

BirdLife Photography Policy for ‘Nesting Bird’ Photography and the use of Call Playback to Observe and/or Photograph Native Birds

Code of Ethics

BACKGROUND

Birds are in a daily fight for survival. Any injury or stress-induced illness will almost certainly result in death. Predators are everywhere; breeding is competitive and finding food imperative.

Further, our climate is changing and habitat is being cleared at a relentless rate. In concert, the number of bird photographers has increased phenomenally in the last two decades. The actions of photographers cannot be viewed in isolation. The more photographers there are, the greater the potential for impacting the daily existence of our birds. The effects of an ever increasing human population as well as an increasing photographic community must be regarded as *cumulative*.

In compiling these ethical guidelines, the BirdLife Photography Committee believes it is important to apply the internationally recognised "Precautionary Principle", which has been incorporated into Australian environmental law under s391 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, and is defined as follows:

"The precautionary principle is that lack of full scientific certainty [eg in relation to the impact of call playback on bird species] should *not* be used as a reason for postponing measures to prevent degradation of the natural and cultural heritage of a reserve or zone where there is a threat of serious or irreversible damage."

By following the ethical guidelines set out below, BirdLife Photography members will ensure that their activities do not adversely affect the ongoing welfare of native Australian birds. **It should also be noted that for BirdLife Photography members these guidelines on Nesting Bird Photography and Call Playback supersede any corresponding sections in the BirdLife Australia Ethical Guidelines.**

NESTING BIRD PHOTOGRAPHY

Summary: Photographs that are NOT accepted for public viewing in any BirdLife Photography gallery, include those depicting nests with eggs or chicks, whether a parent bird is present or not.

Photographs of fledglings are accepted but great care must still be undertaken to ensure that the fledglings are NOT exposed to the elements or predators and that the time to capture an image is brief. There are no metrics to prescribe the time spent photographing a fledgling bird nor an acceptable approach distance. The most reliable guide is that the fledgling(s) and parent bird behaviours are not impacted by your presence; in other words the birds go about their normal daily activities unhindered.

Photographers MUST keep an appropriate distance from nesting birds

Nesting is the *most* critical and stressful time in a bird's life.

It is vitally important that photographers keep an appropriate distance from nesting birds so as to ensure that they do not:

- accidentally, or deliberately, cause damage to the nest or nest site;
- cause nest desertion or stress to the nesting adults or nestlings;
- attract predators to the nest site; and or
- remain at a distance from the nest site, which elicits a behavioural response from the nesting bird(s) - such as 'broken wing' response or the nesting bird not returning immediately to the nest.

In any event, photographers must NOT, in relation to nesting birds:

- damage or trample vegetation that results in exposing a nest;
- startle a bird as that may cause it to accidentally break or eject the eggs or cause the premature eruption of young from the nest;
- 'garden' the area around the nest by removing branches or other objects which may block a clear view of the nest thus increasing the exposure of the nesting birds to adverse weather and to predation;
- modify the nest or its approaches in order to force the bird into a more photogenic position;
- linger too long in the bird's core territory;
- visit nests in early mornings, dusk or inclement weather when any desertion by a parent may result in the eggs/young becoming cold;
- use call playback in the vicinity of a nesting bird which causes the bird to leave the nest to respond to the playback;
- use flash on a nesting bird;
- show undue attention to an otherwise well-camouflaged nest (eg birds nesting on the beach or in dense foliage);
- walk to the nest and back along the same path, leaving a *dead-end trail*; and/or
- act contrary to the law (see relevant sections below).

BIRD CALL PLAYBACK

Summary: Photographers submitting photos to the digital image library must confirm that bird call playback has NOT been used to attract birds for observation or photographic purposes.

The evidence and issues for prohibiting this technique for attracting birds

The issues underlying the impacts of using bird call playback for observing and photographing birds are diverse and continue to be researched and debated. Call playback is an emotive topic, hence the arguments often raised to support the pro-case for this technique are based more upon anecdotal observations and 'emotions' rather than the available scientific evidence. Nonetheless, there are data showing that call playback has an impact on bird behaviour and therefore has the potential to affect the well-being of birds.

Why has BirdLife Photography prohibited the use of bird call playback?

- relevant scientific evidence;
- agreement with the ethical principles of other national and international ornithological/environmental organisations that have prohibited the use of bird call playback;
- adoption of the 'Precautionary Principle' until more evidence becomes available.

In summary, the current scientific evidence shows that:

- vocalisations, aggressive behaviours and territorial disputes increase in many species, even after short durations (minutes) of call playback;
- call playback affects mate choice by females in certain species and female nesting behaviour in other species;
- in species that do eventually habituate to call playback, this can be greater than 12 days even with constant call playback exposure, during which time birds expend energy and time not devoted to nesting, caring for their young, foraging, seeking mates and/or adequately defending their territory.

Therefore, BirdLife Photography members must NOT:

- use bird call playback for attracting birds for observation or photography;
- engage in photographing birds that have been attracted by a third party using call playback; and/or
- encourage third parties to use call playback to attract birds on your behalf.

