

30/8/2021

**RE: Regulating the protection of Wildlife – Consultation Draft (July 2021)<sup>1</sup>**

The Canary and Cage Bird Federation of Australia Inc. (CCBFA) represents some 250 bird keeping clubs throughout Australia, including the majority of clubs operating within Victoria. We have worked on similar reviews of native bird licensing regimes in most other states and territories.

Aviculture (bird keeping and breeding) has changed substantially since the current licensing regime was designed in the 1970s. Significantly there is now no commercial trapping of native bird species and the vast majority of birds in captivity are numerous generations from their wild cousins.

Aviculturists are now conservation focussed. Our clubs promote and operate a range of conservation programs including both in-situ and ex-situ projects together with education and research initiatives.

We are dismayed and find it administratively inefficient and unproductive to run this consultation whilst a total review of the Wildlife Act 1975<sup>2</sup> and of the Prevention of Cruelty Act 1986<sup>3</sup> are underway. We are stakeholders for both reviews and are engaged in direct consultation with politicians and senior department staff.

Our CCBFA recommendations to the Wildlife Act 1975 follow, these recommendations expand on the following points and are to be considered integral and central to this submission.

- A. The current licensing regime for native birds is outdated and is no longer fit for purpose. Risk-based licensing is, in general supported. There is no longer any incentive to take from the wild for the large majority of our aviary species, therefore trivial risk, which should be reflected in the licensing regime.
- B. Aviculturists keep a mix of both native and exotic species; therefore, animal welfare regulation of aviary birds should not be the remit of the Conservation Regulator.
- C. We applaud the intent of the Conservation Regulator to “Inform and educate”, “understand how to comply”, “Collaborate by working with”, etc. described on p7. CCBFA welcomes direct communication from, and looks forward to working with the Conservation Regulator – this has not occurred to date. The consultative committee (see recommendation 4 that follows) should be supported by the Conservation Regulator.
- D. Native animal keeping is a known precursor to conservation awareness, empathy and involvement. Encouraging and supporting native animal keeping should be a central role of the Conservation Regulator.

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<sup>1</sup> Regulating the protection of wildlife - Consultation Draft is here - <https://engage.vic.gov.au/statement-regulatory-intent-biodiversity-and-wildlife>

<sup>2</sup> The Wildlife Act 1975 review website is here - <https://www.wildlife.vic.gov.au/wildlife-act-review>

<sup>3</sup> The Prevention of Cruelty to Animals Act 1986 review website is here - <https://engage.vic.gov.au/new-animal-welfare-act-victoria>

We wish to be involved in conservation, to partner on projects with government and other groups. The intimate expertise gained by caring and breeding a species can assist conservation efforts, particularly threatened species. Our expertise is an untapped resource.

The current licensing regime focusses on regulation, compliance and enforcement, hence policy and licensing staff do likewise. This needs to change, the new regime must encourage and support native animal keeping.

CCBFA's network of clubs are looking to work with the Conservation Regulator.

We appreciate your attention to the recommendations that follow.

Kind regards,

A handwritten signature in black ink, appearing to read 'Sam Davis', written in a cursive style.

Sam Davis  
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## Wildlife Act 1975 Review Submission

### CCBFA Recommendations

The following recommendations are tendered on behalf of CCBFA's Victorian affiliate clubs.

1. "To promote the keeping of native animals" should be included as a purpose within the Act.
  - a. Keeping native animals is a precursor to developing an appreciation of our Australian wildlife.
  - b. Caring for native animals directly develops empathy with wild animals.
  - c. Native animal keeping leads to a strong desire to protect and conserve our environment.
2. All commonly kept and bred species should be exempt from licensing as captive bred birds are no risk to wild populations.
  - a. Align exempt and licensed species with those in Queensland, and currently proposed for NSW<sup>4</sup> and the ACT<sup>5</sup>.
  - b. Exclude captive bred birds from the definition of "Wildlife" within Section 3 of the Act.
  - c. The descendants of most of our current captive species were trapped with royalties paid to the Crown under licence. Ownership of these birds passed from the Crown to the holder of the trapping licence. There is a strong argument that current birds in our aviaries are therefore privately owned descendants – they are not "Wildlife".
  - d. Aviculture does not wish to take from the wild except under exceptional circumstances, such as threatened species captive breeding programs, scientific endeavour or to establish a new species in captivity.
  - e. Implement a risk-based licensing system for non-exempt native avian species which simplifies record keeping in favour of collaboration and knowledge sharing.
  - f. The current licensing system does not prevent poaching, in fact many argue it can be used to legalise poached animals. In any case the current system is no longer fit for purpose.
3. Ensure animal welfare concerns do not unreasonably influence the review. The Wildlife Act is about protection and conservation of wild populations.
  - a. Aviculture includes both native and exotic species, therefore animal welfare is best dealt with under specific animal welfare legislation that covers all captive birds.
  - b. A review of animal welfare legislation in Victoria has been underway for some time and CCBFA is engaged<sup>6,7</sup>.
4. Form an advisory committee specified within the Act to represent avicultural interests. Legislating within the Act itself ensures ongoing political and bureaucratic support. Responsibilities as follows:
  - a. Representation of native bird licensees including the maintenance of licence conditions.

