

31 March 2011

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Mr Greg Leaman
Executive Director, Policy
Director, National Parks and Wildlife SA
Department of Environment and Natural Resources
GPO BOX 1047
ADELAIDE SA 5001

Dear Mr Leaman

Re-make of *National Parks & Wildlife (Hunting) Regulations 1996*

The Society thanks the Department of Environment and Natural Resources (DENR) for the opportunity to consider the proposed amendments to the *National Parks & Wildlife (Hunting) Regulations 1996* ("the Regulations"). The amendments have been considered by the Society's Animal Law Committee. Accordingly, we provide the following comments.

The Society recognises that it is not the intention of the "re-make" to change Government policy in relation to hunting in South Australia; however, in our view there has been an obvious shift in public opinion and subsequent legislative change over the last few years which illustrate that a change in public policy has occurred since the Regulations were last amended.

We make the following recommendations and comments in light of current Government policy.

Amendments to the *Animal Welfare Act 1985 (SA)* ("the *Animal Welfare Act*") mirror the community's expectations as to the standards that must be upheld in society's treatment of animals.

Section 13(3) of the *Animal Welfare Act* provides numerous ways in which a person will be found to have "ill treated" an animal. These include where a person:

- "intentionally, unreasonably or recklessly causes an animal unnecessary harm" (s13(3)(a));
- "fails to take reasonable steps to mitigate harm suffered by an animal" (s13(3)(b)(ii));
- "causes the animal to be killed or injured by another animal" (s13(3)(f)); and
- "kills the animal in a manner that causes the animal unnecessary pain" (s13(3)(g)).

We note that the *Animal Welfare Act* provides an "aggravated ill-treatment offence" where a person "intends to cause, or is reckless about causing, the death of, or serious harm to, the animal" (s13(1)). This offence attracts a maximum penalty of \$50,000 or imprisonment for four years.

These provisions of the *Animal Welfare Act* enacted in 2008 reflect the current Government policy that the intentional, unreasonable and/or reckless causing of unnecessary harm to an animal constitutes a serious offence.

We note the Government's policy on animal welfare as set out in the following excerpt on the DENR website:

"Animals are fundamental to Australia's history and development. They are a source of companionship, food, fibre and other products.

Scientific studies show that inadequate welfare standards compromise the growth, reproduction and survival of animals. It is the personal responsibility of anyone who interacts with animals to make sure they are treated decently and appropriately.

*In South Australia, the Animal Welfare portfolio is administered by the Minister for Environment and Conservation. Animal welfare crosses all government agencies and covers all animals, whether they are native, feral, owned or wild."*¹

In our submission, the proposed "re-make" of the Regulations, does not take into account the policy outlined above.

In our view, Government policy has changed since the Regulations came into effect in 1996 and therefore the Regulations should be brought into line with current Government policy, which now places greater emphasis on animal welfare.

In our submission, the proposed Regulations fail to meet current Government policy in relation to animals and their welfare.

We make the following comments and suggestions in relation to specific proposals to ensure that the Regulations do accord with the *National Parks and Wildlife Act 1972 (SA)* ("the Act"). We note that delegated legislation, such as the proposed Regulations, must be within the legislative power of the delegator.

Regulation 4 – Prohibition of use of protected animal as decoy etc

No changes proposed by the Minister.

Society's comments

We submit that proposed Regulation 4 is ambiguous and in conflict with Part 5 of the Act and in particular, sections 51, 53, 55 and 60 and should therefore be amended.

Section 53 of the Act provides the Minister with the power to issue permits to people to take protected animals or the eggs of protected animals.

¹ Department of Environment and Natural Resources, *Animal Welfare*, accessed 28 March 2011, <http://www.environment.sa.gov.au/Plants_and_Animals/Animal_welfare>.

Section 55 of the Act prohibits a person from releasing a protected animal or an animal of a species listed in Schedule 10 of the Act, from captivity unless that person is authorised to do so by a permit granted by the Minister. The maximum penalty is \$2 500 and the Expiation fee is \$210.

Section 51 of the Act prohibits a person from taking a protected animal or the eggs of a protected animal. Section 60 of the Act provides that a person must not have possession or control of an animal that has been illegally taken or acquired. The penalties for both of these offences are the same and range from \$2,500 or imprisonment for 6 months to \$10,000 or imprisonment for 2 years, depending on the type of animal.

Clearly, the Act contemplates situations where people handle protected animals with and without a permit.

The proposed Regulation 4 fails to make this distinction. Further, the penalty for a breach of Regulation 4 is considerably less than a breach of the relevant sections of the Act. The use of protected animals for the purpose of hunting cannot be deemed less blameworthy. The penalties should therefore be in line with the Act.

In addition, the proposed Regulation 4 omits "*the carcass or eggs of animal*", which is prevalent throughout Part 4 of the Act.

