

Submission on the Wildlife Licenses Discussion Paper

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Wildlife Licensing Consultation
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The NSW Young Lawyers Environment and Planning Committee (Committee) makes the following submission in response to the Discussion Paper on Wildlife Licensing in NSW – Towards a risk-based approach to wildlife licences (the Discussion Paper).

NSW Young Lawyers

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Committee comprises of a group of approximately 50 members interested in our environment. The Committee focuses on environmental and planning law issues, raising awareness in the profession and the community about developments in legislation, case law and policy. The Committee also concentrates on international environment and climate change laws and their impact within Australia.

Summary of Recommendations

1. Licensing should be retained for all activities currently requiring a threatened species licence.
2. Licensing for emu farming should be retained to ensure the industry remains ecologically sustainable and humane.
3. All licensing requirements for all harm to protected birds for damage mitigation purposes should be retained.
4. Further information is required in order to respond to the proposed changes to damage mitigation licensing.
5. Licensing for harm to wombats and other protected animals should be retained, as well as licensing for reptile handlers.
6. Licensing should be maintained for lower risk species as well as higher risk species.
7. Use of microchipping should be maintained.
8. There should be recording requirements for all native animal keepers. In particular, species regulated by a code of practice should require simplified annual returns.
9. The current record book requirements for keepers of venomous snakes should be retained.
10. Licensing for pet shops that sell native animals should be retained, however more information is required before a response can be provided as to whether expanding the list of species that could be sold in pet shops is appropriate.
11. The establishment of the new licence class for commercial dealing in native animals, other than through a pet shop, is necessary.
12. Import and export licenses to monitor interstate movements of native animals should be retained.
13. The requirement to have import and export licenses for the interstate movements of animals kept in zoos, wildlife parks and tourist attractions, should be reviewed and if not removed, consolidated with the Department of Primary Industry's reporting requirements in order to avoid unnecessary overlap between state, territory and Commonwealth agencies.
14. Licensing to taxidermists should be retained.
15. Persons and organisations holding preserved specimens should be exempted from licensing only where that possession is for educational or scientific purposes.

16. Conditions on scientific licences should not be simplified at the cost of regulating the impact that activity under these licences have on the environment. Due to the variation in licenced activities, there remains a need for conditions to be tailored to each licence specifically.
17. More information is needed in relation to the scope and form of codes of practice where licences are discontinued, however on the whole, licensing is the preferred method for regulating and enforcing obligations on relevant parties.
18. Conditions on scientific licences should not be simplified at the cost of regulating the impact that activity under these licences have on the environment.
19. Transparency in the fee setting process is essential. Further consideration should be given to the proposed determination of threatened species licence fees on a case by case basis to ensure thorough and bespoke applications for complex activities are not discouraged.
20. Licence fees should be reduced or waived where the issue of a licence is in the public interest, or where the issue of a licence is conditioned with a requirement for information sharing or reporting that contributes to the broader knowledge and information in the public domain.

Introduction

The Committee welcomes the opportunity to comment on the *Discussion Paper – Towards a risk-based approach to wildlife licences (the Discussion Paper)*.

While the Committee acknowledges the imperative to streamline the administrative and procedural requirements of wildlife licensing, licensing should be retained to ensure enforceability, reporting, and accountability of people and organisations operating in this space, due to vulnerability of wildlife to exploitation and the potential for negative externalities of such activities to the broader environment.

The Committee refers to its submission made on the Draft Biodiversity Conservation Bill 2016 and Draft Local Land Services Amendment Bill 2016 on 28 June 2016. Particularly, concern was raised in that submission about use of the risk-based approach to the protection of animals and plants:

As noted in the Submission Guide: Protecting our Native Plants and Animals, the current default position of the National Parks and Wildlife Service (NPWS) is that harming native flora and fauna is prohibited. Any exemptions and approval processes flow from that fundamental starting position. If the intent is to protect biodiversity and approve development impacting on biodiversity only where appropriate, exemptions should be identified and included only if there is a compelling reason to do so for specific instances of development.

The new 'risk-based approach' proposed will not appropriately engender protection of biodiversity values across the State. Significantly increasing the scope of exempted activities amounts to the removal of a significant additional approval process integral to ensuring biodiversity impacts are appropriately considered for most developments. The blanket exclusion of Category 1 land in s 2.1(2) and s 2.8(1)(b) [of the Draft Biodiversity Conservation Bill 2016] from offences regarding threatened species or endangered ecological communities, except within 'areas of outstanding biodiversity values' (AOBVs), is particularly concerning in this regard, as it has the capacity to significantly undermine the protection of those species and communities over extremely large areas of land.

