Service issues very few licences to authorise taxidermy: currently a total of 102 licences have been issued.

**Annual holding and animal activities records.** For some general licences, licencees are required to submit annual records of their animal holdings or activities. This can be done electronically or by submitting a paper record.

These records are intended to facilitate law enforcement and help with policy development. However, the different records are used varyingly. Animal-holding records are not proactively audited; they are only occasionally used for enforcement purposes, and any information required for policy development can be readily obtained through other mechanisms such as targeted surveys.

All holders of general licences to rehabilitate fauna are also required to submit annual records on the wildlife incidents they have responded to. By comparison, these records are used readily and are considered necessary for policy-making and to deter illegal activities. The Office of Environment and Heritage uses this data to monitor trends in wildlife incidents, such the species affected and the causes and locations of the incidents. In this way, emerging threats to native animals can be identified and managed. Without these records there would likely be an increase in the risk of animal welfare issues from inappropriate housing and husbandry. Further to this, the conservation risks posed by animals being translocated into different populations would be high and difficult to reverse.

**Geographic coverage.** A general licence to conduct fauna rehabilitation specifies a geographic area to which the licence applies. This system creates a ‘territory’ for each rehabilitation group or organisation and encourages stability in the sector by minimising competition among groups for members and resources. It also makes it simpler for members of the public to access wildlife rehabilitation services. Although most groups support the area-based system, some in the rehabilitation sector are strongly opposed to it and advocate for groups to be free to authorise members anywhere in NSW. This aspect of licensing is reviewed every few years to ensure that it continues to achieve the policy intent.

### **Occupier's licence (s.121)**

An occupier's licence can be issued to an owner or occupier of a property to authorise the harming of specified fauna on that property. Whereas a general licence can authorise any person to harm an animal, in various places, the licence issued under s.121 is issued to an owner, occupier or designated person for a specified purpose to harm a specified number of animals in a specified location.

The occupier's licence allows the person who will be managing the property to be covered by the licence and/or to engage the services of a person holding an s.120 licence to harm specified fauna. An example may be where a farmer (the occupier) wishes to engage the services of a professional shooter to cull animals for damage-mitigation purposes.

An occupier's licence cannot be issued for any threatened species, populations or ecological communities; to harm game birds for sporting or recreation purposes; or to authorise the harming of native game birds (according to the *Game and Feral Animal Control Act 2002*) for sustainable agricultural management purposes.

When assessing occupier's licence applications, the National Parks and Wildlife Service considers the impact of the activity on the viability of the population and species and the welfare of individual animals.

### **Commercial fauna harvester's licence (s.123)**

A licence can be issued to allow a person to harm fauna for the purpose of sale. Unless specified, this licence does not extend to the national park estate. It cannot be issued for threatened species, populations or ecological communities.

The Office of Environment and Heritage issues these licences authorising people to take limited or specified numbers of protected fauna from the wild for:

- meat and skins (commercial harvest of four species of kangaroo)
- taxidermy (non-threatened species that are already dead)
- farming for animal products
- exhibition in zoos
- the establishment of new species in the pet trade.

Applications for a commercial fauna harvester's licence are not common and are assessed on a case-by-case basis.

### **Fauna dealer's licence (s.124)**

The Office of Environment and Heritage authorises the commercial trade of protected fauna by issuing fauna dealer's licences. There are 129 species of birds and 11 species of reptiles that may be traded by licensed fauna dealers. The commercial trade of mammals and amphibians is banned by policy. This licence supports a variety of animal trade businesses.

Fauna dealer's licences are required to be renewed every year by bird dealers and every 3 years by reptile dealers. Licencees are also required to provide the Office of Environment and Heritage with a record of their holdings annually and to notify when they change addresses.

The reptile trade was first permitted in NSW in 2013. The sale of reptiles is restricted to pet shops. The pet shop code (administered by the Department of Primary Industries) does not yet have reptile-specific welfare standards, so these standards are enforced via conditions on the fauna dealer's (reptile) licence. To date there have been no reports of reptiles in pet shops suffering from poor welfare.