(A detailed document discussing several of the major studies involving call playback, the pro and con arguments and the implications of call playback on bird behaviours is currently being prepared and when completed, it will be available through our new website.)

BirdLife Photography will continue to monitor publications and recommendations in this field of research to ensure that our policies remain updated and in the best interests of birds.

PHOTOGRAPHERS MUST NOT ACT CONTRARY TO ANY APPLICABLE LAWS

It goes without saying that taking an image of a bird in breach of the law is an unethical act.

A substantial proportion of bird photography is undertaken in national parks and reserves. To assist BLP members in determining the activities that may or may not be legal, we have compiled a summary of the key legislation in each state of Australia, and the Commonwealth, governing the environment (eg national parks and reserves): See Appendix A. It should be noted that these provisions are set out as a *guide* only and should *not* be regarded as definitive of all the rules and regulations, which may govern a particular designated park or reserve. Local governments, for example, are likely to have their own set of by-laws governing communal areas, which must also be taken account of.

It should also be remembered that our native bird species are protected by law throughout Australia regardless of whether they occur in national parks, reserves, local government administered areas or private land, unless otherwise stated by Commonwealth or State fauna/flora agencies.

The kinds of activities often engaged in by bird photographers, which are currently proscribed in some or all government reserves and parks in Australia include:

- taking ('take' often defined to include 'interfering') or harassing (call playback is a form of harassment) native wildlife;
- taking photographs, sounds or filming birds for commercial gain;
- use a radio, tape recorder or other sound or amplifier system in a way that may cause unreasonable disturbance to an animal (eg call playback);
- disturbing or interfering with nests;
- walking or driving off *designated* tracks or roads;
- altering native vegetation (eg to get a clearer photo of bird);
- erecting structures (eg permanent bird hides);
- feeding wildlife (eg using food to attract birds).

If in doubt, you should make an enquiry with the local agency in charge of the area you wish to visit prior to engaging in any of the acts listed above.

Obtain a Licence

In most instances, the relevant legislation has made provision for the issuing of licences to people to engage in particular acts in or on government land, which are otherwise proscribed by the law. The advantage of the licensing system is that any potential impact on local wildlife (of, for example call playback) of a potentially harmful activity can be easily monitored and, where necessary, managed.

BIRDLIFE PHOTOGRAPHY'S MONITORING OF OUR ETHICAL POLICIES

BirdLife Photography is passionate about bird photography, bird conservation, the wellbeing of our Australian birdlife and respecting the Australian and International agreements and legislation summarised in this document. Therefore, photos submitted to the BirdLife Photography Digital Image Library must adhere to this and other BirdLife Photography endorsed ethical policy statements.

Whilst we rely on membership self regulation of these ethical principles, members are required to check a box on the *Submit Photos* page confirming that he/she has read, understood and complied with the ethical policies of BirdLife Photography in regard to the submission of their photo to the digital image library (this encompasses all galleries/competitions). Should it be shown that our ethical policies have been contravened, it is at the discretion of the BirdLife Photography Committee to remove that member's photos from public view.

In addition to this policy document, BirdLife Photography recommends that our members refer to the *Disturbance to Birds and their Habitats due to Recreational Activities Policy* and the *Ethical Birding Guidelines* published on the BirdLife Australia website. The main differences between our 'Nesting Bird and Call Playback' policy as compared to the BirdLife Australia Guidelines, apart from the level of detail in this BirdLife Photography policy document, is that the BirdLife (Australia) Guidelines do not specifically address nesting bird photography and whilst not endorsing call playback for observation or photographing birds, the guidelines suggest limiting the use of call playback.

BirdLife Photography prohibits the use of bird call playback, unless formally endorsed by an Animal Ethics Committee, in accordance with the 'Precautionary Principle' adopted by a number of Federal and State agencies.

BirdLife Photography will not publish photos of nesting birds in viewable galleries. If 'nesting bird' photos are submitted for consideration, the photographer should state the reason(s) why the photograph is a 'rare glimpse' of that species behaviour and/or contributes to a greater scientific understanding of that species. In cases where these photos are accepted, they will be archived in a restricted gallery where member access may be granted by the Committee, based upon the merits of an application. Nesting bird photos may be deemed suitable for publication in conservation articles written for the Newsletter; this is at the discretion of the Newsletter Editor and/or the BirdLife Photography Committee.

Definition of 'nesting birds'

For the purpose of this BirdLife Photography policy statement, '**nesting birds**' is defined as the period from the start of nest building, through egg-laying, incubation and rearing of the chicks until the last young bird in a nest has fledged. A **fledgling** (whether it be an altricial or precocial chick – these terms are described elsewhere) is described as any young bird that has left the nest permanently.

Definition of 'bird call playback'

The technique of bird call playback involves the use of any device, either analog or digital, that plays a part or full repertoire of bird song, which has been obtained either as a commercial product or recorded to a device for private use.

