



Draft Dealing in Protected Birds Code of Practice 2023

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This resource may contain images or names of deceased persons in photographs or historical content.

© 2024 State of NSW and Department of Climate Change, Energy, the Environment and Water

With the exception of photographs, the State of NSW and Department of Climate Change, Energy, the Environment and Water (the department) are pleased to allow this material to be reproduced in whole or in part for educational and non-commercial use, provided the meaning is unchanged and its source, publisher and authorship are acknowledged. Specific permission is required to reproduce photographs.

Learn more about our copyright and disclaimer at www.environment.nsw.gov.au/copyright

Cover photo: Crimson rosella. Rosie Nicolai/DCCEEW

Published by:

Environment and Heritage

Department of Climate Change,
Energy, the Environment and Water

Locked Bag 5022, Parramatta NSW 2124

Phone: +61 2 9995 5000 (switchboard)

Phone: 1300 361 967 (Environment and Heritage enquiries)

TTY users: phone 133 677, then ask for 1300 361 967

Speak and listen users: phone 1300 555 727, then ask for 1300 361 967

Email info@environment.nsw.gov.au

Website www.environment.nsw.gov.au

ISBN 978-1-922900-00-5

EH 2024/0104 April 2024

Find out more at:

environment.nsw.gov.au

Contents

Part 1	Introduction	1
1.	Name of Code	1
2.	Commencement	1
3.	Nature and status of Code	1
4.	Object of Code	1
5.	Interpretation	2
Part 2	Authorisation of Dealing actions	3
6.	Licence not required under this Code	3
7.	Eligibility	3
8.	Registration, record keeping and notification	3
9.	General requirements for dealing in Code Regulated Birds	5
10.	Limit on the number of Code Regulated Birds a person may Deal	5
11.	Limitations of Code	6
12.	Breach of the Code	6
Dictionary		7
	Documents referenced in this Code	9
Schedule 1		10
Schedule 2		11

Part 1 Introduction

1. Name of Code

This Code of practice is the *Dealing in Protected Birds Code of Practice 2023*.

2. Commencement

This Code commences on the day that the Order making this Code is published on the NSW legislation website.

3. Nature and status of Code

1. This Code is made under clause 2.9 of the Biodiversity Conservation Regulation 2017 (BC Regulation).
2. This Code is a code of practice relating to Code Regulated Birds.
3. 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 the act carried out was authorised by, and done in accordance with, this Code.
4. To the extent of any inconsistency between this Code and the conditions of the Biodiversity Conservation Licence (BC Licence) held by a Person, the conditions of the BC Licence prevail over this Code.

Notes: Compliance with all conditions of this Code is a defence to an offence under section 2.5 of the BC Act. Failure to comply with this Code takes away this defence, and as a result you may be prosecuted or fined.

The definition of Code Regulated Bird is a captive-bred species of bird that is subject to a determination published on the Department Website in accordance with clause 1 of Schedule 1. Refer to the Dictionary and Schedule 1 of this Code for more information.

This Code does not permit you to Deal in Code Regulated Birds that have been taken from the wild.

Some bird species are already exempt from the requirement to obtain a BC Licence to Deal. See clause 2.2 of the BC Reg and the NSW Native Animal Keepers Species List for further information.

All birds that are native to Australia or that migrate to Australia (including their eggs and young) are protected under NSW law. It is an offence under Part 2, Division 1 of the BC Act to harm (including to injure, kill or capture), Deal in (including possess, buy, sell, trade, import or export from New South Wales) or liberate without authority any animal, protected or otherwise.

This Code does not provide a defence to an offence under section 2.14(4) of the BC Act (contravention of a BC Licence condition).

4. Object of Code

The object of this Code is to authorise Dealing in Code Regulated Birds in New South Wales subject to the conditions of this Code.

Note: This Code does not permit harming an animal, habitat of a threatened species or a threatened ecological community in order to acquire a Code Regulated Bird.

5. Interpretation

1. Words and expressions defined in the Dictionary at the end of this Code have the meaning set out in the Dictionary.
2. Words and expressions that appear in this Code have the same meaning as they do in the BC Act and BC Reg, except as otherwise defined in the Dictionary.
3. Notes in this Code are provided for guidance and do not form part of this Code.
4. A reference to an Act, policy, guideline, code, or other document in this Code includes any consolidations, amendments, re-enactments or replacements of any of those instruments or documents.