The National Parks and Wildlife Act imposes very few conduct requirements on fauna dealer's licence holders. Licence conditions are primarily used to influence the behaviour of licence holders. These conditions are designed to ensure that:

- animals are kept at the nominated or registered premises
- animals are acquired from, and disposed of to, appropriately licensed persons
- records of acquisitions and disposals are kept and provided
- animals are maintained in a good state of welfare.

Most animals taken illegally from the wild are destined for the pet trade. It's difficult to assess the degree to which the illegal take of animals from the wild has threatened species or populations. However, large numbers of animals would need to be taken to severely damage ecosystems.

Illegal take is extremely difficult for authorities to detect. The equipment required to catch and transport animals is minimal, and offenders often operate in remote areas. Tip-offs and intelligence-gathering are the main methods by which these activities are detected.

### **Skin dealer's licence (s.125)**

The Office of Environment and Heritage authorises the commercial sale of animal skins by issuing skin dealer's licences. This licence allows a person to buy or sell skins. The person's premises must also be registered under this licence. This licence is used most often by the kangaroo skin industry.

### **Emu licence (s.125A)**

Emus and emu products are marketable commodities. However, emus are also a native animal requiring management to ensure that their wild population is conserved. The licensing provisions were created to balance the needs of business and conservation.

The Office of Environment and Heritage authorises emu farming by issuing emu licences. These licences allow people to buy or sell live emus, emu eggs and other emu products and to kill captive bred emus. Egg carving is authorised separately under the general licence provisions (s.120).

As emus are protected fauna under the National Parks and Wildlife Act, a person who takes an emu from the wild, keeps an emu in captivity, or sells emu products (e.g. eggs) without appropriate authorisation is committing an offence (s.98 and s.101). There is also a separate offence for carrying on the business of an emu breeder without a licence (s.105A).

Very few licences are issued for emu farming or emu egg carving.

### **Import and export licences (s.126)**

It is an offence to import or export any protected fauna without a licence.

In particular, the illegal smuggling and trade of reptiles is considered to pose an ongoing risk to the environment, economy and community. Many of the species seized from keepers have an extremely high risk of becoming invasive if released. The discovery of multiple free-living exotic reptiles indicates that the likelihood of future releases by irresponsible pet owners is high.

### **Licence to liberate animals (s.127)**

The Office of Environment and Heritage issues licences to allow a person to liberate an animal within NSW. The licence conditions specify where the animal is permitted to be released.

This licence is important in regulating fauna rehabilitation. Unregulated fauna rehabilitation could have potentially serious impacts on wild populations. For example, if rehabilitated animals are released into different populations they could spread disease and undermine genetic integrity. There are also animal welfare implications if animals are cared for in inadequate facilities or by poorly trained people.

### **Licences related to native plants**

Protected plants are those species listed in Schedule 13 of the National Parks and Wildlife Act. Licences are issued to people to take, grow, import and export protected plants or plant parts for:

- commercial purposes (protected plants, excluding threatened species)
- scientific, educational and conservation purposes.

Commercial activities are also regulated under two statutory flora plans of management:

- the *Commercial harvest, salvage and propagation of protected whole plants: sustainable management plan 2013–2017*
- the *Protected and threatened plants in the cut-flower industry management plan 2013–2017*.

These plans are approved wildlife trade management plans under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. This approval enables people licensed under these plans to export native plants for commercial purposes without having to obtain additional Commonwealth approvals.

All licencees are required to keep records of the native plants they have harvested or grown. This information is maintained in a database, which is used for monitoring and reporting purposes and helps with the development of information on the populations, numbers and reproductive biology of protected plants.

There are no licensing requirements for the use of protected plants that occur naturally or are cultivated on a person's property for non-commercial purposes (excluding species listed under the Threatened Species Conservation Act). Similarly, there are no licensing requirements under the National Parks and Wildlife Act for any use (commercial or non-commercial) of native plant species not listed as protected.