The Committee reiterates its concern about this aspect of the new regime.

A recurring comment throughout this submission is the need for further information and definition around proposed changes to the licensing scheme in order to respond constructively, as such a response will depend on the specific requirements in the code of conduct and the licensing regime. Record-keeping and reporting

requirements in relation to the codes of conduct will be particularly important, as well as what is required to be submitted in respect of licences.

Similarly, further clarification is required as to the mechanism of how other concurrent reviews, the subject of which have been excluded from consideration in the Discussion Paper, will be integrated into the licensing regime.

Threatened species licences

The Committee agrees with the conclusion reached in section 2.3 of the Discussion Paper that licensing should be retained for activities relating to threatened species, for the reasons outlined therein. Given the relatively low numbers of threatened species licence applications in practice (as per Table 2.2 and the discussion in section 2.1 of the Discussion Paper) it seems there is no practical imperative to streamline processes in relation to the activities encompassed within this class of licence.

Should licensing be retained for all activities currently requiring a threatened species licence?

Yes.

Are there any lower risk activities formerly managed by TSC Act section 95 certificates that could be suitable for regulating under an enforceable BC Act code of practice?

No.

Wildlife trade management licences

The Committee agrees that licenses for wildlife trade must be accompanied by record-keeping requirements to allow for accurate tracing of the origins of wildlife products, and to allow for greater understanding of the sustainability of established and growing markets, both domestic and international.

Do you support the retention of licensing for emu farming?

Yes. Emu farming is growing in economic importance in New South Wales. However, it is important to ensure that emu farming continues to be carried out in a way that remains ecologically sustainable and humane. By maintaining the relevant licensing, emu farming can be appropriately administered in light of the need for the industry to be ecologically sustainable.

Can you suggest any improvements to emu farming licence conditions?

No.

Damage mitigation licences

As noted in the Discussion Paper at 4.2.1, the vast majority of animal damage mitigation licences permitting harm to animals (i.e. excluding catch and release licences) are granted for kangaroos and wallabies: 2,151 compared to 333 for other species (as per the data provided in Tables 6 to 8 of the Discussion Paper). However, options relating to animal damage mitigation licences for kangaroos and wallabies are excluded from the Discussion Paper, due to the ongoing consideration by government of Natural Resources Commission's review of pest animal management. Given this, it seems difficult to see how one can

meaningfully comment on a proposal for the animal damage mitigation licensing regime as proposed in the Discussion paper, given (assuming current trends continue) it will (or may) not apply to the vast majority of approved/permitted harm to animals for damage mitigation purposes.

The Committee notes the discussion of current standard licence conditions for licences to harm in 4.2 of the Discussion Paper. It is unclear from the Discussion paper whether these are intended to be retained and, if so, how this will occur (i.e. by guideline, policy or by assumed practice). Given the broad nature of this review, the Committee considers it would have been appropriate for this detail to be provided and able to be considered, so that answer to the questions and feedback on proposed standard licence conditions could be provided with full knowledge and consideration of what licensing would entail in practice.

With these caveats expressed, the Committee makes the following comments on the Discussion Paper.

The proposal that licences to harm protected animals for damage mitigation be required to be held by landholders, who nominate shooters, rather than requiring both shooters and landholders to hold licences, seems sound from an administrative point of view. However, a question of liability arises: does a landholder carry liability where shooters do not comply with the terms of their licence, and, if so, are there circumstances (such as unreasonable behaviour, acting against instructions of the landholder etc.) which would shift that liability to the shooter? Without this information, it is not possible to provide a response to this proposal. Further, the Committee would suggest that, without this information, landholders affected by the proposal cannot provide a fully informed response to the question.

In relation to harming protected birds for damage mitigation purposes, the Committee notes that, as discussed in the Discussion Paper at 4.2.2, the risks vary in relation to each proposal to harm, depending on the species, method of harm and location. A proper assessment of whether a code of conduct-based approach would be applicable for certain proposals to harm, would require creating categories of such proposals, and then conducting blanket risk assessments for each category. Such a process would also need to be undertaken in order to draft the particulars of codes of conduct for those categories. Given the high variation between each proposed instance of harm to birds for damage mitigation purposes, it is unlikely that such a process would be practically, let alone efficiently, achievable. Accordingly, the Committee considers that it is appropriate to retain licensing requirements for all harm to protected birds for damage mitigation purposes.

