

16th February 2023

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

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

Animal Care Australia (ACA) is a national incorporated association established to consult with government in advocating for real animal welfare by those who keep, breed and care for animals. Our goal is to promote and encourage high standards in all interactions with the animals in our care. In response to this particular public consultation, ACA is responding to call-out the sheer waste of time, money and implementation of enacting a Code of Practice (COP) that is:

- a) Stricter than and exceeds the current Licensing requirements – defeating its own purpose of implementation as a risk-based outcome. (Risk-based systems are meant to reduce workload and interaction – not increase it)
- b) Untenable as it is unlikely National Parks & Wildlife Service (NPWS) could ensure compliance – given the vast majority of the public are already unaware they require a license to possess a taxidermied or preserved native animal.
- c) Requiring clearer definition and explanation of the intent and purpose.
- d) Overreaching based on any intended preservation or conservation of native wildlife.

**Definitions:**

**Code Of Practice:** A code of practice can be a document that complements laws and regulations to provide detailed practical guidance on how to comply with legal obligations, and should be followed unless another solution with the standard is in place.

**Risk-based approach:** a risk-based approach is identifying the highest compliance risks to your organisation, making them a priority for the organisation's compliance controls, policies and procedures. Once your compliance programme reduces those highest risks to acceptable levels, it moves on to lower risks.

**ACA's response to COP:**

**3.3 – Nature and status of the Code**

*It is a defence to a prosecution for an offence under section 2.5 of the Biodiversity Conservation Act 2016 (BC Act) if the person charged establishes that they meet the eligibility requirements and have wholly complied with each condition of this code.*

And,

**6. License not required under this Code**

Subject to the limitations in clause 8, a defence to a prosecution for an offence under section 2.5 of the BC Act is available for a person who both:

- a. meets the eligibility requirements in clause 7 of this code; and
- b. complies with every clause and requirement under this code.**

ACA questions the legality of 3.3 and 6 (b).

Regulation 2.9(1) states it is a defence if the offence was “done in accordance with a code of practice” This does not require compliance with ALL of the Code – simply with the section of the Code that relates to the potential offence.

For ACA, this appears to be NPWS attempting to circumnavigate the current intent of codes of practice under an Act – that being as per the above definition: ‘a guide for the purpose of compliance with an Act.’ The mere inclusion of these two clauses highlights NPWS is acutely aware the provisions within a Code of Practice can be used as a defence and are attempting to negate the ability to do so by inferring the ENTIRE Code must be adhered to – even if sections of the code may in fact be irrelevant to the potential offence.

This is clearly an attempt to create a pseudo licensing policy so that they can still claim to meet the requirements for a risk-based approach from within the Biodiversity Conservation Act, while not losing any control or power current licensing provides.

It also contravenes the findings of “A review of biodiversity legislation in NSW Final Report” – Section 6 – Managing Wildlife Interactions (see References at end of submission)

## **8. Limitations of code**

### **4. This code does not authorise a person to preserve an animal by taxidermy.**

This Code is the splitting off of the possession of a specimen from the actual production (taxidermy) of the specimen. The two are currently under the same Licensing category: “Licence to Possess Preserved Specimens and/or Carry Out Taxidermy”

ACA supports the continuance of a regulatory requirement for persons wishing to produce a taxidermied specimen. This is a specialised field and in itself there MAY be some risk value (though extremely LOW) for the conservation of our native wildlife by ensuring only registered persons with expertise can carry out such acts.

HOWEVER ... it is ACA’s contention that the need for an individual wishing to own a taxidermied, or preserved specimen carries little to no risk to our native animals – particularly given the taxidermied specimen they obtain would come from a licensed (regulated) expert. There is a strong element of regulating the already regulated.

The vast majority of the public collect feathers, or ‘grounded’ eggs, or snake skins without any understanding that they are carrying out an illegal activity. It is therefore extremely unlikely the public will adhere to a requirement that they must register their private details with the department in order to keep said skin, feather or egg. This notion is simply ludicrous, impossible to enforce and seriously should have been deemed low to zero risk and removed from requiring any action at all.

## **9. General requirements for dealing in specimens**

**2. A person may only deal in a carcass, preserved specimen or skeletal remains found by that person if that specimen is found dead and the person did not harm or cause its death.**

**3. A person may only deal in skin and feathers of a protected animal found by that person if the skin or feathers:**

**a. were naturally shed or moulted from an animal; or**

**b. otherwise not attached to an animal, whether or not that animal is alive or dead.**

**4. A person may deal in a non-viable egg or egg shard from a protected animal found by that person if:**

**a. the non-viable egg or egg shard was found broken or empty and the person did not cause the egg to be broken or emptied**

## **b. the non-viable egg or egg shard was not collected from a nest**

Simply put – PROVE IT!

- How does a person in possession prove such requirements?
- How does the department intend to prove same requirements?
- Has this been evaluated legally for the ability to prove and prosecute said requirements? If so, where is that legal evaluation? It is not included anywhere on your website.

### **6. Nothing in this clause 9 restricts the ability of a person to deal in a specimen purchased or received from another person.**

This statement appears to contradict 9.2. If 9.2 is to be enforced how can a person obtain a specimen from another person if the person owning the specimen MUST be the person who found it? How can they then sell a specimen they own if the registered owner of the specimen MUST be the person who found it?