The Society recommends that the proposed Regulation 4 be amended as follows:

(1) *A person must not use a protected animal or the carcass or eggs of a protected animal for the purposes of hunting, whether as a decoy or otherwise:*

(a) *If the animal or eggs of an animals are subject to a permit issued pursuant to section 53 of the Act:*

Maximum penalty: \$2,500.

Expiation fee: \$210.

(b) *If the animal or the carcass or eggs of the animal are not subject to a permit issued pursuant to section 53 of the Act:*

Maximum penalty:

In the case of a marine mammal or the carcass of a marine mammal—\$100 000 or imprisonment for 2 years.

In the case of an animal, (not being a marine mammal), or the carcass or eggs of an animal, of an endangered species—\$10,000 or imprisonment for 2 years.

In the case of an animal (not being a marine mammal), or the carcass or eggs of an animal, of a vulnerable species—\$7,500 or imprisonment for 18 months.

In the case of an animal (not being a marine mammal), or the carcass or eggs of an animal, of a rare species—\$5,000 or imprisonment for 12 months.

In any other case—\$2,500 or imprisonment for 6 months.

Regulation 5 – Prohibition of taking galahs and little corellas except by shooting

No changes proposed by the Minister.

Society's comments

In our view, Regulation 5 and the designation of Galahs and Little Corellas as “*unprotected species*” under the Act, must mean that these birds have been deemed as pests. If the Minister takes this view then in our submission, instead of granting permits to allow destruction (and more often injury), alternative control methods should be explored and implemented.

The Society submits that Regulation 5 is ambiguous as, on one reading, the Regulation creates two offences. The first is the taking of Galahs or Little Corellas without a permit. The second is the taking of Galahs or Little Corellas by means other than shooting. The Society submits that this ambiguity should be corrected and amended as follows:

(1) *A person must not take a Galah (Cacatua roseicapilla) or a Little Corella (Cacatua sanguinea) except by shooting with a firearm:*

(a) *If a Galah (Cacatua roseicapilla) or a Little Corella (Cacatua sanguinea) is subject to a permit issue by the Minister*

Maximum penalty: \$2,500.

Expiation fee: \$210

(b) *If a Galah (Cacatua roseicapilla) or a Little Corella (Cacatua sanguinea) is not subject to a permit issue by the Minister*

Maximum penalty:

\$2,500 or imprisonment for 6 months.

Regulation 6 – Prohibition of damaging trees, nests etc for purposes of hunting wildlife

No changes proposed by the Minister.

Society's comments

We submit that the behaviour set out in the proposed Regulation 6(1)(a) namely, “*cut down, lop branches from or otherwise destroy or damage any tree (whether living or dead)*” is already provided for in the definition of “*take*” in the Act.

Section 5 of the Act defines “*take*” in relation to a plant to mean: “*to remove the plant or part of the plant, from the place in which it is growing; or to damage the plant.*”

For this reason, the Society submits that the act of unlawfully “*taking*” native plants whether for the purpose of hunting or not, is already prohibited pursuant to section 47 of the Act and thus Regulation 6(1)(a) is superfluous.

In the alternative, if the Minister is of the view that the proposed Regulation 6(1)(a) should be included, the Society submits that the penalties should be amended so as to be in accord with section 47 of the Act. The penalties for contravening section 47 of the Act are as follows:

Maximum penalty:

In the case of a native plant of an endangered species, \$10,000 or imprisonment for 2 years.

In the case of a native plant of a vulnerable species, \$7,500 or imprisonment for 18 months.

*In the case of a native plant of a rare species, \$5,000 or imprisonment for 12 months.
In any other case, \$2,500 or imprisonment for 6 months.*

We consider that destroying or damaging any tree for the purposes of hunting is not less blameworthy. For that reason, the Society recommends that the penalties be in line with the Act as set out above.

In relation to the proposed Regulation 6(1)(b), the Society supports the prohibition of this behaviour namely, "destroy, damage or disturb the animal's burrow or nest" as this is lacking in the Act. The penalties for this offending should be in line with similar prohibited behaviour under the Act, i.e. taking native plants (s47) or protected animals (s51). The penalties for both of these offences are the same and range from \$2 500 or imprisonment for 6 months to \$10 000 or imprisonment for 2 years. The current penalties of "Maximum penalty: \$1 250. Expiation fee: \$160", are too low and in conflict with the penalties provided throughout the Act.

Regulation 7 – Waterfowl Identification Test

The Minister proposes an amendment to the Regulation concerning Waterfowl Identification testing to allow the Minister to require applicants to undertake updated versions of the Test.

Society comments

The Society recognises that the Waterfowl Identification Test (WIT) has made a contribution to the species identification skills of hunters and therefore to the conservation of protected and non-game species. Further, the requirement for applicants to sit updated versions of the WIT does go some way towards strengthening the efficacy of the WIT.

However, the Society questions whether the arbitrary nature of the requirement to sit the WIT ensures applicants maintain their skills in identifying protected species.

Under this amendment, applicants are required to sit the test only once, when first applying for a permit, and then whenever the Minister requires applicants to take an updated version of the test. According to the Explanatory Paper, this will be at least every 10 years or when the status of listed game species changes.