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<sup>4</sup> Correspondence detailing proposed NSW exempt species is here - <https://www.ccbfa.org.au/wp-content/uploads/2020/06/ccbfa-atticus-synopsis-080520-meeting-final.pdf>

<sup>5</sup> Details of the ACT proposal is here - <https://www.ccbfa.org.au/wp-content/uploads/2019/09/ccbfa-act-exempt-020919.pdf>

<sup>6</sup> Recent CCBFA submission to the animal welfare directions paper <https://www.ccbfa.org.au/wp-content/uploads/2020/12/CCBFA-Vic-Directions-Paper-Submission.pdf>

<sup>7</sup> CCBFA communication with government regarding the animal welfare law review is here - <https://www.ccbfa.org.au/wp-content/uploads/2020/04/Vic-Animal-Welfare-200420-Meeting-Synopsis.pdf>

<sup>8</sup> Our initial CCBFA submission to the Animal Welfare Action Plan (AWAP) is here - <https://www.ccbfa.org.au/wp-content/uploads/2018/02/ccbfa-vic-animal-welfare-sub.pdf>

- b. Assessment of applications to move species on and off licence or between licence categories.
  - c. Manage and oversee collaborative educational initiatives.
- 5. A minor offence of not having an appropriate licence is required when it is clear animals were obtained from a captive bred source.
  - a. Not having a licence to keep is not the same offence as poaching.
  - b. Current Section 45 and 47 offences are inappropriate for those who have captive bred birds but have neglected to renew or obtain a licence.
- 6. Remove the need for an annual “Amnesty from prosecution” under Regulations 31, 39 and 62. Details in Appendix A and a sample amnesty is provided as Appendix B.
  - a. Welfare at avicultural events is already regulated via the Domestic Animals Act 1994 (DAA), in particular, our recently negotiated “Declared bird organisation system” in DAA Sections 58T and 58U<sup>9</sup>.
- 7. Ensure aviculture is split off from hunting within the new Act to avoid all confusion.
- 8. Right of entry to check licence conditions must require permission and an advance appointment, except when a warrant has been obtained.
  - a. Refer Section 22(3)(c) in the current Wildlife Act 1975.
  - b. Privacy at one’s place of residence is a fundamental right.
  - c. Unfettered right of entry to property should not be given to officers lightly and certainly not without substantive evidence proving good cause.

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<sup>9</sup> DAA is here [http://classic.austlii.edu.au/au/legis/vic/consol\\_act/daa1994163/](http://classic.austlii.edu.au/au/legis/vic/consol_act/daa1994163/) and CCBFA explanation of the declared bird organisation system is here <https://www.ccbfa.org.au/wp-content/uploads/2018/07/ccbfa-vic-declared-bird-outline.pdf>

## Appendix A - The current legislative situation

The current Wildlife Act 1975 (Act) is here...

[http://classic.austlii.edu.au/au/legis/vic/consol\\_act/wa197593/](http://classic.austlii.edu.au/au/legis/vic/consol_act/wa197593/)

The current Wildlife Regulations 2013 (Regs) are here...

[http://classic.austlii.edu.au/au/legis/vic/num\\_reg/wr2013n64o2013283/](http://classic.austlii.edu.au/au/legis/vic/num_reg/wr2013n64o2013283/)

1. Wildlife licences are issued under Section 22 of the Act.
2. Currently 1 PU (penalty unit) is approximately \$130
3. s.22(1)(b) is the main licence for aviculture which allows licensees to “buy, sell, acquire, receive, dispose of, keep, possess, control, breed, process or display wildlife (other than specified birds).”
4. Specified birds are exotic game birds listed in the Schedule to the Act, currently pheasant, partridge, European quail, Japanese quail and Californian quail.
5. s.22(3)(b) means licence conditions are to be detailed in the Regs. Refer Reg 7, 8 and 12.
6. s.22(3)(c) requires “that the holder of the licence must allow inspection by an authorised officer, at any reasonable time, of any dwelling house specified in the licence for the purpose of monitoring compliance with this Act, the regulations or the conditions of the licence.”
7. Offences for keeping threatened and protected wildlife (without a licence) are specified in s.45 and s.47 respectively. Fines of 240PU (+20PU per animal) and 50PU (+5PU per animal apply to s.45 and s.47 offences respectively.
8. There are currently 3 licence categories relevant to aviculture specified in Reg 7, Reg 8 and Reg 12.
9. There are a number of relevant Schedules within the Regs that specify the list of species that may be kept by different licence categories.
  - Schedule 2 – basic birds
  - Schedule 3 – advanced birds
  - Schedule 4 – exempt birds not requiring a licence
  - Schedule 7 - Emu
10. “Wildlife Basic” is specified in Reg 7 and permits non-commercial keeping of species in Schedules 2 and 7 of the Regs.
11. “Wildlife Advanced” is specified in Reg 8 and permits non-commercial keeping of species in Schedules 2, 3 and 7 of the Regs.
12. “Wildlife Dealer” is specified in Reg 12 and allows commercial dealings in species in Schedule 2, Part A of Schedule 3, Schedule 4 and Schedule 7.
13. Reg 49 exempts people from requiring a licence to keep captive bred from the species listed in Schedule 4.
14. Currently an exemption, known as “An Amnesty from Prosecution” has been provided each year by the Secretary of DELWP to allow licence holders at bird sales/expos to sell and buy native birds. The “Amnesty” is in relation to Reg 31, 39 and 62.
  - Regulation 31 – requires record books to be kept at the premises specified on the licence.
  - Regulation 39 – specifies transactions can only occur at the premises of a party to the transaction.
  - Regulation 62 – requires licensees to obtain permission to remove animals from the premises specified on their licence.



