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# Submission:
# Draft Dealing in Protected Birds Code of Practice 2023

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**Submitted to:**
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## Executive Summary

The *Draft Dealing in Protected Birds Code of Practice 2023* highlights a missed opportunity. A missed opportunity to re-centre Departmental policies and processes to ensure the best welfare and wellbeing outcomes for native birds are met.

By contrast, the proposed deregulation of keeping native birds in captivity diminishes oversight and prioritises self-reporting and regulation. The welfare and wellbeing of nature birds is tertiary at best, situated behind a preference for expedience and reduced regulatory oversight, and the interests of those who wish the keep native birds in captivity. It does not reflect community expectations, and positions to Department as out of touch.

More native birds will be exposed to serious and irreversible impacts, including an increased risk of grey- and black-market trafficking.

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## About WIRES

WIRES is Australia's largest wildlife rescue organisation, and operates a dedicated Wildlife Rescue Office assisting wildlife and the community across Australia 24-hours a day, 365 days a year, providing rescue advice and assistance for over 130,000 animals annually — including 862 koalas in 2023. We have around 4,000 dedicated volunteers as well as a fleet of Wildlife Ambulances operated by full-time, professional Emergency Responders across NSW, South-East Queensland and Tasmania. These ambulances travel, on average, 43,000 kms per year and have responded to more than 17,000 rescues since October 2020.

In addition, WIRES trains hundreds of rescuers and carers annually, are dedicated to the ongoing recruitment of new volunteers and the continued training of existing volunteers. This growing network is critical for the rescue and rehabilitation of our unique native wildlife. WIRES has responded to more than 60% of all animals needing rescuing in NSW over the last 8 years. Across NSW the volunteer contribution is estimated to save the government approximately $27 million per annum and is growing.[1]

WIRES has developed partnerships and programs and provides forward-thinking national support to hundreds of projects which aim to see listed species' populations increase though protection efforts. Since the 2019-2020 summer bushfires, we have had an increasing focus on supporting projects that protect and restore threatened habitats and provide for the long-term recovery of wildlife habitat and the preservation of native species in the wild.

[1] Department of Planning, Industry and Environment (2020). *NSW Volunteer Wildlife Rehabilitation Sector Strategy 2020-2023*, NSW Government.

## Introduction

NSW Wildlife Information and Rescue Service Inc (WIRES) welcomes the opportunity to provide a submission on the *Draft Dealing in Protected Birds Code of Practice 2023* (herein, *Draft Code*).

Underpinning the Draft Code is a risk-based methodology and approach. WIRES has several serious concerns regarding the broad application of risk-based methodologies and approaches to enable the keeping of native birds in captivity.

Risk-based approaches have been applied to mitigate anthropocentric impacts on threatened and endangered species, and those whose habitat is under threat of destruction and fragmentation, seeking to balance the welfare and wellbeing of wildlife and conservation programs.[2] The application of a risk-based approach in such contexts reflects the Precautionary Principle. The Draft Code's proposed adoption of a risked-based method to permit the keeping of native birds in captivity does not.

The proposed focus on a risk-based approach presents a missed opportunity, informed by a Departmental desire to reduce its regulatory responsibility — an opportunity to focus on and recentre the welfare and wellbeing of native birds as a Departmental priority.

Of very significant additional concern are identified links between a reduction in regulatory oversight and an increase in grey- and black-market trafficking of wildlife.

The Department should be providing leadership and reflecting increasing community expectations to ensure the welfare and wellbeing of wildlife are paramount in decision making processes.

## Risk-based approaches

The application of risk-based methodologies and approaches to the keeping of native birds in captivity is fundamental to the proposed approach in the Draft Code. The direct outcome is an increase in the ease for an individual to obtain, keep and expand the number of native birds and species they are placing and keeping in captivity. This outcome is rooted in a desire to further minimise — to diminish — the regulatory responsibility of the Department through reducing oversight. The Draft Code shifts emphasis to those who do and want to keep native birds in captivity, through establishing minimal individual self-management reporting processes.

