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using the law to protect the natural and built environment

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Wildlife Regulations Review
Dept of Primary Industries, Parks, Water and Environment
GPO Box 44
Hobart 7001

By email: wildliferegulationsreview@dpiwpe.tas.gov.au

Dear Sir or Madam,

Review of the *Wildlife Regulations 1999*

Thank you for the opportunity to comment on the issue papers regarding the review of the *Wildlife Regulations 1999*.

The Environmental Defenders Office (**EDO**) is a non-profit, community based legal service specialising in environmental and planning law. Our principal comments relate to the regulation of crop protection permits, penalties and enforcement issues. Other general comments are set out in a table on page 2.

Crop Protection Permits

Draft r.21(2) of the *Wildlife (General) Regulations 2010* provides that

(2) The Secretary is not to grant an application for a crop protection permit referred to in regulation 26 unless satisfied that it is **proper to do so to prevent the destruction of, or injury to, any stock or plants caused by the wildlife specified in the permit.** (emphasis added)

This is consistent with the regulatory 'test' for granting a crop protection permit under the current *Wildlife Regulations 1999*. However, there continues to be significant criticism about shooting activities authorised by such permits, particularly the number of animals taken. For example, DPIWPE figures indicate that 447,579 Bennett's wallabies and 560,406 pademelons were reported as being taken pursuant to crop protection permits in 2008-2009.

The EDO is frequently contacted by landowners adjoining forestry coupes concerned that culling is excessive and indiscriminate. In contrast, some farmers have indicated that it is difficult to obtain a permit to cull feral deer affecting their properties. We believe that formal guidelines should be developed to assist DPIWPE staff to determine when it is "proper" to issue a crop protection permit and to place

restrictions on the number of animals to be taken under such a permit. For example, this could require applicants to:

- demonstrate that fencing options had been explored;
- provide sufficient evidence of damage to crops to warrant culling;
- provide information about the financial impacts of the damage to crops and the costs of protecting against the damage;
- submit accredited property-based game management plans prior to the issue of permits.

Offences, penalties and enforcement

We strongly support the extension of “relevant offences” to include offences under the *Animal Welfare Act 1993*, *National Parks and Reserves Management Act 2002*, *Firearms Act 1996* and *Threatened Species Protection Act 1995*.

It is important that maximum penalty rates are set so as to provide a deterrent against non-compliance. In practical terms, it is also important that penalties are graded to indicate increasing seriousness of offences and that it is appropriate to award close to maximum penalties. We believe that prescribing the same penalty for taking protected wildlife without authority as for failing to keep records may detract from the seriousness of the unlawful taking offences.

Penalties attaching to infringement notice offences are substantially lower than penalties that can be imposed if an offence is proved in court. While we acknowledge the utility of infringement notices for dealing with matters ‘on-the-spot’, it is important that the convenience of such notices is not used to avoid undertaking prosecutions which may yield much higher penalties (and act as a greater deterrent). We believe that an infringement notice should not be issued for a second or subsequent offence.

We recommend that DPIPWE consider introducing an escalating scale of enforcement actions and penalties, depending on the seriousness of the offence and whether it is the offender’s first offence. We further recommend that DPIPWE develop enforcement guidelines for the *Wildlife Regulations 1999* to provide guidance on these issues.

Self-evidently, sufficient resources must also be made available to the Nature Conservation Branch to ensure that they are in a position to oversee, review and enforce compliance with permits issued under the *Wildlife Regulations*.

GENERAL COMMENTS

Wildlife (General) Regulations 2010

Regulation	Comment
<i>Wildlife (General) Regulations 2010</i>	
R24	<p>This provision does not preclude a permit being issued retrospectively.</p> <p>This anomaly is noticeable when compared to, r.13 of the <i>Wildlife (Exhibited Animal) Regulations 2010</i> where it is stated that the licence commences on the day issued or a later day specified.</p>

Regulation	Comment
	As R24 is constructed, nothing disqualifies the making of an application for a permit <u>after</u> the taking of a protected or partially protected wildlife.
R45(3)	It is possible for a vessel to be operated by the skilful use of currents. We recommend that current, water flow or tide be included under sub-regulation (3) to ensure all situations are captured.
R47(3)	We believe that 15 is too high a threshold for permit requirements for an organised shoot and would support the number being set at a significantly lower figure.
R52(3)	Is the use of a duck whistle permitted for attracting wild duck?
R55(2)	Offences under r.55(2) should be included in Schedule 10.
General comment	The <i>Wildlife (General) Regulations 2010</i> do not include provision for an applicant to be notified of appeal rights under the <i>Magistrates Court (Administrative Appeals Division) Act 2001</i> . In contrast, r.13, 19, 33, 40 and 44 of the <i>Wildlife (Exhibited Animals) Regulations 2010</i> include this advice.
<i>Wildlife (Exhibited Animal) Regulations 2010</i>	
R17(1)(b)	A licence may be cancelled where an offence is committed under the Act or "these regulations". For consistency with other provisions, it would be appropriate to allow cancellation where any "relevant offence" was committed.
R22(1)	This provision may need to be amended to relax the two hour notification period where escape occurs outside business hours.
R24(1)(a)	As drafted, this provision may make it an offence for an exhibitor to accept injured wildlife where the wildlife has been unlawfully obtained. This is a practical concern, as many wildlife exhibition centres will have staff who are in a position to assist with injured wildlife and should not be discouraged from doing so. The provision may need to be amended to exempt 'acquisitions' made for the purpose of dealing with injured wildlife, but require the exhibitor to report the incident. Keeping the animal after care has been provided should be subject to approval from the Secretary.

Thank you for considering our comments. Please do not hesitate to contact us to discuss this submission.

Kind regards,

Environmental Defenders Office (Tas) Inc

Per:



Jess Feehely
Principal Lawyer