

23 July 2018

Wildlife Licensing Consultation
National Parks and Wildlife Service
PO Box 1967
Hurstville NSW 1481

By email: wildlife.reforms@environment.nsw.gov.au

Dear Wildlife Reforms Team,

Towards a risk-based approach to wildlife licences

EDO NSW is a community legal centre specialising in public interest environmental law. We welcome the opportunity to provide comment on the proposed new management regime for wildlife licensing in NSW. The current consultation papers will inform how wildlife licensing is implemented under the *Biodiversity Conservation Act 2016*. EDO NSW has made extensive submissions on the NSW biodiversity conservation reforms, our previous recommendations are published on our website.¹

This submission responds to the following consultation documents:

- Discussion Paper – Towards a risk-based approach to wildlife licences
- Revised NSW Native Animals Keepers Species List
- Draft Code of Practice for Keeping Native Reptiles
- Draft Code of Practice for Keeping Native Frogs
- Draft Code of Practice for Keeping Native Birds

EDO NSW recognises that the Office of Environment and Heritage (**OEH**) has engaged with relevant stakeholder groups in relation to the details of keeping requirements within each Code. We support the involvement of these groups in the development of any final Codes. We do not comment on the *Revised NSW Native Animals Keepers Species List* and defer to the relevant wildlife rehabilitation groups and expert societies in that regard. We therefore limit our comments in this submission to legislative framework, implementation and enforcement of the Codes.

EDO NSW generally supports a risk-based approach to wildlife licences. However, it must be recognised that the use of Codes may provide a defence against actions that would otherwise constitute a legal offence. As such, it is vital that risk-based management is precautionary in its approach to assigning risk, and is supported by clear and enforceable management requirements. In this regard, EDO NSW submits that there should be a number of improvements made to the proposed risk-based approach and the draft Codes, should they be adopted.

¹ For more information see: www.edonsw.org.au/biodiversity_legislation_review.

1. Discussion Paper – Towards a risk-based approach to wildlife licences

Proposed Use of Codes to Replace Licensing

EDO NSW supports maintaining a strong licensing regime for the management of threatened and protected species and ecological communities. We do not support the use of Codes to manage activities that were formally managed by section 95 certificates under the *Threatened Species Conservation Act 1996*. We refer OEH to our previous comments regarding management of flying-foxes.²

We also submit that a strong licensing and/or management regime for native species that are not currently threatened is vital to avoid impacting on species and communities to an extent that they become threatened. In particular, we note the significant concerns expressed by wildlife rehabilitation groups, animal welfare groups and licensed wildlife dealers in relation to the risks that would arise from removing the need for licensing for the keeping of native animals. This includes the reduced ability to track the movement of native animals due to lack of recording and monitoring, and the increased risk of impulse purchase and associated abandonment of unwanted animals. In light of these risks, we do **not** support the proposal to replace licensing with a Code of Practice under the *Biodiversity Conservation Act 2016*.

However, if Codes are implemented, these risks could be better managed by increasing the monitoring and reporting required under the Codes. We strongly recommend that any final Code include a requirement to record and annually report on information that, as a minimum, includes the dates people acquire or dispose of animals, including births, deaths, purchases, sales/transfers and escapes. These reporting requirements should be retained for all Codes and licences.

Further, where Codes are applied they should only be used for species that do not have special keeping requirements.

We note the proposal in the Discussion Paper to require a three year review of the implementation of any final Codes. While we support the requirement for a review, it should also be made clear that the three year review flagged in the Discussion Paper can be brought forward if significant increased risk to native plants and animals is identified.

Specific Licensing Proposals

We support the proposal to retain licensing for emu farming.

We support the retention of licensing for harming protected birds and other native animals, including wombats. Licensing in this regard is particularly important for understanding the cumulative impact of these activities.

² For more information see: www.edonsw.org.au/native_plants_and_animals_policy.

We support the retention of licensing for relocating possums. If this licence is retained, it may be appropriate to remove the requirement for the landowner to also obtain a licence and instead require landowner consent, supported by appropriate reporting by the licence holder.