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[2] Minteer, Ben A. Ben A. & Collins, James P. (2013). Ecological Ethics in Captivity: Balancing Values and Responsibilities in Zoo and Aquarium Research under Rapid Global Change, *ILAR Journal*, Vol. 54, no. 1, 2013, pp. 41–51. https://doi.org/10.1093/ilar/ilt009

The proposed adoption of a risked-based method and approach to permitting the containment of native birds in captivity is anathema to the Precautionary Principle. The Precautionary Principle is an important component of international laws and treaties, and domestic environmental policies and processes in Australia. For example, the current review of the federal Environmental Protection and Biodiversity Conservation Act, and the proposed Nature Positive Bills emerging from the process continue to reinforce the importance of the Precautionary Principle.[3]

The *NSW Biodiversity Conservation Act 2016* is also informed by the Precautionary Principle, noted in section 1.3 Purpose of the Act:

> The purpose of this Act is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development…

The included principles of ecologically sustainable development are underpinned by the Precautionary Principle and include a requirement on the part of the Minister. Section 1.3 references the *Protection of the Environment Administration Act 1991*, which itself refers to the Precautionary Principle.

A regulatory framework and policy approach informed by the Precautionary Principle would identify the welfare and wellbeing implications of keeping of native birds in captivity as having a significant and negative impact — serious and irreversible harm.[4] Any proposal which has the potential to increase the number of individuals and species of native birds being kept in captivity would be deemed unjustifiable. As would any proposed regulatory change that increases the potential for an increase in grey- and black-market trafficking of wildlife.

The assumptions and approach underpinning the Draft Code is subject to existing critiques of the misplaced application of risk-based processes and decisions which continue to significantly and negatively impact wildlife, including the serious and irreversible harm of long-term captivity.[5]

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[3] The Bills Digest explicitly outlines the continued important of the Precautionary Principle. See Gibson, Emily (2024). *Nature Positive (Environment Protection Australia) Bill 2024 [and related Bills]*, Bills Digest No. 75, Bills Digest Alphabetical Index 2023-24, 24 June. https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2324a/24bd075

[4] Chrulew, M. (2020). Abnormal Animals: Animaladies of Captivity, *New Literary History*, 51: 729–750. Chrulew, M. (2014), "An art of both caring and locking up": Biopolitical Thresholds in the Zoological Gardenm *SubStance* #134, Vol. 43, no. 2; Taylor, N., & Sutton, Z. (2018). For an Emancipatory Animal Sociology. *Journal of Sociology*, Vol. 54, no. 4, 467-487. https://doi.org/10.1177/1440783318815335

[5] Bocci, Federica (2024). Metrics in biodiversity conservation and the value-free ideal, *Synthese* 203, 145. https://doi.org/10.1007/s11229-024-04561-8 ; Acari, Paula, Probyn-Rapsey, Fiona & Singer, Hayley (2020). Where Species Don't Meet: Invisibilized animals, urban nature and city limits, *Environment and Planning E: nature and Space*, 4(3), 940-965. https://doi.org/10.1177/2514848620939870; Ferraro, Kristy M., Ferraro, Anthony L., Arietta, A. Z. Andis, Sommer, Nathalie R. (2023). Revisiting two dogmas of conservation science, Conservation Biology, e14101. https://doi.org/10.1111/cobi.14101

## Reduced regulatory requirements & increased self-management

A clear, if unstated aim, of the Draft Code is a reduction in the regulatory requirements of the Department through a shift to self-reporting and self-management, reflecting a broader trend of translocating responsibility.

Clear in the underpinnings of the Draft Code — reflecting a long-term trend across the managerialism of government departments — is a determination to diminish Departmental responsibility being prioritised over consideration of the welfare and wellbeing of native birds.