"APPENDIX A"

AUSTRALIAN LEGISLATIVE FRAMEWORK FOR THE PROTECTION OF THE ENVIRONMENT

Whilst photographing birds, or birding per se, is a leisure activity, it is conducted in environments protected by various laws.

Set out below is the legislation at both a Federal and State/Territory level that, whilst much of it is not directly relevant, does provide a picture of the regulatory framework within which birding activities typically take place.

FEDERAL LEGISLATIVE FRAMEWORK FOR THE PROTECTION OF THE ENVIRONMENT

Australia's main national environment law is the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) and the regulations enacted under it.

Australia is also a party to the following treaties/conventions:

- **Ramsar Convention on Wetlands** (Australia currently has 65 *Wetlands of International Importance*. For a list of all designated wetlands, go to: <http://www.environment.gov.au/cgi-bin/wetlands/alphablist.pl>).
- Convention concerning the Protection of the World Cultural and Natural Heritage (**World Heritage Convention**)
- **Convention on Biological Diversity** [the main goals of this are the conservation of biological diversity (or biodiversity), sustainable use of its components and fair and equitable sharing of benefits arising from genetic resources].
- **Antarctic Treaty and the Agreement on the Conservation of Albatrosses and Petrels¹**
- Convention on the Conservation of Migratory Species of Wild Animals (**Bonn Convention**)
- Bilateral Migratory Bird Agreements with China, Japan & Korea (**CAMBA, JAMBA and ROKAMBA**)

Australia's obligations under the above are encompassed within the **EPBC Act**.

According to the Australian Government's website, there is also a **Draft Wildlife Conservation Plan for Migratory Shorebirds**. Comments on this closed 3 December 2014.

Environment Protection and Biodiversity Conservation Act 1999

World Heritage Convention - ss 12 & 15A

As per the Australian government's website², "World heritage sites are places that are important to and belong to everyone, irrespective of where they are located. They have universal value that transcends the value they hold for a particular nation".

Australia currently has 19 properties on the World Heritage list³, including, among others, Gondwana Rainforests of Australia, Macquarie, Fraser, Cockatoo and Lord Howe Islands, Kakadu, Kata Tjuta

¹ <http://www.acap.aq/en/acap-agreement/206-agreement-on-the-conservation-of-albatrosses-and-petrels/file>

² <https://www.environment.gov.au/heritage/about/world-heritage>

and Purnululu National Parks, Tasmanian Wilderness and Wet Tropics of Queensland and Greater Blue Mountains Area, NSW.

Under s12 of the EPBC Act, a person must not take an action that has, will have or is likely to have a *significant impact* on the World Heritage values of a World Heritage place. Such an action may also be deemed an offence under s15A.

National Heritage - ss15B & C

Australia also maintains its own National Heritage List. As per the Australian government's website⁴, "[t]he National Heritage List has been established to list places of outstanding heritage significance to Australia. It includes natural, historic and Indigenous places that are of outstanding national heritage value to the Australian nation".

Australia has over 100 National Heritage sites⁵, including, among others, Fraser, Macquarie and Lord Howe Islands, Stirling Range and Kakadu National Parks, the Greater Blue Mountains, the Tasmanian Wilderness and the Willandra Lakes region.

By way of example, one of the 'natural' values for which Fraser Island was listed is the prolific birdlife. The Statement of Significance notes:

"It is a *particularly important site for migratory wading birds* which use the area as a resting place during their long flights between southern Australia and their breeding grounds in Siberia. A species of particular interest is the *endangered ground parrot* [NB: Eastern Ground Parrot - not to be confused with the critically endangered Western Ground Parrot!], which is found in the wallum heathlands".

Under s15B of the EPBC Act, a person must not take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place. Such an action may also be deemed an offence under s15C.

RAMSAR Convention on Wetlands⁶ - ss 16 & 17B

The Convention encourages member countries to nominate sites that are important for ecological, botanical, zoological, limnological or hydrological significance, to the List of Wetlands of International Importance (Ramsar sites). Member countries are obliged to promote the conservation of Ramsar wetlands and wise use of all wetlands and work to ensure that Ramsar sites are managed to protect their ecological character.

Australia's commitments and responsibilities under the RAMSAR Convention (as noted above) have been incorporated into Australian law via the Commonwealth EPBC Act, *sections 16 and 17B*.

These sections provide that a person must not (unless they have approval/permission as per the EPBC Act) take an action that has or will have, or is likely to have a *significant impact* on the ecological character of a declared Ramsar wetland.

³ <https://www.environment.gov.au/heritage/places/world-heritage-list>

⁴ <https://www.environment.gov.au/heritage/about/national>

⁵ <https://www.environment.gov.au/heritage/places/national-heritage-list>

⁶ According the Australian Government *Department of Environment* website, *National Guidelines for Ramsar Wetlands* are currently being developed.

As it is primarily concerned with activities that alter the *ecological character* of a wetland, it is not directly relevant to the current discussion. However, it is possible to envisage circumstances where the use of call playback or disturbance of certain nesting birds may occur to such an extent that it has a detrimental impact on a particular species that is prevalent in that wetland (in the Corlscrew Swamp, Florida, USA, call playback ruined the breeding attempts of every breeding pair of Barred Owls in one year)⁷. In such a scenario, if the bird species is deemed an intrinsic part of the ecological (or zoological) character of the wetland, such activities may constitute a breach of the EPBC Act.