The Office of Environment and Heritage also issues licences authorising people to grow and harvest artificially cultivated protected plants for commercial use. This enables the Office of Environment and Heritage to monitor the movement of protected plant material through the supply chain.

Illegal harvesting of seeds, wildflowers, tubers and whole plants is believed to be affecting threatened plant species and populations. For a number of highly sought after orchids, illegal harvesting is considered to be the most significant threat to the survival of species. There is strong anecdotal evidence of wild harvesting causing significant population reductions and local extinctions.

### **Licence to pick protected native plants (s.131)**

If a person has been issued a licence to grow native plants for the purpose of sale (s.132) and has subsequently grown the native plants in accordance with this licence, then the Office of Environment and Heritage can issue a licence authorising the person to pick these protected native plants as specified by the licence.

### **Licence to grow native plants for sale (s.132)**

The Office of Environment and Heritage can issue a licence to an owner or occupier of a property to grow native plants for commercial purposes.

### **Import and export licences for protected native plants (s.132A)**

It is an offence to import or export any protected native plants without a licence.

## **Scientific licences**

Scientific research on native plants and animals has a long history of public and government support. Increasing our understanding of how the natural environment works has many benefits, including the identification of potential threats, more effective conservation actions and an enhanced appreciation of nature. Scientific licences are among the licences that are issued most regularly.

A scientific licence may be issued authorising a person to take action, for scientific, educational or conservation purposes, that is likely to result in harm to any protected fauna, or any animal that is part of a threatened species, endangered population or an endangered ecological community.

A scientific licence may be issued authorising a person to take action, for scientific, education and conservation purposes, that is likely to result in the picking of any protected plant, or plant that is part of a threatened species, population, or ecological community, or cause damage to critical habitat or the habitat of threatened species, populations and ecological communities.

A diverse range of activities involving animals and plants fall within the definition of science, education and conservation. They include academic and private research; bush regeneration; fauna and flora translocation; seed collection; and ecological surveys. There is increasing interest among schools and wildlife rehabilitation groups in the use of live native animals as educational resources, and conservation activities such as bush regeneration and ecological surveys are common practice.

The Office of Environment and Heritage assesses licence applications to determine the potential impacts of the proposed activities on target and non-target species or populations—in particular, threatened species, populations, ecological communities and identified critical habitat. Experts and stakeholders are consulted, where required, to ensure that the benefits and risks of a project are fully assessed. In situations where there is uncertainty about the impact of the activity, researchers are often required to do surveys.

Licencees are required to provide detailed annual reports on their activities. Scientific licences are among the more regularly issued licences: 867 licences had been issued as at September 2014.

### **4.3 Protection of marine mammals**

Marine mammals are protected fauna under the National Parks and Wildlife Act. The National Parks and Wildlife Act applies to marine mammals within NSW coastal waters. NSW jurisdiction over coastal waters and seabeds extends for 3 nautical miles seaward from the coast (waters beyond 3 nautical miles are the Commonwealth Government's jurisdiction). All cetaceans (whales and dolphins), pinnipeds (seals and sea lions) and marine turtles are protected in Commonwealth waters under the Environment Protection and Biodiversity Conservation Act.

Reflecting the nature of regulating marine mammals across vast expanses of ocean, the protection and regulation of marine mammals are purposely consistent across Australian jurisdictions.

Marine mammals are subject to the special provisions of Part 7A of the National Parks and Wildlife Act. These provisions were created by the *National Parks and Wildlife (Marine Mammals Protection) Amendment Act 1986*. Provisions were created for:

- the preparation, adoption and carrying out of plans of management for marine mammals (s.112C to s.112E)
- additional restrictions on licences that allow for the exhibition of marine mammals under a general licence or scientific licence (s.112F).

The Bill also provided for a Marine Mammals Advisory Committee intended to advise the Minister on the conservation and protection of marine mammals with regard to the National Parks and Wildlife Act (s.112A to s.112B). However, this Committee has never been established.