In addition, a desire of select individuals to keep and increase the number of native birds and species they can have in captivity is given credence over the welfare and wellbeing of native birds. The Departmental position implicit in the Draft Code is counter to increasing community expectations which emphasise the importance of the welfare and wellbeing of native birds, and our responsibility to maximise these.

The Draft Code further enables the Department to avoid challenging — and necessary — action. Action required to ensure the welfare and wellbeing of native birds is given primacy in regulatory frameworks and processes.

A welfare- and wellbeing-based approach would be to further limit the number of individual birds and species kept in captivity. A discussion the Department should be leading, rather than shying away from the opportunity this presents — rooted in the lack of desire to make correct (however challenging) long-term changes in associated processes.

## Increased burden on the volunteer rescue and rehabilitation sector

The Departmental focus on deregulation and reduced responsibility will directly lead to an increased burden on an already stretched volunteer wildlife rescue and rehabilitation sector. In addition to providing rescue and rehabilitation for species in the wild — at substantial avoided cost to government — the sector already takes in significant numbers of surrendered and abandoned wildlife, including through existing memoranda of understanding with the Department.

The potential increase alone in the number of surrendered and abandoned native birds should be enough to illustrate that any proposed further deregulation of the keeping of native birds in captivity is the wrong approach. The welfare and wellbeing of native birds must be the priority. Facilitating any increases in numbers in captivity — rather than a reduction — is an unacceptable policy outcome.

## A missed opportunity

The Draft code represents a missed opportunity. A missed opportunity for the Department to further regulatory mechanisms and processes to cement the primacy of the welfare and wellbeing of native birds.

The Draft Code presents a prioritisation of expediency and an unwillingness to limit the number of individual birds and species kept in captivity.

In reducing the regulatory role of the Department, the Draft Code prioritises the interests of those who want to keep birds in captivity, making it possible to increase both the number of birds and species of birds in captivity — at the expense of the welfare and wellbeing of native birds. This represents an ethical failure of the Department to recognise the impacts of captivity on native birds.[6]

To restate another way, any regulatory and policy changes must be tasked with reducing (1) the number of individual birds kept in captivity, (2) the number of species in captivity, and (3) maximising the welfare of those already in captivity. The Draft Code makes it clear that this is not the case.

## Proposed trading limit

In seeking feedback on the Draft Code, the Department asks: *Do you agree with the proposed trading limit of 30 birds?* The question itself distracts from a more pressing concern. Whereas section 10.1 of the Draft Code sets a limit of 30 birds which an individual may deal, where deal includes buying, selling, trading, importing, exporting and gifting (to and from), the content of section 10.3 has serious and irreversible impacts on the welfare and wellbeing of native birds.

Section 10.3 in the Draft Code 'does not place a limit on the number of Code Regulated Birds a Person may possess at any given time.'

In addition to the diminished oversight and emphases on self-management which underpins the proposed deregulation, there are clear and significant implications though a no limits approach. Notwithstanding the problems if adopting a risk-based approach to facilitate the keeping of native birds in captivity, a *no limits* approach is directly contrasts with the intent of risk-based principles.

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[6] Derrida, J. (2009). The Beast and the Sovereign Vol. 1. Chicago: University of Chicago Press; Wadiwel, D. (2015) *The War Against Animals*, Brill, p. 256.

## Proposed registration requirements and yearly reporting

Reduced oversight and an emphasis on self-reporting are exemplified in proposed registration and reporting requirements. The details required are minimal, and the welfare and wellbeing of native birds are at best an afterthought.

Alongside providing limited personal information, and change of address notification within 28 days, those who keep Code Regulated Birds in captivity are only required to report any changes in numbers once every 12 months.

What is clear in these limited requirements are an attempt to reduce the regulatory requirements of the Department and shift emphasis to self-management — at the expense of the welfare and wellbeing of native birds.