Threatened Species - S18

Under s18 of the EPBC Act, a person must not (without approval/permission) take an action that has or will have, or is likely to have, a significant impact on a listed threatened species⁸. Such an action may also be deemed an offence under s18A.

Migratory Species - S20

Similarly, under s20 of the EPBC Act, a person must not (without approval/permission) take an action that has or will have, or is likely to have, a significant impact on a listed migratory species⁹. Such an action may also be deemed an offence under s20A.

Precautionary Principle

Section 391 of the EPBC Act provides that the Minister must take account of the precautionary principle in making certain decisions therein listed¹⁰. The precautionary principle is defined as follows:

"The **precautionary principle** is that lack of full scientific certainty should not be used as a reason for postponing measures to prevent degradation of the natural and cultural heritage of a reserve or zone where there is a threat of serious or irreversible damage¹¹"

Environment Protection and Biodiversity Conservation Regulations 2000 (EPBC Regulations)

Under the EPBC Regulations it is an offence to:

- take an action (without approval/permission) that results in the death or injury of a member of a protected species; OR that involves the taking, trading, keeping or moving of a member of a protected species; OR that *damages or destroys a nest* or dwelling place of a member of a protected species [Reg 9.03];
- take an action (without approval/permission), in a Commonwealth reserve, that results in the death or injury of a member of a native species in the reserve OR involves taking, trading, keeping or moving a member of a native species in the reserve. This includes actions that cause disturbance or harm to the member of the native species or its habitat [Reg 12.19B];
- carry on an excavation, erect a building or other structure or carry out works in a Commonwealth reserve [Reg 12.11];

⁷ de la Torre, J (1990) *Owls: Their Life and Behaviour*. Crown Publishers, New York.

⁸ <https://www.environment.gov.au/cgi-bin/sprat/public/publicthreatenedlist.pl?wanted=fauna>

⁹ <https://www.environment.gov.au/cgi-bin/sprat/public/publicshowmigratory.pl>; Migratory species are those referred to in the Bonn Convention and CAMBA, JAMBA and ROKAMBA.

¹⁰ These include issuing permits and making plans for RAMSAR Wetlands, World Heritage and National Heritage sites.

¹¹ Also referred to in the EPBC Regulations and in s3 of Schedule 8 "Australian IUCN reserve management principles" of the Regulations.

- take an action that, in a Commonwealth reserve, damages, defaces, obstructs, removes or interferes with a natural feature; or an object, sign or structure; or a road or track [Reg 12.12];
- enter or remain in a Commonwealth reserve, or a part of a Commonwealth reserve, in contravention of a prohibition or restriction imposed by the Director [Reg 12.23]
- engage in an activity, or an activity in a class of activities, in a Commonwealth reserve, or a part of a Commonwealth reserve, OR *capture an image or record a sound in or of a Commonwealth reserve* in contravention of a prohibition or restriction imposed by the Director [Reg 12.23A];
- use a captured image of a Commonwealth reserve to derive commercial gain ('captured image' includes an image that was not captured for a commercial purpose or in contravention of the Act or Regulations) [Reg 12.38]¹²;
- walk or ride in a Commonwealth reserve other than on a vehicle access road or a vehicle access track or a track for walking or riding provided by the Director [Reg 12.55].

Agreement on the Conservation of Albatrosses and Petrels

Under clause 2 of Article III of the agreement, the Parties shall, subject to certain exemptions, prohibit the deliberate taking of, or harmful interference with, albatrosses and petrels, their eggs, or their breeding sites.

“Taking” is defined to mean taking, hunting, fishing, capturing, *harassing*, deliberate killing or attempting to engage in any such conduct (my emphasis).

Further, Annex 2, clause 3.4 of the Agreement specifically states, under the title 'Disturbance' as follows:

"3.4.1 In both marine and terrestrial habitats, the Parties shall seek to minimise disturbance of albatrosses and petrels, and to establish and maintain some areas that are kept free from disturbance.

3.4.2 The Parties shall seek to avoid or minimise disturbance caused by, *inter alia*, **tourism**, and in particular by **controlling the proximity of approach to breeding birds.**"

¹² The regulations go on to provide that no fee is payable for a permit for capturing images for commercial gain if the Director is satisfied that the activity contributes to the 'positive portrayal of the Commonwealth reserve and its values.

STATE/TERRITORY LEGISLATIVE FRAMEWORK FOR THE PROTECTION OF THE ENVIRONMENT

WESTERN AUSTRALIA

Western Australia's Department of Parks and Wildlife (**Parks and Wildlife**) has primary responsibility for managing the state's national parks, marine parks, State forests and other reserves, for conserving and protecting native animals and plants, and for managing many aspects of the access to and use of the state's wildlife and natural areas¹³.