In 2006, an amendment was made to the National Parks and Wildlife Regulation 2002 in accordance with the Commonwealth Government's *Australian National Guidelines for Whale and Dolphin Watching 2005*. This amendment was made to protect and conserve certain marine mammals, and it outlined approach distances of watercraft. It also regulated penalty

notices in respect to offences made under s.112G of the National Parks and Wildlife Act – approaching marine mammals.

The National Parks and Wildlife Regulation 2002 has since been repealed and replaced by the National Parks and Wildlife Regulation 2009 (the Regulation). The protection of certain marine mammals, including the amendment outlined above, is legislated under Part 6, Division 3 of the Regulation.

### **Prescribed approach distances to marine mammals**

Under the National Parks and Wildlife Act, a person must not approach or interfere with a marine mammal any closer than the distance prescribed by the Regulation (s.112G), unless the person can prove that the offence was done under and in accordance with a general licence (s.120) or scientific licence (s.132C) issued under the National Parks and Wildlife Act. Approach distances vary and are based on the species and location (water or land) of the marine mammal, and the mode of transport of the person (boat or swimming). For example, the approach distance for a whale is greater than that prescribed for a dolphin or seal.

The Regulation states that approach distances do not apply to a person approaching a marine mammal in particular circumstances, such as to exercise a law enforcement function under the *Fisheries Management Act 1994*, or if the person is approaching in order to prevent a risk to human health or as a result of an unavoidable accident not caused by negligent or reckless behaviour.

The Regulation also includes provisions regarding the operation of vessels and aircraft in the vicinity of marine mammals; feeding marine mammals; swimming with whales or dolphins; and approaching special interest marine mammals.

The Minister can declare special interest marine animals to be a marine mammal or group of marine mammals for which an approach distance may be specified in a particular area (s.67 of the Regulation). After making an order regarding special interest marine mammals, the order is to be publicised through television or radio operating in the area concerned, as well as by a notice in a newspaper that is circulated in that area. A copy of the order is also Gazetted. Special interest marine animals currently include:

- dugongs or rarely sighted species of marine mammals
- morphological or colour-variant marine mammals
- female marine mammals that have recently given, or are about to give, birth
- calves separated from a mother or group of marine mammals
- sick or injured marine mammals
- marine mammals or groups of marine mammals at risk of harassment, injury or death.

### **People interacting with marine mammals**

The protection and conservation of marine mammals is an important and high-profile role of the National Parks and Wildlife Service. Increasing public interest in marine mammals has led to the rapid growth of commercial whale, dolphin and seal watching. There has also been considerable growth in land-based whale watching from coastal national parks. This growth has been encouraged through campaigns such as that on the ‘Wild About Whales’ website, which provides tips and guidelines about whale watching in NSW.

At the same time, human impacts such as increasing recreational and commercial whale/dolphin watching, coastal development, fisheries activities, vessel activity and marine

pollution have the potential to have serious implications for marine mammals that may result in injury, death, habitat degradation and competition for food resources.

Furthermore, each year there are a number of incidents involving marine mammals that affect marine mammal populations and health and also affect humans. Incidents involving whales and dolphins, such as strandings or boat strike, tend to be high profile and generate large amounts of media and public attention. The increasing human impacts and incidents involving marine mammals highlight the need for ongoing regulation of marine mammals.

#### **Case study: Licence for commercial ‘swimming with dolphins’ tours**

A permit allowing people to swim in the wild with common dolphins has recently been granted to Dolphin Swim Australia in accordance with Office of Environment and Heritage policy. This is the first permit of its kind ever issued in NSW (by the Marine Park Authority) and is overseen by the Office of Environment and Heritage. It required a long -term population and identification study by Dolphin Swim Australia in accordance with baseline data requirements, and an ongoing independent monitoring and research program designed by a dolphin expert will be undertaken.