Department of Environment,  
Land, Water & Planning

**AMNESTY FROM PROSECUTION FOR THE REMOVAL OF LICENSED WILDLIFE  
AND RECORD BOOKS FROM SPECIFIED PREMISES FOR THE PURPOSE OF  
PARTICIPATING IN AUTHORISED EVENTS**

**1. What is the purpose of the Amnesty?**

The purpose of this Amnesty is to exempt certain holders of a wildlife licence issued under the *Wildlife Act 1975* for breaching licence conditions related to specified premises only while attending authorised events.

All individual participants of those events listed in section 3 of this Amnesty will require a relevant wildlife licence issued under the *Wildlife Act 1975*.

All other requirements prescribed in the Wildlife Regulations 2013 and on the licence still apply.

**2. To whom does this Amnesty apply?**

The Amnesty applies to holders of a wildlife licence issued pursuant to section 22 of the *Wildlife Act 1975*.

**3. What are the terms of the Amnesty?**

A person to whom this Amnesty applies will not be subject to enforcement action in respect of the legislative provisions described below provided the person:

- A. Removes wildlife from the premises specified in their licence for the purpose of attending:
- i. Bird sales as a registered participant with the Avicultural Society of Australia (ASA) as follows:
    - Western District branch at the Exhibition Hall, Hamilton Showgrounds on 20 March 2016;
    - Geelong branch at the Geelong Showgrounds on 3 April 2016;
    - Gippsland branch at Exhibition Hall, Warragul on 17 April 2016
    - Swan Hill branch at the Italian Club, Swan Hill on 24 April 2016
    - Union Hall, Latrobe University, Bundoora on 1 May 2016;
    - Bendigo branch at the Bendigo Showgrounds on 7 May 2016;
    - Goulburn Valley branch at the Shepparton Showgrounds on 15 May 2016;
    - Mornington Peninsula at the State Dog Centre, Western Port Highway, Skye on 29 May 2016;
    - Mildura and District Bird Club at the Redcliff Civic Centre on 12 June 2016;
    - Ararat branch at the Alexandra Hall, Ararat on 19 June 2016;
    - Centre West branch at the Civic Hall, Cobden on 9 July 2016;



- Latrobe Valley Aviculture Club at the Newborough Town Hall on 3 July 2016;
  - Gippsland Caged Birds at the Exhibition Hall, Warragul on 17 July 2016; and
  - Ballarat branch at the Ballarat Showgrounds on 6 August 2016.
- ii. Australian Association of Wildlife Artists' Taxidermy Exhibition and Wild Deer Expo at the Bendigo Showgrounds between 3 March 2016 and 6 March 2016 as a registered participant.
- iii. Victorian Herpetological Society's 2016 Reptile and Amphibian Expo at the Royal Melbourne Showgrounds, Flemington on 5 March 2016 as a registered participant with the Victorian Herpetological Society.
- B. Removes their record book from premises specified in their wildlife licence for the purpose/s only of attending those events listed in Section 3(A) of this Amnesty.

#### 4. What is wildlife?

For the purpose of this Amnesty, 'wildlife' is the same as that defined under section 3 of the *Wildlife Act 1975* and which is held under a wildlife licence issued under section 22 of this Act.

#### 5. What legislative provisions will not apply?

A person to whom the Amnesty applies, who complies with the terms of the Amnesty, will not face enforcement action in respect of a breach of the following regulations under the *Wildlife Regulations 2013*:

- i. Regulation 31 – Storage of record books and return forms
- ii. Regulation 39 – Wildlife to be bought, sold or disposed of only at specified premises
- iii. Regulation 62 – Specified premises

#### 6. For how long does the Amnesty run?

This Amnesty applies only to the events and dates provided at Section 3(A) of this Amnesty, unless cancelled by the Secretary.



ADAM FENNESSY  
Secretary

30 /12/ 2015