The relevant legislation for activities conducted in national parks and reserves is set out in the *Conservation and Land Management Act 1984* and its regulations, the *Conservation and Land Management Regulations 2002*¹⁴ (**CALM Regulations**).

Conservation and Land Management Regulations 2002

Under the CALM Regulations, a person must not, without lawful authority do any of the following on CALM land:

- take any flora or fauna (Reg 8);
- feed fauna, or entice fauna with food (Reg 10);
- erect or place any structure (Reg 34);
- take still pictures (or video) to be used for commercial purposes (Reg 108).

Part I section 2 of the CALM Regulations defines *take* as including:

- to injure, destroy or *otherwise interfere with*, or cause or permit the doing of any of those things; and
- to hunt any fauna even though no fauna is actually taken; and
- an attempt to take.

TASMANIA

The Parks and Wildlife Service operates under the *National Parks and Reserves Management Act 2002* (this partially replaces the *National Parks and Wildlife Act 1970*)

National Parks and Reserves Management Act 2002

The *National Parks and Reserves Management Act 2002* provides, at section 38, that a person must not (without a licence), in reserve land that is also Crown land:

- provide, offer to provide or hold himself or herself out as willing to provide any service or facility for any monetary or other consideration; or
- take or cause to be taken any photograph or cine, video, movie or television film for or with a view to any monetary or other consideration.

¹³ <http://www.dpaw.wa.gov.au/about-us/strategic-directions>

¹⁴ http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1260_homepage.html

Reserves are declared under the *Nature Conservation Act 2002* (sets out the values and purposes of each reserve class) and managed under the *National Parks and Reserves Management Act 2002* according to management objectives for each class.¹⁵

National Parks and Reserved Land Regulations 2009

Under the *National Parks and Reserved Land Regulations 2009*¹⁶, a person must not:

- on any reserved land, erect, place or modify any building or structure, other than a tent that is intended for use while camping [Reg 4];
- on any reserved land, take or have in his or her possession any form of wildlife or the products of wildlife; OR use or have in his or her possession any hunting equipment; OR lay or set any trap or snare; OR *interfere with the nest, breeding place or habitation* of any form of wildlife; OR *rouse or disturb* any form of wildlife [Reg 6]
- enter or remain in or on a restricted area; OR Macquarie Island Nature Reserve; OR any reserved land or part of any reserved land (other than a cave) if access to that reserved land or part of that reserved land is prohibited by a sign or a public notice published in a newspaper [Reg 17];
- drive a vehicle on any reserved land except on a road on that reserved land; OR in a designated vehicle area, [Reg 18].

SOUTH AUSTRALIA

National Parks and Wildlife Act 1972

Section 68 of the *National Parks and Wildlife Act 1972*¹⁷ provides that a person must not:

- interfere with, harass or molest, or cause or permit the interference with, harassment or molestation of, a protected animal; OR
- undertake or continue an act or activity that is, or is likely to be, detrimental to the welfare of a protected animal after being directed by a warden not to undertake, or to stop, that act or activity; or
- undertake or continue an act or activity in relation to a protected animal that is contrary to regulations promulgated under this section

National Parks and Wildlife (National Parks) Regulations 2001

The *National Parks and Wildlife (National Parks) Regulations 2001*, promulgated under the *National Parks and Wildlife Act 1972*, provide that a person must not, without the permission of the relevant authority:

¹⁵

http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=all;doc_id=63%2B%2B2002%2BAT%40EN%2B20151029000000;histon=;prompt=;rec=;term=Nature%20Conservation%20Act%202002

¹⁶ These regulations generally lists activities which are prohibited or may only be undertaken subject to certain conditions in Tasmanian parks and reserves:

http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=all;doc_id=%2B169%2B2009%2BAT%40EN%2B20130530000000;histon=;prompt=;rec=;term=national%20parks%20and%20reserved%20land

¹⁷ <http://www.legislation.sa.gov.au/lz/c/a/national%20parks%20and%20wildlife%20act%201972/current/1972.56.un.pdf>

- A person must not, without the permission of the relevant authority, drive or tow a vehicle in a reserve except on a road or track set aside for that purpose by the relevant authority or in any other area of the reserve set aside for that purpose by the relevant authority [Reg 11];
- take or molest an unprotected animal in a reserve OR intentionally damage the nest or burrow of an animal in a reserve [Reg 24];
- remove from a reserve wood, mulch or other dead vegetation... OR intentionally disturb any wood, mulch or other dead vegetation in a reserve [Reg 31];
- A person must not, without the permission of the relevant authority, abandon or leave unattended for more than 24 hours any vehicle or other personal property in a reserve [Reg 35];
- use or cause to be used, any loud speaker or similar device or other noisy equipment in a reserve; OR construct or erect any booth, marquee or other structure in a reserve [Reg 38].

Further, pursuant to Regulation 37, a person must not undertake filming, videotaping or taking photographs for commercial purposes OR conduct scientific experiments in a reserve except pursuant to a lease, licence or agreement between that person, or some other person, and the Minister or the relevant authority.

