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FIREARMS REGISTRY

Policy Title

Application by wildlife (fauna) rehabilitators for a firearms licence for Animal Welfare

Reference: Section 12 of the *Firearms Act 1996* ('the Act'), Section 120 of the *National Parks and Wildlife Act 1974* (NSW) ('NPW Act'), Code of Practice for Injured, Sick and Orphaned Protected Fauna (the Code of Practice), Legal Advice (D/2014/392784 – 6 March 2015), Ian Ratcliff, Legal Officer, Firearms Registry, Office of the General Counsel.

Policy Number: 2015/99

Effective Date: 15 April 2015

Repealed Versions: Nil

Application:

This policy applies to wildlife (fauna) rehabilitators making application for a firearms licence for the genuine reason of Animal Welfare - Owner, Transporter, Drover or Other Handler of Animals.

Policy:

Individuals who hold or are authorised under a general licence issued to a Fauna Rehabilitation Organisation under section 120 of the NPW Act which permits the person to harm protected fauna for a specified purpose may make application for a firearms licence for the genuine reason of Animal Welfare - Owner, Transporter, Drover or Other Handler of Animals.

Evidence must be provided that the person has been approved by the Fauna Rehabilitation Organisation to shoot animals, consistent with any Code of Practice that applies and the individual has an active role in the fauna rehabilitation organisation. The individual is also required to complete a specific training course in relation to shooting animals in a public place.

In the case of a reapplication, evidence of the shooting of injured wildlife from records required under clause 14.1.1 of the Code of Practice must be provided. In addition, if the individual's sole genuine reason is Animal Welfare, the practical component of an approved firearm safety training (longarms) must be completed upon reapplication.

Special Conditions must be imposed to limit the use of firearms to the type of firearms that can be used and to the fauna permitted to be handled as specified under the general licence issued under section 120 of the NPW Act.

Applicable Legislation:

Section 12 of the *Firearms Act 1996* – Table

Reason: animal welfare

The applicant must be:

- (a) an officer of the RSPCA or the Animal Welfare League who is a special constable, or
- (b) a veterinary practitioner, or

- (c) a person who is employed in the Department of Primary Industries or is a member of staff of Local Land Services and who has responsibility for animal welfare, or
- (d) an owner, transporter, drover or other handler of animals who may need to destroy animals to avoid suffering.

Section 120 of the *National Parks and Wildlife Act 1974*

General Licence

- (1) The Director-General may issue a licence (in this Act referred to as a general licence), authorising a person to do any or all of the following:
 - (a) to harm or obtain any protected fauna for any specified purpose,
 - (a1) to hold or keep in possession or under control any protected fauna for any specified purpose,
 - (b) to exhibit protected fauna,
 - (c) to dispose of, whether by sale or otherwise, any fauna harmed, obtained, held, kept or exhibited under the authority of the licence,
 - (d) to sell any fauna in the person's lawful possession, otherwise than as a fauna dealer or skin dealer,
 - (e) to harm any protected fauna (other than a threatened species, population or ecological community) in the course of carrying out specified development or specified activities.
- (2) A general licence does not, except in as so far as the terms of the licence otherwise expressly provide, authorise the harming of fauna in a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve, wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement.
- (2A) A general licence does not authorise the harming of game birds for sporting or recreational purposes. However a licence can authorise a sporting or recreational shooter to harm game birds for any other specified lawful purpose.
- (2C) A general licence is not to be issued to authorise the harming, on private land, of any native game bird within the meaning of the *Game and Feral Animal Control Act 2002* for sustainable agricultural management purposes.