In relation to harm to animals other than kangaroos, wallabies and birds for animal damage mitigation purposes, the Committee concurs with the conclusion reached in section 4.2.3 of the Discussion Paper. Given the relatively low numbers of licence applications currently, there seems no imperative to streamline processes in relation to the approval of such harm.

In relation to catch and release of possums, the Committee does not consider sufficient information is provided in the Discussion Paper to form a view as to whether licensing requirements should be retained. It is difficult to form a view on this when there is little discussion of how compliance with codes of practice is proposed to be monitored and enforced. It would also be relevant to know if reporting on numbers of possums caught would be required under codes of conduct, and whether such data is considered useful for animal research and future assessment purposes.

The proposal to remove obligations for a landholder to obtain a licence to harm, in favour of an obligation only on the person conducting the catch and release activity to hold a catch and release licence, seems appropriate.

It would not only reduce the administrative burden in relation to licensing, but would clarify the burden of liability in the event activities are conducted in breach of the terms of the licence.

In considering the question regarding improvement to minimum standards imposed upon possum relocation management, the Committee notes that the link to the OEH Possum Management Policy provided in the Discussion Paper does not include Appendices 1 and 2 to the Policy, which contain the current licence conditions. Therefore no response to the question can be provided.

In relation to catch and release activities involving reptiles, the Committee concurs with the proposal in 4.4.2 of the Discussion Paper that licensing requirements be retained, for the reasons contained therein. The Committee has not formed a view in relation to eligibility criteria and licence conditions and would defer to opinion of experts, particularly animal welfare experts, on this issue.

Should all nominated shooters be listed on the landholder's licence to harm, rather than issuing nominated shooters a separate licence to harm, to reduce administrative effort?

No response, pending information on liability in respect of breach of licences.

Can you suggest any improvements to standard conditions of a landholder's licence to harm?

No response, pending information on the mechanism for setting standard licence conditions in place.

Do you support the retention of licensing for harming protected birds?

Yes.

Can you suggest any improvements to the licence conditions for harming birds?

No response, pending information on the mechanism for setting standard licence conditions in place.

Should codes of practice be developed for harming birds in specified circumstances as an alternative to licensing?

No.

Should licensing for harm to wombats and other protected animals be retained?

Yes.

Should relocating possums from residences, building and parks be regulated under an approved code of practice, rather than licensing?

No response, pending further information.

If licensing is retained, should the holder of the catch and release licence be required to obtain the landholder's consent, rather than requiring the landholder to obtain a landholder's licence to harm?

Yes.

Can you suggest any improvements to minimum standards for relocating possums as set out in the OEH Possum Management Policy and current licence conditions?

No response possible.

Should licensing for reptile handlers be retained?

Yes

How can licence eligibility criteria and licence conditions be improved to ensure licensed handlers have the competency and knowledge to safely catch and relocate reptiles?

No response.

Keeping and dealing licences

Animal keeper licenses

Do you support the proposed staged approach to implementing a risk-based approach to regulating native animal keeping?

Whilst the proposed risk-based approach to regulating native animal keeping would reduce the administrative burden for hobby keepers with lower risk species in smaller numbers, the difficulties in detecting and enforcing breaches of animal trading and welfare requirements, as well as the increased number of native animal pets being abandoned, would appear to outweigh the benefits of a risk-based approach.

Can you suggest any changes to the draft revised NSW Animal Keepers' Species List to ensure specific species are subject to the appropriate level of regulation?

The Committee makes no comment on this question.

Do you have any suggestions for improving the animal welfare and record keeping requirements in the draft codes of practice?

The Committee does not have any specific suggestions for improving the animal welfare and recording requirements in the draft codes of practice. However, the Committee does support the use of microchipping as an appropriate way to determine the ownership and other relevant information of an animal and is of the opinion that this should be maintained.

Do you support a risk-based approach to annual records for licensed keepers including simplified returns for Class 1 and advanced keepers, but retention of current animal record book requirements for keepers of venomous snakes?

The Committee is of the view that there should be recording requirements for all native animal keepers. In particular, the Committee is of the view that the species regulated by a code of practice should require annual returns. The annual returns need not be overly complex, therefore a simplified annual

return similar to that proposed for Class 1 and advanced keeper licence holders would be appropriate. The retention of current record book requirements for keepers of venomous snakes is supported.