The permit was granted only after stringent examination of Dolphin Swim Australia’s swim and safety management protocols and after two full permit applications had been made. Dolphin Swim Australia also had to demonstrate high levels of compliance with the National Parks and Wildlife Act.

There is increasing pressure from tourism organisations to allow licences such as this. There is potential for this pressure to increase further: Queensland recently became the first state to allow people to swim with humpback whales, as part of a 3 year trial.

## **4.4 Requirements for wildlife management under the *Environment Protection and Biodiversity Conservation Act 1999***

The Commonwealth Government requires that wildlife trade management plans are approved under the Environment Protection and Biodiversity Conservation Act before permits for commercial export of native species can be issued. This approval enables people licensed under these plans to conduct their business without having to obtain additional Commonwealth approvals.

In NSW this is relevant to the commercial harvest of kangaroos for meat and skins and the export of native plants for commercial purposes.

Exporting of native plants for commercial purposes is regulated under two statutory flora plans for management, both of which are approved as wildlife trade management plans under the Environment Protection and Biodiversity Conservation Act:

- the *Commercial harvest, salvage and propagation of protected whole plants: sustainable management plan 2013–2017*
- the *Protected and threatened plants in the cut-flower industry management plan 2013–2017*.

## **4.5 Codes of practice**

The Office of Environment and Heritage and the Department of Primary Industries have developed a number of codes of practice and guidelines to provide direction in, and help enforce, animal welfare, human safety and better conservation outcomes. A number of the codes contain standards that licencees must to adhere to as a condition of their licence.

### **Codes for keeping and trading**

Current codes related to the keeping and trade of native animals are:

- *NSW Animal Welfare Code of Practice No. 4 – Keeping and Trading of Birds*

- *Code of Practice for the Private Keeping of Reptiles*
- *Animal Welfare Code of Practice – Animals in Pet Shops.*

Birds and reptiles may be traded commercially by licensed fauna dealers. The bird trade has been regulated for many decades. Bird dealers are also required to comply with the *NSW Animal Welfare Code of Practice No 4 – Keeping and Trading of Birds*, which is administered by the Department of Primary Industries. Both the Office of Environment and Heritage and the RSPCA are able to enforce this code. Reports of bird dealers breaching the code are rare.

If birds are sold through a pet shop, the dealer has to comply with the *Animal Welfare Code of Practice – Animals in Pets Shops*, which is also administered by the Department of Primary Industries. This code is enforced by the RSPCA and the Animal Welfare League, and data regarding the frequency of poor welfare outcomes for native birds in pet shops is not available.

Reptile trade in NSW was first permitted in 2013. The sale of reptiles is restricted to pet shops. The pet shop code does not yet have reptile-specific welfare standards, so these standards are enforced by the Office of Environment and Heritage via conditions on the fauna dealer (reptile) licence. To date there have been no reports of reptiles in pet shops suffering from poor welfare.

There is little available data on the frequency of welfare issues among native animals kept as pets. Anecdotal evidence collected by the Office of Environment and Heritage in 2008 as part of a review of animal keeping and trade suggested that poor welfare outcomes for captive reptiles were a significant issue. Veterinarians reported that welfare problems in pet reptiles were most likely to have resulted from the owners' lack of knowledge about appropriate housing and care. In 2013, the *Code of Practice for the Private Keeping of Reptiles* was released to help educate keepers about the captive requirements of reptiles. Compliance with the standards in this code is a condition for all licences issued to authorise the keeping of reptiles as pets. Failure to comply with this is an offence under the National Parks and Wildlife Act. It is not yet known whether this code has been successful in raising care standards.

Depending on the species being kept or traded, a licence holder may have to comply with an animal welfare code developed by the Department of Primary Industries (e.g. *NSW Animal Welfare Code of Practice No 4 – Keeping and Trading of Birds*) or a code developed by the Office of Environment and Heritage (e.g. *Code of Practice for the Private Keeping of Reptiles*). These codes are enforced by using different regulatory mechanisms (e.g. provisions in the National Parks and Wildlife Regulation, provisions in the Prevention of Cruelty to Animals Act, or licence conditions under National Parks and Wildlife Act), and they therefore attract different penalties for non-compliance. This situation is illogical and confusing, and it undermines the effectiveness of these welfare protections.