Part 2 Authorisation of Dealing actions

6. Licence not required under this Code

Subject to the limitations in clauses 10 and 11, a defence to a prosecution of an offence under section 2.5 of the BC Act is available for a Person who:

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

Note: Other defences, for example a licence, permit, or other authority are required if you are unable to comply with the Code when Dealing in a Code Regulated Bird.

7. Eligibility

A Person may only Deal in a Code Regulated Bird in New South Wales if they:

- a. are over the age of 16 years;
- b. are registered under this Code in accordance with clause 8(1); and
- c. have not previously contravened the BC Act, BC Reg or another statutory instrument under the BC Act.

Notes: please contact the Department for information on transitioning from a BC Licence to regulation under this Code.

An example of a statutory instrument listed in clause 7(c) is another code of practice made under clause 2.9 of the BC Reg.

If you move your Code Regulated Bird to another state or territory, you must comply with the laws of that State or Territory, which may involve obtaining a licence or permit in that jurisdiction.

8. Registration, record keeping and notification

1. A Person may Deal in a Code Regulated Bird if they:
 - a. register the following Preliminary Information:
 - i. Personal Details
 - ii. the number and species of Code Regulated Birds that person possesses at the time of registration; and
 - iii. Third-Party Information of the Birds described in clause 8(1)(a)(ii) (if known);with the Department online;
 - b. update their Personal Details within 28 days of these details changing; and
 - c. update the Third-Party Information and Dealing Information for each Code Regulated Bird that Person:
 - i. buys;
 - ii. sells;
 - iii. imports;
 - iv. exports;
 - v. trades;

- vi. gifts; or
- vii. acquires as a gift;

by the Anniversary Date each year. To avoid doubt, this clause 8(1)(c) does not apply to a Code Regulated Bird which is only possessed by a Person within a relevant 12-month period.

- d. For the purpose of clause 8(1)(c), **Anniversary Date** means the day and month one year after the date a Person registers their Preliminary Information with the Department under clause 8(1)(a), and each succeeding date one year after the previous Anniversary Date.
2. For the purposes of clause 8(1) of this Code, a Person may register or update their Personal Details, Preliminary Information and Dealing Information with the Department by contacting the following:

Online: TBD

3. A Person must retain records on the:
- a. Animal Information;
 - b. Dealing Information;
 - c. Third-Party Information; and
 - d. Other Third-Party Information;

for each Code Regulated Bird in which they Deal. Animal Information and Third-Party Information must be retained for at least 7 years after the Code Regulated Bird to which that information relates leaves the possession of that Person.

4. A Person must produce Animal Information and Other Third-Party Information relating to a Code Regulated Bird to an authorised officer of the Department under the BC Act upon request.

Notes: refer to the Dictionary of this Code for definitions of Animal Information, Preliminary Information, Personal Information, Animal Information, Dealing Information, Third-Party Information and Other Third-Party Information.

If you fail to register, keep the records required by this Code or do not produce records requested by an authorised officer of the Department you may be guilty of an offence under clause 2.38 of the BC Reg and Part 12 of the BC Act.

If you are moving from a BC Licence to registration under the Code to Deal in a Code Regulated Bird, you are still required to update your e-book when your BC Licence lapses or is revoked in accordance with the terms of that BC Licence.

If you register under this Code, you may receive updates from the Department about animal keeping, conservation, and animal welfare related topics.

Personal information disclosed for the purpose of this Code will be managed by the Department in accordance with its obligations under the *Privacy and Personal Information Protection Act 1998*.

You must update the Third-Party Information and Dealing Information for the Code Regulated Birds you buy, sell, import, export, trade, gift or acquire as a gift, once every 12 months. The deadline to update Third-Party Information and Dealing Information is the anniversary of the date you first registered your details under this Code. For example, if you register your details on 25 June 2023 you will need to update the Third-Party Information and Dealing Information for the Code Regulated Birds you buy, sell, import, export trade, gift or

acquire as a gift by 25 June every year. You do not need to update your Third-Party Information or Dealing Information if you do not buy, sell, import, export trade, gift or acquire as a gift a Code Regulated Bird within that 12-month period.

The definition of ‘**Dealing Information**’ does not include the number or species of birds a Person possesses.