VICTORIA

Parks Victoria's responsibilities encompass the management of, inter alia¹⁸:

- all areas reserved under the National Parks Act 1975;
- metropolitan waterways and adjacent land under the Water Industry Act 1994;
- nominated Crown land reserved under the Crown Land (Reserves) Act 1978;
- conservation reserves reserved under the Crown Land (Reserves) Act 1978; and managed in accordance with approved land use recommendations under the Land Conservation Act 1970
- areas reserved under the Heritage Rivers Act 1992;
- planning for all Ramsar sites and management of some sites; and
- other areas as specified under the Parks Victoria Act 1998.

National Parks Act 1975

Under s27C of the National Parks Act 1975¹⁹, a person must not conduct an organised tour or recreational activity for profit in a park unless that person holds a tour operator licence [s27C].

National Parks Regulations 2013

Under the *National Parks Regulations 2013*²⁰ a person must not:

¹⁸ <http://parkweb.vic.gov.au/park-management/legislation>

¹⁹

[http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst9.nsf/DDE300B846EED9C7CA257616000A3571/E8B976F06B11E9C8CA257EEB001B7457/\\$FILE/75-8702aa150%20authorised.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst9.nsf/DDE300B846EED9C7CA257616000A3571/E8B976F06B11E9C8CA257EEB001B7457/$FILE/75-8702aa150%20authorised.pdf)

²⁰

[http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst9.nsf/DDE300B846EED9C7CA257616000A3571/91E71D872102404BCA257E0B00811DC8/\\$FILE/13-115sra002%20authorised.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst9.nsf/DDE300B846EED9C7CA257616000A3571/91E71D872102404BCA257E0B00811DC8/$FILE/13-115sra002%20authorised.pdf)

- other than a person acting in accordance with a permit under regulation 24, in a park, disturb, harass, remove, hunt, capture, take, kill, injure or otherwise destroy or interfere with any animal [Reg 23]²¹;
- other than a person acting in accordance with a permit under regulation 24, in a park, destroy, disturb or interfere with the *nest, bower, display mound, lair or burrow* of any animal [Reg 23]
- in a park, feed, offer food or offer any object as food to any animal [Reg 26];
- cut, fell, pick, remove, take, damage or destroy any vegetation in a park [Reg 48];
- erect, construct or install a building or other structure (whether temporary or otherwise) in a park [Reg 79];
- use or operate a vehicle in a restricted area [Regs 93 & 94].

Forests Act 1958

Pursuant to s57E of the *Forests Act 1958*, a person must not conduct an organised tour or recreational activity for profit on Crown land in a reserved forest unless that person holds a tour operator licence.

Forests (Recreation) Regulations 2010

The *Forests (Recreation) Regulations 2010*²² govern State Forests, forest reserves and forest parks.

They provide that a person must not:

- within a forest reserve or forest park, film or take photographs for profit [Reg 22]
- within a forest reserve or forest park, construct any building, permanent structure or improvement [Reg 24];
- in a forest reserve, knowingly disturb, harass, remove, hunt, capture, take, kill or injure or otherwise destroy or interfere with any fauna or other animal [Reg 37 (1)];
- in a forest reserve, knowingly disturb, remove, take or otherwise destroy or interfere with the nest, bower, display mound, lair or burrow of any fauna or other animal [Reg 37 (2)];
- in a forest reserve, intentionally or recklessly cut, fell, pick, remove, take, destroy or damage any flora [Reg 37(7)];
- in a forest reserve, shoot, trap, catch or otherwise destroy or interfere with any animal or bird [Reg 39];
- in a forest park, *knowingly disturb, harass*, remove, hunt, capture, take, kill or injure *or otherwise destroy or interfere* with any fauna [Reg 51(1)];
- in a forest park, knowingly disturb, harass, remove, take, injure or otherwise destroy or interfere with the nest, bower, display mound, lair or burrow of any fauna [Reg 51(2)];
- in a forest park, intentionally or recklessly cut, fell, pick, remove, take, destroy or damage any flora [Reg 51(7)];
- essentially, drive in areas designated as off limits to the public [various regs].

²¹ Regulations 111, 113 and 114 provide that a person does not commit an offence against regulation 23(1) when engaging in certain hunting activities in particular parks, subject to certain conditions.

²²

[http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst9.nsf/DDE300B846EED9C7CA257616000A3571/74D12785E9BC42D0CA257E0B0081E36B/\\$FILE/10-30sra003%20authorised.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst9.nsf/DDE300B846EED9C7CA257616000A3571/74D12785E9BC42D0CA257E0B0081E36B/$FILE/10-30sra003%20authorised.pdf)

NEW SOUTH WALES

The Office of Heritage & Environment administers the legislation relevant to the environment²³ including the *National Parks and Wildlife Act 1974* and the *Threatened Species Conservation Act 1995*.