We support the retention of licensing for the catch and release of reptiles.

We do not support expanding the list of native mammals that can be kept as pets at this time.

We support the retention of licensing for pet shops and the proposal to introduce licensing for online dealing of native animals. We recommend that, as a minimum, such dealers be required to meet the same welfare and management standards that currently apply to pet shops.

We generally support the retention of import and export licences to monitor interstate movement of native animals, including movement of any species that are regulated under a Code of Practice. If import and export licences are to be discontinued for facilities such as zoos on the basis that this activity is also regulated under the *Exhibited Animals Protection Act 1986*, that Act must be reviewed to ensure that, as a minimum, the welfare and reporting requirements currently required under the *Biodiversity Conservation Act 2016* are retained. This is necessary to ensure that OEH can adequately monitor all native wildlife transfers.

We support the retention of licensing for taxidermists. Licences for holding animals should only be removed if there is a requirement to demonstrate that the specimen was obtained legitimately.

Scientific Licensing

EDO NSW generally supports the proposed changes to scientific licensing, however we are concerned about the proposal to replace licensing of seed collection from protected plants with a Code of Practice. Seed collection for commercial purposes creates a significant risk of over-collection in localised areas. If a Code is introduced, a distinction should be made between seed collection for smaller scale, local re-vegetation (which may often fall under the category of bush regeneration) and commercial, larger scale seed collection.

In relation to the collection of abiotic material, licensing requirements should also consider the proportion of the in situ abiotic material that is to be sampled. For example, small collections of very rare materials may have a more significant impact than larger collection of more common materials.

Fee setting principles

Fee setting should include a user pays principle where there is no community benefit to the activity. In our view, licence fees should be introduced for licences sought to harm wildlife for a commercial purpose, including licences for 'causing a threat to human safety, damaging property or causing economic hardship' where the harm is undertaken to generate a commercial benefit for an individual or business for

example through reducing or avoiding damage to crops and fences. Such an approach would also help to drive a stronger focus on non-lethal management measures. EDO NSW believes that OEH should invest additional resources in supporting the use of non-lethal management measures for protected animals.

EDO NSW supports retaining fee waivers for wildlife rehabilitation and other community service activities. In our view, biodiversity assessments are not a community service as these surveys are generally done to support commercial development. As such, there should be no fee discount for licences required to conduct biodiversity assessments.

2. Draft Codes of Practice

The following comments apply to each of the three draft Codes of Practice currently on public exhibition.

As stated previously, Codes must be supported by strong monitoring and enforcement. We recommend that this should include a requirement that where a keeper is relying on a Code of Practice, the keeper must be registered with OEH and provide annual reporting that includes sufficient information for OEH to undertake enforcement on compliance with the Code, and to identify any illegal wildlife trading.

Given that Codes may provide a defence to wildlife protection offences, they must be clear and enforceable. While we recognise that there may be value in a Code having both mandatory requirements (standards) and guidelines, to provide additional information on best practice, the current draft Codes risk creating confusion about what is a mandatory requirement and what is an optional guideline. This is particularly the case where the same information is included as both a standard and a guideline. To avoid confusion, we recommend that information on mandatory requirements should only be included in the section on standards and any additional information should be included in the guidelines section. The draft Codes should also be reviewed to ensure there is no inconsistency between standards and guidelines.

Similarly, the reference in Codes to activities that require a licence may create a perception that the Code also covers those activities. To avoid confusion, we recommend that references in the Codes to activities requiring a licence should either be removed or included in a different section of the Code that specifically explains what is not covered by the Code.

Where a Code permits departure from the Code based on expert veterinarian advice, the keeper must be required to maintain a record of that advice.

Where there are relevant OEH protocols, for example the *Hygiene Protocol for the Control of Disease in Frogs* and *Hygiene Protocol for the Control of Disease in Captive Snakes*, these should be mandatory standards.

Thank you for the opportunity to provide this feedback. [REDACTED]
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Yours sincerely,
EDO NSW

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Rachel Walmsley
Policy & Law Reform Director