



Dealing in protected birds draft code of practice consultation report

Department of Climate Change,
Energy, the Environment and Water

Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the Traditional Custodians of the lands where we work and live.

We pay our respects to Elders past, present and emerging.

This resource may contain images or names of deceased persons in photographs or historical content.

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Artist and designer Nikita Ridgeway from Aboriginal design agency Boss Lady Creative Designs created the People and Community symbol.

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Background

The *Biodiversity Conservation Act 2016* (BC Act) and Biodiversity Conservation Regulation 2017 (BC Reg 2017) regulate human interactions with native wildlife in New South Wales by applying a risk-based approach.

In New South Wales, a biodiversity conservation licence (BC licence) or a code of practice can give a person the authority to undertake an activity that would otherwise be an offence under the BC Act. It is proposed that codes of practice for lower-risk activities be implemented to reduce administrative burden and modernise and streamline regulation. This means that certain previously licensed activities would no longer require a BC licence and instead could be carried out in accordance with an enforceable code of practice.

The Draft Dealing in Protected Birds Code of Practice (the draft code) has been prepared and proposes to provide a defence for a person to deal (buy, sell, possess, trade, import and export) in *Code Regulated Birds* in New South Wales.

The BC Act sets out the process for making codes of practice, which requires the draft consultation document be made publicly available for comment for a period of at least 4 weeks. This consultation report provides the main themes raised in submissions.

Overview of consultation process

The draft code was placed on public exhibition from 31 May to 30 June 2024. Notice of the public exhibition, a reminder notification and an exhibition closed notification was sent via email and letter to over 3,500 stakeholders. Stakeholders included:

- BC licence holders who keep native birds, including expired bird keeper licensees going back 2 years
- fauna dealer BC licence holders
- Species List Advisory Committee members and deputies
- conservation organisations
- animal keeper peak groups
- animal welfare organisations
- rehabilitation groups BC licence holders
- state and Australian Government agencies
- previous public exhibition submission respondents concerning animal keeping reforms.

A notice was placed in the NSW Government Gazette, on the Environment and Heritage Have Your Say website, and on the NSW Government Have Your Say portal.

A webpage with frequently asked questions was also available, which provided additional explanatory information about the draft code, proposed implications and the risk-based approach that has been developed.

People were asked to 'have their say' by either completing an online survey with a set of focus questions, emailing, or posting their written submission.

The following gives an overview of the number of submissions and the main feedback received on the draft code, which is summarised below.

Submission respondents represented a variety of interests and viewpoints and included individual licensed keepers, avicultural organisations, welfare organisations, wildlife rehabilitation organisations, and an NSW Government agency.

- A total of 146 submissions were received
- 123 of these submissions completed the online survey
- 20 submissions received via email
- 3 submissions received via post

All submissions received will be carefully considered and reviewed before finalising the content of the Draft Dealing in Protected Birds Code of Practice.

Main themes raised in submissions

The proposed implementation of a code of practice to replace a BC licence to deal in protected birds was met with diverse feedback, including:

- respondents wanting less regulatory oversight for bird keeping
- respondents wanting to retain current regulatory oversight for bird keeping (that is, continue to operate under licence rather than the implementation of a code)
- respondents agreeing with the registration, reporting and trade limit elements within the draft code.

A number of recurrent issues were raised, which are categorised below.

Note: In the online survey, respondents were asked if they agreed or disagreed with key elements within the proposal, such as trading limit, registration, etc.

Not all respondents answered every question and the vast majority of those who did, did not provide reasons why they agreed/disagreed, nor provide alternatives, so the below are examples of comments from submissions that did provide reasons for their answer.

Requirements relating to a trading limit

The draft code proposes a trading limit of 30 birds per year. This means a person could trade (buy, sell, exchange, import and export) up to 30 code regulated birds in a year if registered to the code otherwise a BC licence would need to be retained.

Opposed

Of the 146 submissions received, 131 submissions referred to a trading limit of which 91 opposed this trading limit believing it should be higher or there should be no trading limit at all.

Submissions expressed the view that having a trading limit adds another level of bureaucracy and administrative burden that would over-complicate the bird keeping hobby, negatively impacting aviculture.

Twenty-seven respondents questioned why the number 30 is proposed, saying that 30 is low and impractical considering that many commonly kept bird species are prolific breeders. These submission respondents provided examples of different types of species that can produce multiple clutches a year with the offspring then typically traded or sold within the same year, resulting in the limit being easily exceeded.

One submission respondent expressed that the aim of a bird keeper is to breed the greatest number achievable, all while needing to trade the excess and keep a sustainable population.