## **Shooting codes**

Current codes related to the shooting of native animals are:

- *National Codes of Practice for the Humane Shooting of Kangaroos and Wallabies*
- *Office of Environment and Heritage Standard Operating Procedure for the Shooting of Flying-foxes.*

A humane killing method achieves instantaneous loss of consciousness and rapid death without the animal regaining consciousness. The minimum standards for shooting animals enforced through the *National Codes of Practice for the Humane Shooting of Kangaroos and Wallabies* and the *Office of Environment and Heritage Standard Operating Procedure for the Shooting of Flying-foxes* are designed to achieve this.

These codes also outline human health and safety considerations such as the use of personal protective equipment and firearm and ammunition specifications. Compliance with the relevant standards is a condition of licences that authorise killing. It is therefore an offence under the National Parks and Wildlife Act not to adhere to the code.

## **Rehabilitation guidelines**

Current guidelines related to the rehabilitation of native animals are:

- *Code of Practice for Injured, Sick and Orphaned Protected Fauna*
- *Code of Practice for Injured, Sick and Orphaned Koalas*
- *Code of Practice for Injured, Sick and Orphaned Flying-Foxes*
- *Guidelines for the Rehabilitation of Birds of Prey*
- *Guidelines and Conditions for Marine Reptile Strandings, Rehabilitation and Release in NSW.*

The *Code of Practice for Injured, Sick and Orphaned Protected Fauna* is designed for those involved in the rescue, rehabilitation and release of native fauna and shows how they can protect the welfare of the animals in their care. The code contains both standards and guidelines for the care of native animals that are incapable of fending for themselves in their natural habitat. Compliance with the standards is a condition of all Office of Environment and Heritage rehabilitation licences (issued as general licences under s.120). The code requires fauna rehabilitation groups and zoos to keep detailed records on rescued animals.

Licencees and the people they authorise must comply with rehabilitation guidelines issued by the Office of Environment and Heritage. Informal feedback from rehabilitation groups indicates that the Office of Environment and Heritage codes have helped them to improve welfare standards for rescued animals. Enforcing compliance with codes is the responsibility of field-based Office of Environment and Heritage officers, who often find they do not have the resources available to prioritise compliance checks.

There is value in having clear minimum standards to operate under, as evidenced by the fact that some groups are now working together to develop additional species-specific codes (e.g. best practice guidelines for wombat rehabilitation).

These codes also include standards for the selection of release sites to ensure that wild populations and natural environments are not negatively affected by native animal releases.

## **4.6 Duplications and interaction with other NSW laws**

There is some duplication with the parts of the National Parks and Wildlife Act under review and with the Prevention of Cruelty to Animals Act, to the extent that both laws have provisions for animal welfare.

Animal welfare in NSW is primarily the responsibility of the Department of Primary Industries, which administers the Prevention of Cruelty to Animals Act, the *Animal Research Act 1985*, and the *Exhibited Animals Protection Act 1986*. Local government also plays a role in administering the *Companion Animals Act 1998*, which provides for the keeping of cats, dogs and other companion animals listed under the relevant regulation.

The Prevention of Cruelty to Animals Act is administered by the Department of Primary Industries and enforced by the RSPCA and the Animal Welfare League. Although these organisations manage serious welfare breaches and incidences of cruelty, in practice they generally do not have a strong involvement in welfare issues associated with wildlife rehabilitation in NSW, although they do provide advice to, and work in partnership with, the Office of Environment and Heritage on some wildlife issues. In other jurisdictions such as South Australia, Queensland and the ACT, the RSPCA, for example, plays a more prominent role in wildlife management.