The duck and quail open season runs for a limited period of approximately 4 months each year. Therefore, there is a significant amount of time each year (up to 8 months) where hunters are not taking part in this activity and thus their identification skills are not being utilised. The Society recommends that the requirement for applicants to sit a WIT be imposed on a biennial basis (at a minimum) to ensure that applicants continue to demonstrate that they can correctly identify protected waterfowl.

Regulation 8(b) – Further restrictions applicable to open season, replace “boat” with “vessel”

The Minister proposes to replace the term “boat” with the term “vessel”.

Society’s comments

The Society proposes that this amendment be consistent with the proposed amendment to Regulation 8(a) and therefore the term “boat” should be replaced with the term “vessel or personal watercraft”.

Regulation 8(c) – Further restrictions applicable to open seasons, exclude use of decoys and bird callers from restrictions

By the new proposed Regulation 8(c), the Minister proposes to clarify the current Regulation 9(c). The Minister has concerns that the current Regulation 9(c) may be interpreted in a way to preclude the use of decoys and bird callers.

Society’s comments

The Society recommends that the proposed Regulation 8(1)(c) be withdrawn and that Regulation 9(1)(c) as it currently stands remain unchanged.

In the alternative, the Society recommends that the proposed Regulation 8(1)(c) be amended to read “*a person must not scatter grain or other material or use any other means including bird callers and decoys to entice protected game into an area so that it may be hunted*”.

The objective of the proposed amendments is to update provisions to better support current Government policy. We do not consider that the proposed Regulation 8(1)(c) achieves this objective.

Regardless, we submit that bird callers and decoys do not procure changes to bird behaviour any less than the other methods of enticement, which are expressly excluded under the proposed regulation 8(1)(c). It is clear that the frequency with which these instruments are used by humans to entice birds out of their natural environments for the purposes of hunting would no doubt affect their natural behaviour. Therefore, there is no reason why bird callers and decoys should not be considered an additional means of enticing animals into an area so that they may be hunted, and thus expressly included in the restrictions cited in the proposed Regulation 8.

Regulation 8(2): Penalties

No changes proposed by the Minister.

Society’s comments

The Society submits that the penalties for contravention of Regulation 8 (1) should be amended so as to be in accord with the Act. The Society recommends that the proposed Regulation 8 (2) be amended as follows in accord with similar contraventions of the Act

A person who contravenes a restriction prescribed by subregulation (1) is guilty of an offence.

Maximum penalty: \$2,500.

Expiation fee: \$210.

Regulation 9 – Duty of Open Season Hunting Permit Holder to complete and lodge hunting survey – new requirement that holders of Open Season Hunting Permits complete Hunting Surveys

The Minister proposes to insert a new Regulation requiring permit holders to complete a Hunting Survey.

Society's comments

The Society supports this proposed Regulation but recommends the completion of a hunting survey be mandatory for all permit holders. Information gathered will be vital in shaping future policy and reform.

The Society proposes an additional sub-regulation as follows:

(3) Failure to comply with Regulation 9(1) will be a matter relevant to the granting of any future permits.

Regulation 11 – Fees

The Minister proposes to amend the definitions of “*junior*” and “*sub junior*” so that they are in line with the *Firearms Act 1977* and the *Firearms Regulations 2008*.

Society's comments

The Society does not support children of, or under, the age of 13 years being permitted to take part in hunting activities.

We note that South Australia is the only State or Territory that allows children of this young age to hunt.

The table below shows the legal hunting age in each State and Territory:

SA	NSW	VIC	QLD	ACT	TAS	WA	NT
Any	12	12	11	12	12	Hunting only on private land	12

The Society submits that South Australia should fall in line with other States and preclude children under the age of 12 years from obtaining a hunting permit.

Schedule – Fees – Amend Clause 2 Streamlining permit categories and ensuring alignment of criteria with provisions of the *Firearms Act 1977*

The Minister proposes to streamline permit categories. There are currently 10 different types of permit categories. The Minister proposes to amalgamate these into 3 categories – General, Open Season Quail and Open Season Duck.

Society's comments

The Society does not agree with the amalgamation of the different types of hunting permits into only three categories. The Society fears that important data will be lost and the ability to provide conclusive statistics as to what animals are being hunted will be impeded.

Incorporation of penalties into Regulations 4, 5, 6, 8, 9, and 10

The Minister proposes to delete the current general Regulation relating to penalties and instead incorporate a penalty for each offence.


Society's comments

The Society agrees with the deletion of the general penalty Regulation and supports an individual penalty for each offence.

However, we do not support the proposal to keep all penalties in the Regulations the same. The Society refers to its comments above as to the need to ensure the penalties in the Regulations are in line with the Act.

I trust these comments are of assistance. Please do not hesitate to contact me should you wish to discuss any aspect of this submission.

Yours sincerely



Ralph Bönig
PRESIDENT