National Parks and Wildlife Act 1974 (NPAW)

The NPAW Act stipulates that a person shall not (unless has authority eg a licence):

- harm any animal that is within a national park [s 45A];
- any animal that is within a nature reserve [s56];
- fell, cut, destroy, injure, pick, remove or set fire to any tree, timber, plant, flower or vegetation in a nature reserve [s57];
- harm any animal that is within a karst conservation reserve [s58Q];
- fell, cut, destroy, injure, pick, remove or set fire to any tree, timber, plant, flower or vegetation in, OR be in possession of any native plant within, a karst conservation reserve [s58R];
- harm any fauna, or use any animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any fauna, being fauna within a wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement [s70];
- pick or have in the person's possession any native plant within a wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement [s71]
- harm any protected fauna (*protected fauna* does not include threatened interstate fauna, threatened species, endangered populations, endangered ecological communities, or locally unprotected fauna under section 96 [s98];
- damage any critical habitat [s118C];
- pick or have in the person's possession a protected native plant [s117];
- damage any habitat of a threatened species, an endangered population or an endangered ecological community if the person knows that the habitat concerned is habitat of that kind [s118D];
- remove any water other than for purposes authorised by or under any Act or for the purposes of personal use on the land OR damage or remove any vegetation, rock, soil, sand, stone or similar substance [s156A].

Also of relevance, pursuant to section 99A an officer of the Service may give a direction to a person to stop any activity that is causing or is likely to cause, distress to protected fauna.

National Parks and Wildlife Regulation 2009

Pursuant to the *National Parks & Wildlife Regulations 2009*²⁴ a person must not, in a park:

- drive a vehicle or hoofed animal, or tether a hoofed animal, otherwise than on a road, track, trail or way, or in an area, set aside for that purpose OR open any gate, barrier or similar device in a park or remove, shift, damage or destroy any obstruction that has been positioned or created, by

²³ For a full list see: <http://www.environment.nsw.gov.au/legislation/legislation.htm>

²⁴

<http://www.legislation.nsw.gov.au/viewtop/inforce/subordleg+427+2009+cd+0+N/?dq=Regulations%20under%20National%20Parks%20and%20Wildlife%20Act%201974%20No%2080>

- any means, so as to restrict or obstruct vehicular access to any road, track, trail, way or area in a park [Reg 7];
- carry, lay or set any trap, snare or poison, or drop from an aircraft or otherwise deposit any poison bait or poisonous chemical substance, or hunt, shoot, poison, net, spear, pursue, interfere with, injure, hurt, capture, destroy, trap or snare, or have in the person's possession, an animal, or take any animal's nest or egg, or interfere with any animal's nest or egg or habitation or resting place or any beehive, or feed any animal [Reg 12];
 - operate or use any radio, television, cassette player, compact disc player or other sound-generating device in a manner likely to interfere with or cause a nuisance to any person or animal [Reg 13];
 - erect, alter, extend or occupy any building OR install, use or occupy a moveable dwelling in a park OR construct, operate or use any structure, installation, engineering work, plant, equipment, amusement device, fixture or improvement in a park [Reg 17];
 - gather, pluck, pull up, poison, take, dig up, cut, fell, remove, damage or destroy any vegetation [Reg 18];
 - take any photograph, video, movie or television film for sale, hire or profit [Reg 21].

QUEENSLAND

In Queensland, the Department of Environment & Heritage Protection administers the relevant legislation²⁵.

Nature Conservation Act 1992

The Act, which applies to national parks, regional parks, nature refuges and conservation areas [s14], provides that protected wildlife is to be managed to conserve the wildlife and its values and, in particular to [s73]:

- ensure the survival and natural development of the wildlife in the wild; and
- conserve the biological diversity of the wildlife to the greatest possible extent; and
- identify, and reduce or remove, the effects of threatening processes²⁶ relating to the wildlife; and
- identify the wildlife's critical habitat and conserve it to the greatest possible extent; and ensure that any use of the wildlife for scientific study and monitoring; or for educational, recreational, commercial and authorised purposes; or is ecologically sustainable.

Under the Act, a person, other than an authorised person, must not:

- not take, use, keep or interfere with a cultural or natural resource²⁷ of a protected area, other than under ... a lease, agreement, licence [s 62];
- take a protected plant that is in the wild unless the plant is taken under ... a licence, permit or other authority [s88];
- in relation to native wildlife (other than protected wildlife) in an area identified under a regulation or conservation plan as including critical habitat or being of major interest, take,

²⁵ <https://www.ehp.qld.gov.au/about/legislation/acts.html>

²⁶ Defined in s12 to mean as any process that is capable of threatening the survival of any protected area²⁶, wildlife, community of native wildlife or native wildlife habitat or the capacity of those areas/wildlife to sustain natural processes.

²⁷ **Natural resources**, in relation to a protected area; or an area identified under a regulation or conservation plan as, or including a critical habitat; or an area of major interest, means the natural and physical features of the area, including wildlife, soil, water, minerals and air [Schedule Dictionary, s7]

use, keep or interfere with the wildlife, other than under ... a licence, permit or other authority [s97].

Many regulations have been enacted under the *Nature Conservation Act 1992*. The relevant ones are set out below.