Fifteen submission respondents stated that bird keepers and hobby aviculturists help prevent birds from going extinct and contribute considerably to preserving and restoring endangered and threatened bird species. They further stated that multiple

different species have benefited from captive breeding programs, and that if restrictions on trading were introduced, breeders would turn away from the hobby.

Support

Twenty-five submissions were in support of the proposed 30 birds per year trading limit. Submissions supporting the trading limit believed that this number was sufficient for most bird keepers, as most bird keepers only sell/trade a few birds a year to maintain genetic diversity in the aviary or reduce crowding during an exceptional season.

In addition, one submission respondent commented that having a trading limit makes it easier to monitor and prevent captive breeding from becoming a business and another submission commented that this ensures a more controlled and manageable environment for both traders and the birds themselves.

Fifteen submission respondents suggested that the trading limit was too high and should be less than 30 per year, believing this would lead to the exploitation of protected birds by making them more vulnerable to smuggling, poor animal welfare and wellbeing outcomes.

Two submissions further expressed disagreement with trading in protected birds in any capacity, advising that there should be a limit on the number of protected birds a person can possess, as well as a limit on trading.

Registration and reporting information to the department

The draft code proposes registration and record keeping with the department. This includes registering a person's personal details, the number and type of species in their possession at the time of registration, and third-party information (if known) on who they acquired the bird(s) from. Submissions both in support and in opposition to this proposal were received.

Opposed

Of the 146 submissions received, 125 submissions referred to registration requirements of which 85 opposed.

Thirty submission respondents who opposed the registration requirements expressed concern that this would create unnecessary paperwork and is a waste of government resources for species that are low risk, as these species are abundant in aviculture, relatively inexpensive and have little risk of being trapped in the wild.

Forty-eight submission respondents believed the registration and record keeping requirements were the same or more restrictive as the current licence requirements, providing no relief for bird keepers.

Privacy and security concerns were also raised about this information potentially being hacked by 10 submission respondents.

Eighty submissions disagreed with needing to update personal details within 28 days of them changing, reasons provided included that this was too onerous and could easily be forgotten, therefore making a person liable to breaches of the BC Act.

Although opposed to registration, 14 submissions conceded that higher-risk species such as those of higher monetary value, those endangered, and those known to be trapped in the wild merit a requirement to register with the department.

Support

Thirty-eight submission respondents agreed with the proposed registration and record keeping and believed that this information is necessary to keep track of protected birds, noting that bird keepers should already be updating changes through the Native Animal Keeper Online Record Keeping system annually.

The requirement to update details within 28 days was agreed with by 38 submission respondents, with 2 submission respondents believing this to be a reasonable timeframe, and a necessary measure for maintaining accurate records, thus ensuring accountability.

Three of submission respondents stated that more information should be reported. Recommendations included reporting a person's BC licence or code registration identifier and having more reportable animal information.

Exempt classification rather than code

Twenty-eight submission respondents believed that common aviary bird species or all current bird species classed as 'basic' should be placed on the exempt species list and, therefore, disagreed with the draft code.

Reasons provided in submissions included that the husbandry requirements for these birds match those on the current exempt list, that common and popular birds are of no risk of being poached and that their potential escape/release into the wild would not provide a suitable habitat to survive.

Seven submission respondents recommended adopting certain aspects of recently implemented reforms to bird keeping by the Queensland government, which resulted in additional species of birds moving to an exempt status under their legislation.

Fourteen submissions expressed disappointment that the previously proposed changes in 2018 to the keeping of protected birds had not been progressed, with 3 suggesting that this delay is the reason for non-compliance among bird keepers, confounded with a dysfunctional licensing system.

Retain licensing requirements

Twelve submission respondents were critical of the introduction of a code of practice and believed it was the government's responsibility to continue to license these bird species and that all requirements for a licence must remain in place.

Submission respondents raised concern that the focus on deregulation and reduced responsibility would have serious repercussions for both conservation and animal welfare.

One submission believed that the government is trying to opt out of its duties in protecting native birds so that there would eventually be no control over bird keeping.

While another submission noted that the introduction of a code of practice would diminish government oversight and shift responsibility to self-reporting and self-management.

Three submissions believed the introduction of the code could lead to more animals being abandoned and would require re-homing and therefore increased burden on the volunteer wildlife rescue and rehabilitation sector.

Seven submission respondents disagreed with the introduction of the code because they believe it would increase the potential for illegal wildlife trafficking. These submission respondents advocated that stronger regulation and enforcement are required, not less.