Reduced regulation is linked with an increase in grey- and black-market activity, including illegal wildlife trafficking, which is presents an additional serious impact.[7]

## Conclusion: a change in the wrong direction

The *Draft Dealing in Protected Birds Code of Practice 2023* represent a missed opportunity for the Department and the NSW Government. Rather than reflecting community expectations and providing leadership, the proposed deregulation underpinning the Draft Code will lead to serious an irreversible welfare and wellbeing impacts on an increased number of native birds.

The Draft Code cannot and will not ensure the best welfare and wellbeing outcomes for native birds are met. Risk-based methodologies are not suitable for regulatory mechanisms which ensure that native birds can be kept in captivity. The proposed Code does not and cannot align with the precautionary principle and a body of literature which clearly illustrates the serious and irreversible impacts of long-term captivity.

The proposed further deregulation of keeping native birds in captivity diminishes oversight and prioritises self-reporting and regulation. There will be an increase in the number of birds kept in

[7] Janssen, J., Leupen, B.T.C. (2019). Traded under the radar: poor documentation of trade in nationally-protected non-CITES species can cause fraudulent trade to go undetected. *Biodiversity Conservation*, Vol 28, pp. 2797–2804. https://doi.org/10.1007/s10531-019-01796-7; Toomes, A., García-Díaz, P., Stringham, O. C., Ross, J. V., Mitchell, L., & Cassey, P. (2022). Drivers of the Australian native pet trade: The role of species traits, socioeconomic attributes and regulatory systems. *Journal of Applied Ecology*, Vol. 59, pp. 1268–1278. https://doi.org/10.1111/1365-2664.14138. See also, Altherr, S., Lameter, K. & Cantu, J.C. (2019). The trade in nationally protected lizards from Australia, Cuba and Mexico and the EU's role as a main destination, *Traffic Bulletin*, Vol. 31, no. 2, pp. 59-66.

captivity, with reduced oversight through deference to and a reliance on self-management and self-reporting.

The direct outcome is that more native birds will be exposed to serious and irreversible impacts through their long-term confinement.

The Draft Code also represents a very bad precedent for other species, normalising the permissibility of keeping additional species of native wildlife in captivity, reinforced through very limited regulatory oversight and an emphasis on self-management. Reduced regulatory oversight similarly increases the potential for grey- and black-market proliferation, including illegal wildlife trafficking.

Stronger regulation and enforcement are required, not less.

## Recommendations

**Recommendation 1**
Any Code and associated processes which regulate, including reducing the regulation of, practices pertaining to the use of wildlife must have the welfare and wellbeing of wildlife as the principle guiding aim.

**Recommendation 2**
A risk-based methodology is not a suitable regulatory approach to ensure the welfare and wellbeing of native birds, when it facilitates native birds being kept in captivity.

**Recommendation 3**
WIRES does not support any *dealing* (the possession, buying, selling, trading, importing or exporting from NSW) of native birds, which is the stated objective of the Draft Code.

**Recommendation 4**
WIRES does not support the proposed deregulation and the associated removal of licences to keep native birds in captivity. All requirements for a licence must remain in place.

**Recommendation 5**
Rather than further deregulation, the Department must (re)focus on furthering the processes essential for an appropriately resourced wildlife regulator, with powers to investigate and ensure compliance.

**Recommendation 6**

No species of native bird can be removed from NSW Native Animal Keepers Species List for addition to the Code Regulated Bird List. The NSW Native Animal Keepers Species List should be reducing in size towards zero.

**Recommendation 7**

The Draft Code stipulates that it 'does not permit a Person to harm, injure or release into the wild a Code Regulated Bird'. Given the significant likelihood of an increase in the number of surrendered native (Code Regulated) birds, the Department must detail formal processes to ensure the welfare and wellbeing of all surrendered birds. These processes must include a Departmental commitment to funding the care and rehoming of surrendered birds.

Yours sincerely,

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