

14/02/2023

Manager NPWS Wildlife Regulation Unit  
By Email: wildlife.reforms@environment.nsw.gov.au

**Re: Protected animal specimens draft code of practice (Code): public consultation**

The Code is here - <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Licences-and-permits/protected-animal-specimens-draft-code-of-practice-220539.pdf>

The Canary and Cage Bird Federation of Australia Inc. (CCBFA) represents approximately 240 avicultural clubs nationally, over 100 within NSW, with many tens of thousands of members.

In general, the Code is overreach and unnecessary. It is unclear how the Code will assist in the conservation of our wildlife.

Codes of practice under the *Biodiversity Conservation Act 2016* are intended to reduce the compliance burden in favour of education, whilst providing a defence to charges. Instead, this Code increases the compliance burden via it's "Record keeping and notification" clauses.

We doubt many of our members are even aware of the current "Taxidermy licence" and few, if any, would be compliant. This proposed code is further red tape. Where is the evidence to indicate such a Code is needed? Why not aim to involve those interested in our native fauna in conservation efforts rather than burden them with additional red tape?

Some areas of concern include:

1. The note accompanying 3(3) is factually incorrect. Regulation 2.9(1) states it is a defence if the offence was "done in accordance with a code of practice"<sup>1</sup>. It is not necessary to comply with all conditions of the code for it to be used as a defence.
2. Further to 1 above, 6.b. of the Code proposes "every clause" must be complied with before any part of the Code can be used a defence. This contravenes the intent of Section 2.9 of the *Biodiversity Conservation Act 2016* and Reg 2.9(1).
3. This Code (and other proposed draft codes) are greatly misinterpreting the intention of codes of practice under Section 2.9 of *Biodiversity Conservation Act 2016*. Such codes are to be guides as to how people should act when dealing with native flora and fauna. They are not licensing schemes – licensing schemes require notification to the department, codes of practice do not. 11(1) and related clauses must be removed.
4. It may be helpful for the review panel to read section 6. "Managing wildlife interactions" within the document *A review of biodiversity legislation in NSW Final Report*<sup>2</sup> which is clear that the aim of a risk-based methodology is to reduce the regulatory burden for low-risk activities such as

<sup>1</sup> <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2017-0432#sec.2.9>

<sup>2</sup> <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/review-biodiversity-legislation-nsw-final-report-2014.pdf>

proposed to be covered by this Code. This was the guiding report accepted by government that lead to the drafting of the current *Biodiversity Conservation Act 2016*.

5. We request details of the stakeholders consulted prior to the formulation of this Code. There is no documentation to this effect that we can locate on the review website.
6. The purpose of the *Biodiversity Conservation Act 2016* is to “maintain a healthy, productive and resilient environment”<sup>3</sup>. We request evidence to show how the following activities are detrimental to this purpose.
  - a. Aviculturists, including licensed native bird keepers routinely keep deceased birds for the purpose of autopsy either by their own hand or by avian qualified vets. This includes a range of threatened species kept in captivity.
  - b. Many aviculturists keep collections of preserved specimens, both of native and exotic species. Some are professionally prepared mounted specimens whilst others are frozen or in the form of skins much like those maintained by museums internationally. In our case these are specimens of deceased birds sourced from our captive collections.
  - c. Members of the general public, often children collect feathers and egg shards they find and are keen to have the species identified. We routinely assist in identification as aviculturists have expert knowledge in this area.
7. There are numerous threatened species routinely kept by aviculturists. 8(1) of the Code implies a licence is required to keep such specimens, similarly 9(2) requires that the specimen must be found dead. This includes feathers, an egg, not just a deceased bird. Obviously, for captive animals, this is all absurd. All activity using captive bred specimens must be exempt.
8. Clause 11(6) requires import and export permits for Code specimens. Such a requirement defeats the purpose and intent to reduce the administrative burden for low-risk activities.
9. The note accompanying 11(7) presumes the Code to be a “relevant instrument” under Reg 2.38<sup>4</sup> - this is disputed. The purpose of a code of practice for low-risk activities is to guide and encourage compliance via education.

We welcome the opportunity to consult further as the Code is finalised.

Regards,



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<sup>3</sup> <https://legislation.nsw.gov.au/view/html/inforce/current/act-2016-063#sec.1.3>

<sup>4</sup> <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2017-0432#sec.2.38>