9. General requirements for dealing in Code Regulated Birds

1. Any Code Regulated Bird must be kept at the residential address provided by a Person to the Department under clause 8(1) of this Code.
2. Despite clause 9(1), a Code Regulated Bird may be removed temporarily for a reasonable period of time from the Person’s residential address for the following purposes:
 - a. to seek veterinary treatment;
 - b. to move the Code Regulated Bird to its new permanent residence;
 - c. for the sale or disposal of the Code Regulated Bird;
 - d. for showing of the Code Regulated Bird, to participate in competitions, or for another purpose consistent with the *Exhibited Animals Protection Act 1986*; or
 - e. for the purpose of protecting the Code Regulated Bird from an imminent threat to the Code Regulated Bird’s life or safety.
3. A person who advertises a Code Regulated Bird for sale, trade or gifting must include the notice in Schedule 2 (**‘Notice’**) to this Code in the advertisement, or a notice of similar wording to the same effect of the Notice.
4. A person must comply with the NSW Animal Welfare Code of Practice No 4 – Keeping and Trading of Birds, or any later equivalent code.

Nothing in this Code restricts the requirement of a Person to comply with the conditions of their BC Licence, or other licence, permit or authority to Deal in a Code Regulated Bird where applicable.

Notes: Examples of where clause 9(2)(f) applies includes evacuating a Code Regulated Bird from a residential premises because of threat of natural disaster or to quarantine from infectious disease.

Nothing in this Code removes the requirement for you to comply with the *Exhibited Animals Protection Act 1986*.

It is an offence under section 2.14 of the BC Act to contravene a condition of a BC Licence.

10. Limit on the number of Code Regulated Birds a person may Deal

1. This Code does not apply where a Person:
 - a. buys;
 - b. sells;
 - c. trades;
 - d. imports;
 - e. exports;
 - f. gifts; or

g. acquires as a gift;

more than 30 Code Regulated Birds in any 12-month period from the date of registration under this Code.

2. Despite clause 10(1), this Code does not place a limit on the number of Code Regulated Birds a Person may possess at any given time.
3. For the purpose of clause 10(1)(c), the number of Code Regulated Birds traded in means the number of Code Regulated Birds exchanged as part of the trade.

Note: for example, if you trade one Code Regulated Bird in exchange for another Code Regulated Bird, you have Dealt in 2 birds for the purpose of subclauses 10(1)(c) and 10(3). Where a Code Regulated Bird is exchanged for another good or service, only one bird has been Dealt.

11. Limitations of Code

1. This Code does not apply to:
 - a. Code Regulated Birds kept in a Pet Shop or other commercial premises intended for sale; or
 - b. Code Regulated Birds possessed for public exhibition, rehabilitation, education, conservation, or scientific purposes, or any other purpose other than private keeping.
2. Nothing in this Code removes the requirement to comply with the *Prevention of Cruelty to Animals Act 1979*, *Exhibited Animals Protection Act 1986*, *Local Government Act 1993*, or any other laws, regulations or other statutory instruments relating to the welfare and Dealing with animals.
3. From the date a determination that a species of bird is a Code Regulated Bird is revoked in accordance with clause 2 of Schedule 1, a Person Dealing in that species has 28 days (unless otherwise directed by the Department) to seek a BC Licence or otherwise dispose of, rehome or sell that bird.

Notes: a licence, permit or authorisation is still required to Deal in or to keep a bird in a Pet Shop for commercial sale.

This Code does not permit a Person to harm, injure or release into the wild a Code Regulated Bird.

Any changes to this Code of Practice or schedule to this Code will be reflected on the Department's Website.

12. Breach of the Code

1. The Department may, by notice served on a Person, cancel that Person's registration under this Code for a contravention of:
 - a. this Code;
 - b. the BC Act;
 - c. the BC Reg; or
 - d. any other statutory instrument made under the BC Act.

Dictionary

Animal Information means:

- a. the number and species of the Code Regulated Bird(s) possessed by a Person;
- b. where a Code Regulated Bird produces young, dates of birth, the number and species of the young;
- c. in the event of any death or escape of a Code Regulated Bird, the:
 - i. species of Code Regulated Bird;
 - ii. where applicable, the Code Regulated Bird's microchip or band number;
 - iii. date of death or escape; and
 - iv. reason for death or escape (if known).