Note. Native game birds may be killed on private land for sustainable agricultural management purposes under the authority of a native game bird management licence under the *Game and Feral Animal Control Act 2002*.
- (3) A general licence may be issued without conditions or limitations or may be subject to specified conditions or limitations.
- (4) Without affecting the generality of subsection (3):
 - (a) a general licence may but need not specify the species of protected fauna that may be harmed under its authority, and
 - (b) a general licence may but need not be limited to specified areas.
- (5) A general licence may authorise any specified persons in addition to the person to whom the licence is issued to do the things authorised by the licence. In any such case, the specified persons are taken to be the holders of the licence for the purposes of this Act.
- (6) To avoid doubt, the Director-General is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when issuing a general licence.

Code of Practice for Injured, Sick and Orphaned Protected Fauna

Section 7.2.2. Guidelines

7.2.2.1. Fauna rehabilitators should arrange for a veterinarian to perform euthanasia. Intravenous barbiturate overdose should be used.

7.2.2.2. When a non-veterinarian is required to perform euthanasia, a method appropriate for the species and circumstances should be employed to ensure minimal pain and suffering.

This may include the following methods:

- Shooting with a rifle for large animals.

Section 14.1. Standards

14.1.1. Licensed fauna rehabilitation groups, zoological parks and individuals must maintain a current register of all protected fauna reported, encountered or rescued.

The register must contain the following information on each animal:

- encounter details (date, location, encounter circumstances, the animal's condition and unique ID number)
- species data (species name, sex, age, initial weight and pouch condition if a marsupial)
- care providers (name and address of the initial assessor (see 4.1.2), name and address of the fauna rehabilitator)
- fate details (date, final disposition, location and any permanent marking).

These records must be submitted to the Wildlife Licensing and Management Unit of OEH in an approved electronic format on an annual basis.

Rationale:

The Director General of the Office of Environment and Heritage ('OEH') has power to issue a general licence under section 120 of the NPW Act, which may permit a person to harm protected fauna for a specified purpose. Every general licence issued to fauna rehabilitation organisations or individuals includes a condition that the licensee and any persons authorised by the licensee to operate under the licence must at all times comply with the principles and requirements of the Codes of Practice. The Code of Practice sets standards for the care and housing of protected fauna that is incapable of fending for itself in its natural habitat. The standards specifically cover the euthanising of animals.

Section 12(1) of the Act prescribes that the Commissioner must not issue a licence that authorises the possession and use of a firearm unless the Commissioner is satisfied that the applicant has a genuine reason for possessing or using the firearm.

The genuine reason of Animal Welfare, specified in section 12 of the Act, includes an owner, transporter, drover or *other handler of animals who may need to destroy animals to avoid suffering*.

The following two aspects of the definition of this genuine reason must be fulfilled:

1. Other handler of animals
2. Need to destroy animals to avoid suffering

Other handler of animals

The firearms legislation does not define the term 'handler of animals'. The dictionary defines 'handler' as, relevantly, a person who controls animals¹. This definition is very broad in its terms and legal advice provides that this definition should include members of licensed fauna rehabilitation organisations who as a matter of course, under their licences, handle protected fauna, albeit limited to injured, sick and orphaned protected fauna.

Need to destroy animals to avoid suffering

All fauna rehabilitators (including those who are authorised by a licensed fauna rehabilitation organisation) are required to comply with the Code of Practice. This generally requires that a veterinarian carry out euthanasia on an animal. However, there is also an acknowledgement that a non-veterinarian may be required to perform euthanasia, which explicitly refers to the shooting with a rifle of "large animals". Given the number of injured wildlife events and the likely limitations on requesting veterinary assistance (especially outside business hours), it is consistent with the general licence issued under section 120 of the NPW Act and the Code of Practice for individual fauna rehabilitators to provide evidence that they *may* need to destroy animals to avoid suffering.

¹ See Collins Australian Dictionary.

It is therefore determined, if all the necessary application requirements are met, that individual members of fauna rehabilitation organisations can be issued with a firearms licence for the genuine reason of Animal Welfare, Owner, Transporter, Drover or Other Handler of Animals on the basis that they are “other handlers of animals who may need to destroy animals to avoid suffering”.



Bruce Lyons
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