Additional 9.6 places confusion on the existing conditions for holding a taxidermy licence:

A taxidermied specimen cannot be sold by a taxidermist.

*“You cannot sell or trade animal specimens, even if you do not want to keep it. If you’re a professional taxidermist, you may advertise and charge for your taxidermy services.”* – Service NSW website.

Therefore a person cannot ‘PURCHASE’ a specimen in order to obtain it, in order to possess it under this Code as the taxidermist is not the individual who found the animal and the buyer may not be the person who found the animal.

Additionally Section 9 makes no clear delineation for how the owner of an animal that was in their care under the provisions of another Biodiversity Conservation License (such as an animal keeping license) is able to then preserve or taxidermy their deceased pet. It clearly states the person must not have caused the death of the specimen and yet pets are in their ongoing care – how does a licensed animal keeper prove this?

Section 9 also implies no euthanised animals can be taxidermied or preserved. This could create a welfare issue preventing important specimens from being preserved, or having to allow an animal already suffering to die "naturally" in order to use that specimen. It is astonishing that NPWS are placing measures that make it harder to euthanise a suffering animal. It should never have to be considered by an animal owner.

Of greater concern to the above points - there are numerous threatened species routinely kept by private animal keepers. 8.2 of the Code implies a licence is required to keep such preserved specimens. This creates added confusion – if you are able to keep the animal while it is alive – then why do you need an additional license and continued record reporting when it is dead?

Clearly the sole focus by NPWS has been on the assumption that everyone is out collecting native animals from the wild and no consideration has been given to those already doing the right thing by complying with animal keeping licenses. The existence of, death of and subsequent continued ownership of captive bred native species requires some form of an exemption – regardless of whether they are threatened species and regardless of Clause 9 of this Code.

## **11. Record keeping and notification**

### **1. A person may deal in a specimen if they:**

**a. register their personal details and specimen Information for each specimen that person possesses at the time of registration with the department online.**

***b. update their personal details with the department within 28 days of these details changing; and***

***c. update with the department the specimen information for each specimen that person:***

***i. buys***

***ii. sells; or***

***iii. trades***

***by the anniversary date each year. To avoid doubt, this clause 11(1)(c) does not apply to a specimen which is only possessed by a person within a relevant 12-month period.***

***d. for the purpose of clause 11(1)(c), anniversary date means the day and month one year after the date a person registers their personal details and specimen information with the department under clause 11(1)(a), and each succeeding date one year after the previous anniversary date.***

This is absolute overreach – and places a stricter requirement than the existing provisions of the current licensing system for ‘Licence to Possess Preserved Specimens and/or Carry Out Taxidermy’ which only requires a reporting period once per license period – once every five (5) years – the license period for current Possession of Preserved Specimen. Reporting every change within 28 days instead of every 5 years (or even annually) makes this Code unnecessarily cumbersome, a burden, and overreaching – teetering on an abuse of power – AND contravenes the findings of “A review of biodiversity legislation in NSW Final Report” – Section 6 – Managing Wildlife Interactions.

Again there is confusion here – if the item is bought by a new owner what Clause within the Code overrides 9.2 that states the specimen had to be found by the person in possession in order to then be able to obtain without breaching the Code?

#### **11. Record Keeping and notification:**

***6. Where a person imports to New South Wales or exports from New South Wales a specimen, that person must retain:***

***a. the third-party information and the import or export licence number of the other party importing or exporting the specimen***

***b. the specimen information of the imported or exported specimen for at least 7 years after the specimen leaves the possession of that person.***

If this Code does not apply to the Import & Export of Specimens as per:

#### ***8. Limitations of code***

***1. d. the export or import of specimens, except to impose requirements in relation to the retention of information, in accordance with clause 11***

Then, what is the justification or legal ground of the imposition to keep records of said import/export? Such records would exist within the department as it must have approved the said Import/Export? ACA is unclear why these two points have been included, particularly when they clearly overlap a separate licensing type/category. Surely these provisions already exist in the conditions of that category? If not – why not?

#### **Conclusion:**

- ❖ ACA does not support the implementation of this Code; and
- ❖ ACA finds no cause or direct relevance to the conservation of animals in the wild by this Code: and

- ❖ ACA finds it is irresponsible of NPWS to be drafting this Code without providing any written data or supporting information that justifies the need of this Code; however.
- ❖ ACA supports a requirement for persons who carry out taxidermy to be registered and operate under a Code – that is under a RISK-BASED PRINCIPLE – based on the LOW RISK to conservation.

ACA finds this Code and its attempted implementation to be a clear sign that the staff and department within the NPWS have clearly different ideological agendas if they can find justification for establishing:

- an ongoing register of dead animals
- profiteering off of dead animals by the department (in yearly license fees)
- providing further unjustifiable reasons to maintain knowledge of and the private details of people who keep dead animals

Should you require ACA to provide further clarification to this submission, please do not hesitate to make contact with us.

Kind regards,



Michael Donnelly  
President  
0400 323 843

**References:**

The [Code of Practice](#)

[Section 2.9 of the Biodiversity Conservation Act:](#)

[A review of biodiversity legislation in NSW Final Report:](#)

[Licence to Possess Preserved Specimens and/or Carry Out Taxidermy](#)

[Taxidermist License condition prohibiting sale](#)