Dealer licenses

Do you support the retention of licensing for pet shops that sell native animals and expanding the list of species they may sell?

The Committee supports the retention of licensing for pet shops that sell native animals, however the Committee expresses concern over expanding the list of species where the species are not specified. Whether expanding the list of species that could be sold is appropriate will depend on being made aware of the proposed species to be included. Further information is required to before a response can be given.

Can you suggest any changes or improvements to the license conditions for licensed dealers and expos?

The Committee makes no comment on this question.

Should licensing also be required for persons undertaking the business of selling native animals over the internet or from their homes?

The Committee strongly supports the implementation of licensing requirements for persons selling native animals using means other than existing licensed dealers that is, other than through a pet shop. Aside from a differing level of control between the internet or someone's home and a pet shop, dealing with native animals using the internet or from homes is substantially the same as dealing with native animals from a pet shop in terms of the need for regulation regarding animal welfare outcomes.

If so, what criteria should be applied to identify where online and home-based breeding and dealing is undertaken as a business, rather than incidental to keeping native animals as a hobby?

The Committee makes no comment on this question.

Interstate import and export licenses

Do you support the retention of import and export licenses to monitor interstate movements of native animals?

The Committee supports the retention of import and export licenses to monitor interstate movements of native animals.

Should lower risk species be exempted from licensing, such as species regulated by a code of practice?

As above, lower-risk species that are regulated by a code of practice should not be exempt from licensing.

Should import and export licences be discontinued for interstate movements of animals kept by zoos, wildlife parks and tourist attractions?

The requirement to have import and export licenses for the interstate movements of animals kept in zoos, wildlife parks and tourist attractions, should be reviewed and if not removed, consolidated with the Department of Primary Industry's reporting requirements in order to avoid unnecessary overlap between state, territory and Commonwealth agencies.

Taxidermy and preserved specimens

Do you support the retention of licensing for taxidermists to enable effective monitoring of the sources of preserved native animals?

The Committee supports the retention of licensing for taxidermists. Here, licensing is important in order to track where animals intended for preservation originate and end up.

Should persons and organisations holding preserved specimens be exempted from licensing?

The Committee is of the opinion that persons and organisations holding preserved specimens be exempted from licensing only where they are for educational or scientific purposes.

Scientific licences

The Committee supports greater streamlining of the licensing system for scientific licenses. However, it is important that the streamlining of the process is informed by the scientific model. For instance, applications should not be refused solely by reason of the fact that proposed activities may duplicate existing research (as at 6.1 of the Discussion Paper), rather assessment of applications should consider the distinction between duplication and replication of research or assessments. This needs to be balanced against the cumulative impact that such studies would have on the environment in which they are carried out, especially where there is a focus on studying rare or vulnerable communities and species.

The Committee supports replacement of bush regeneration licensing with a BC code of practice, provided that the code of practice undergoes regular review and is updated in accordance with best practice.

Do you support the proposed changes to scientific licence classes?

Largely yes, however more information is needed in relation to the scope and form of codes of practice where licences are discontinued. Further thought should be given to consolidating the administrative process where a licence requires input from multiple authorities, for instance the RFS and OEH, however this should be done by implementing a formal procedure for referral and feedback to a primary licensing authority, to increase transparency, and allow for accurate reporting on licences being approved and refused.

Do you have any suggestions to simplify the conditions for scientific licences?

Conditions on scientific licences should not be simplified at the cost of regulating the impact that activity under these licences have on the environment. Due to the variation in licenced activities, there remains a need for conditions to be tailored to each licence specifically.

Licence fees

Do you have any comments on the proposed principles for determining licence fees?

The Committee does not support the fee for threatened species licences for commercial developments being determined on a case-by-case basis, as the impact of this can be twofold:

- Reduced transparency in the process may affect compliance with the licencing requirements
- Complex activities or sites should not be penalised where proposed actions are unusual or bespoke to the constraints of the activity, as the priority to the process should be in ensuring the proposed activities address accurately and thoroughly the requirements of each case.

Given the relatively low numbers of threatened species licence applications in practice, there is no imperative to determining each fee based on time taken to assess each application.

Do you have any suggestions to improve fairness and equity in setting licence fees?

Fairness and equity in setting licence fees may be achieved by reducing or waiving licensing fees where the issue of the licence is in the public interest, or where the issue of a licence is conditioned with a requirement for information sharing or reporting that contributes to the broader knowledge and information in the public domain.

Concluding Comments

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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