The National Parks and Wildlife Act also interacts with the Threatened Species Conservation Act. Part 8A contains offence provisions and penalties for threatened species, populations and communities, and Part 6 of the Threatened Species Conservation Act provides for licences to be issued (under both the Threatened Species Conservation Act and National Parks and Wildlife Act) for activities that affect threatened species.

**Case study: Interactions of the National Parks and Wildlife Act licensing regime with the Threatened Species Conservation Act**

*Managing damage caused by threatened flying-foxes*

As noted already, the National Parks and Wildlife Act allows general licences (s.120) to be issued to harm protected fauna (noting that all native fauna are ‘protected’ under the National Parks and Wildlife Act), but granting a licence to harm a threatened species, population or ecological community (listed under the Threatened Species Conservation Act) is prohibited by s.120(1)(e) of the National Parks and Wildlife Act.

However, s.91(2) of the Threatened Species Conservation Act overrides this and permits a licence to harm a threatened species under a s.120 National Parks and Wildlife Act general licence, where it is for the welfare of an animal or there is a threat to life or property (only).

A licence permitting harm to threatened species, populations or ecological communities can also be granted under s.91(1) of the Threatened Species Conservation Act for any purpose, but it requires detailed information from the applicant about the nature, duration, and intensity of the proposed harm, plus details of possible measures to avoid or ameliorate the harm. (Alternatively, the applicant can complete a species impact statement.)

No such details or assessments are required for harming a threatened species under a National Parks and Wildlife Act s.120 license if it is granted for the welfare of an animal (such as euthanasia to end undue suffering) or if there is a threat to life or property (such as in the case of damage to crops by flying foxes. (This is the most common case in which a s.120 licence is granted under the National Parks and Wildlife Act to allow ‘harm’ to—in this case the killing of—a threatened species.)

## 5 Conclusion

This evaluation has shown that, although the NSW Government has a robust approach to wildlife management, the regulatory system has not evolved to adequately respond to the issues being faced in this area, such as strong growth of native animal keeping and trading. There is a lack of ability to regulate proportional to risk, and the system is overly complex and lacks enforceability.

The single-level regulatory approach is an obvious candidate for reform. It is onerous for very-small-scale animal keepers (it was estimated by the National Parks and Wildlife Service in 2009 that about 40 per cent of licencees keep five animals or fewer.) At the same time, licence conditions and costs are inadequate (based on comparisons with other licensed commercial activities) for large-scale animal keepers (a small number of licencees are understood to be effectively breeding and trading animals at a commercial scale.)

Other problems or factors that complicate the regulatory system include:

- There are separate regulatory systems for managing plants and animals, reflecting the different uses and activities to which each are subject.
- Within the system for regulating the keeping and trading of native animals there are separate regulatory approaches for birds and reptiles, reflecting the different stages at which trade for each became allowed. Birds and reptiles account for 97 per cent of all private native-animal keeping in NSW. Maintenance of two regulatory regimes for the two most commonly owned groups of native animals undermines both public understanding of animal keeper responsibilities and efficient administration and compliance.
- The sheer number and type of licences that are available for regulating different activities is confusing and creates a significant administrative and enforcement burden. There is also a lack of capacity in government for consistent monitoring of compliance with

regulatory requirements, reflecting the low risks associated with non-compliance in the case of many licensed activities.

- The system imposes overly burdensome licence requirements, particularly on low-risk or small-scale licencees. As a result it is believed there is a high degree of non-compliance with both low and high risk conditions.
- The Office of Environment and Heritage has developed and implemented codes of practice in recent years but has not used them to reduce red tape.
- Requirements for fauna rehabilitation-group membership and registration are perceived by some to be unfair and a restraint on the free choice of the community to join groups with which they are comfortable.
- There are inherent tensions in terms of animal welfare between the right of an individual animal to be kept alive in care or captivity and the conservation decision to euthanase the animal if it cannot be returned to be self-sufficient in the wild. The community expects government to lead resolution of these issues through regulation, but regulatory instruments do not provide sufficient clarity about what decision should be made and who should make it.

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