Nature Conservation (Wildlife Management) Regulations 2006

Section 7 of the *Nature Conservation (Wildlife Management) Regulation 2006*²⁸ defines an **unauthorised interaction** for a protected animal in the wild as:

- an interaction with the animal, other than photographing or filming the animal in a way that does not disturb or interfere with the animal, for which a person gains a financial benefit;
- handling or touching the animal;
- interacting with the animal in a way that will, or may, *disturb* or *interfere* with the animal;
- physically restraining, or placing a physical restraint on, the animal.

Nature Conservation (Wildlife) Regulations 2006

*Nature Conservation (Wildlife) Regulation 2006*²⁹ prescribes threatened native wildlife.

Nature Conservation (Protected Areas Management) Regulation 2006

Regulation 17 prescribes that in considering an application for a permit to take, use, keep or interfere with cultural or natural resources (a **resources permit**) ... the chief executive must have regard to:

- the impact the activities that may be conducted under the permit or authority may have on the character and amenity of the protected area to which the permit or authority applies and adjacent areas;
- the likely *cumulative effect* of the proposed use and other uses on the protected area to which the permit or authority applies.

Further, under these regulations a person must not:

- in a protected area, or a part of a protected area, conduct a commercial activity unless the person is authorised to conduct the activity under a commercial activity permit or agreement [Reg 96];
- without the chief executive's written approval or a reasonable excuse, enter an area closed to the public [Reg 101];
- erect or keep a structure, other than a camping structure being used under a camping permit, or carry out works in a protected area without the chief executive's written approval... [Reg 103];
- A person must not possess or use an appliance in a protected area unless the person has the chief executive's written approval for possessing or using the appliance... [Reg 137];
- use a radio, tape recorder or other sound or amplifier system in a way that may cause unreasonable disturbance to a person or animal in a protected area [Reg 139].

Forestry Act 1959

The Queensland Department of Agriculture & Fisheries administers the *Forestry Act 1959*.

²⁸ <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/N/NatureConWiMR06.pdf>

²⁹ <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/N/NatureConWiR06.pdf>

Forestry Regulation 2015

The *Forestry Regulation 2015*, promulgated under the *Forestry Act 1959*, provide that a person must not, in a State forest or timber reserve, without reasonable excuse, *use a sound amplifying system*, including, for example, a radio, in a way that unreasonably disturbs someone else *or an animal* in the State forest or timber reserve [Reg 11]³⁰.

NORTHERN TERRITORY

Territory Parks and Wildlife Conservation Act

The Parks and Wildlife Commission of the Northern Territory administer the *Territory Parks and Wildlife Conservation Act*³¹.

Pursuant to section 66 of that act, a person must not take or interfere with protected wildlife unless the person is authorised to do so under the act.

Territory Parks and Wildlife Conservation Act By-Laws

Under the By-laws, a person must not:

- except in accordance with a permit issued by the Commission, in a park or reserve, carry on trade or commerce. Trade or commerce includes selling, offering or exposing for sale any article, plying for hire any goods or services, photography for commercial purposes and the conduct of a tour, safari or excursion [By-law 13];
- except in accordance with a permit issued by the Commission, damage, injure, destroy or otherwise interfere with wildlife that is an animal in a park or reserve [By-law 17];
- dig or otherwise interfere with any soil, stone or other material forming part of the park or reserve; or remove, mark, damage, deface or otherwise interfere with a rock or natural feature; or tree, shrub or plant whether or not planted by the Commission³² [By-law 18];
- drive a vehicle in a park or reserve except on a road, in a camping area, in a designated parking area or in accordance with a permit [By-law 28].

30 Interestingly, **Prescribed structure** is defined in the Schedule 7 dictionary as meaning a construction, or equipment, used to facilitate filming or photography, including, for example, a shelter, platform, tower or building, or generator or vehicle, but does not include portable hide large enough to shelter only 1 person or a camera or camera accessories or a tripod.

³¹ **Progeny**, of an animal is defined as any descendant of the animal and includes any animal reproductive material of the animal

<http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d7583963f055c335482561cf00181d19/80f44dc6b25e18cf69257d93000ecdd7?OpenDocument>

³² except as provided in a plan of management in force under the Act

AUSTRALIAN CAPITAL TERRITORY

Nature Conservation Act 2014

Under the *Nature Conservation Act 2014*³³ (ACT), a person commits an offence if they:

- interfere with the nest of a native animal OR something in the immediate environment of the nest of the native animal [s 128];
- interfere with the nest of a native animal OR something in the immediate environment of the nest of the native animal AND the interference places the animal or its progeny in danger of death or places the animal in danger of not being able to breed [s129];
- engage in conduct that causes injury to an animal or places a native animal in danger of injury or death [s 131];
- engage in conduct that causes damage to a native plant [s218];
- use a motor vehicle in a wilderness area outside a track or road designated designed to be used by vehicles with 4 or more wheels [s224].

³³ <http://www.legislation.act.gov.au/a/2014-59/current/pdf/2014-59.pdf>