Anniversary Date has the meaning set out in clause 8(1)(d).

BC Act means the *Biodiversity Conservation Act 2016*.

BC Reg means the Biodiversity Conservation Regulation 2017.

BC Licence means a licence issued pursuant to Part 2 Division 3 of the BC Act.

Code Registration Identifier means the unique identification number provided to a Person upon registration under this code.

Code Regulated Bird(s) means the captive-bred protected species of birds that is subject to a determination published on the Department Website in accordance with clause 1 of Schedule 1 of this Code.

Deal has the same meaning as in section 2.5 of the BC Act and for the purpose of this Code also includes gifting or acquiring a Code Regulated Bird as a gift.

Dealing Information means the number and species of Code Regulated Birds a Person:

- a. buys;
- b. sells;
- c. trades;
- d. imports;
- e. exports;
- f. gifts; or
- g. acquires as a gift;

in a 12 month period, and the date on which that Code Regulated Bird is Dealt.

Department means the NSW Department of Climate Change, Energy, the Environment and Water or any department replacing it acting as delegate for the Environment Agency Head.

Department Website means www.environment.nsw.gov.au/licences-and-permits/wildlife-licences

Other Third-Party Information means the

- a. name;
- b. postcode;
- c. email or phone number; and
- d. details of the person's legal authority to deal in Code Regulated Birds (if known);

of the person or business from or to whom a Code Regulated Bird is Dealt. This definition only applies to information of a person who does not hold a BC Licence or is registered under this code.

Personal Details means a Person's:

- a. full name;
- b. residential address;
- c. date of birth;
- d. phone number; and
- e. email address;

but does not include Third-Party Information.

Person means a natural Person registered under this Code.

Preliminary Information means the information described in clause 8(1)(a).

Pet shop means a shop or place, including a market, used by a Person for the conduct of a business, in the course of which an animal is possessed for the purposes of sale.

Risk-Based Methodology means the process set out in the Department's risk-based approach for native animal keeping as updated from time to time.

Third-Party Information means the:

- a. name;
- b. postcode;
- c. email or phone number; and
- d. BC Licence number or Code Registration Identifier (if known);

of the person or business from or to whom a Code Regulated Bird is Dealt. This definition only applies to the information of a person who holds a BC Licence or is registered under this Code.

Notes An import or export licence issued by NSW National Parks and Wildlife Service is required to import or export from or into New South Wales birds other than Code Regulated Birds and species listed in the BC Reg as exempt.

The exportation of native birds overseas is prohibited unless you have been granted a licence by an authority under Commonwealth law.

Persons from other Australian States and Territories may need a keeper licence and/or an import licence issued by the environment agency in their State or Territory to acquire Code Regulated Birds from New South Wales.

Documents referenced in this Code

The NSW Animal Welfare Code of Practice No 4 – Keeping and Trading of Birds can be viewed through the link:

www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-care-and-welfare/other/companion-animal-files/nsw-code-of-practice-no-4-keeping-and-trading-of-birds

Wildlife licensing:

www.environment.nsw.gov.au/licences-and-permits/wildlife-licences

Schedule 1

1. A species of bird is a Code Regulated Bird for the purpose of this Code if:
 - a. it has been assessed in accordance with the Risk-Based Methodology;
 - b. the Environment Agency Head has made a determination that the species of bird is appropriate to be subject to the Code based on the outcome of the Risk-Based Methodology assessment; and
 - c. the notice of determination in accordance with (b) above has been published on the Department Website and not revoked under clause 2 below.
2. The Environment Agency Head may at any time publish a notice on the Department Website revoking the determination under clause 1 of this Schedule.

Schedule 2

Notice to be published in advertisements for sale, trade or gifting of Code Regulated Birds:

This bird is a Code Regulated Bird within the meaning of the Protected Birds Code of Practice (**'Code'**). You may only possess or otherwise deal in this bird if you are able to fully-comply with the Code, or if you are lawfully permitted to purchase and possess this species of bird under New South Wales law. If you intend on importing or exporting this bird, the laws of another Australian State or Territory may also apply.

Further information on dealing with native birds species in New South Wales can be found at:

www.environment.nsw.gov.au/licences-and-permits/wildlife-licences/native-animals-as-pets/bird-keeper-licences