

# Assessment Guideline

Queensland Parks and Wildlife Service and Partnerships

## Assessment of an application for a Research Permit

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### **Assessment guideline subject**

Under the provisions of the *Nature Conservation Act 1992* (the NCA) and the Nature Conservation (Animals) Regulation 2020 (the Animals Regulation), a Research Permit (RP) is available to authorise genuine research activities that involve the taking, keeping, or use of animals<sup>1</sup> in the three prescribed classes of wildlife – protected wildlife, international wildlife and prohibited wildlife.

### **Purpose**

The purpose of this assessment guideline is to provide guidance for Department of Environment and Science (DES) officers on NCA requirements for the assessment of an application for an RP.

### **Background**

An RP is not automatically required for all research involving protected, international and prohibited wildlife. A key consideration in determining if a permit is required is whether the research activity would involve taking<sup>2</sup>, keeping or use under the NCA.

Where it is determined that a proposed research project does require the grant of an RP, the assessment guidelines, below, will assist the chief executive to assess the RP application in accordance with NCA requirements.

### **Guideline statement**

DES supports and encourages the use of RPs to contribute to scientific knowledge about, and improve the management of, protected, international and prohibited wildlife.

The chief executive, and each DES officer who holds a delegation under the NCA to grant a RP, will have regard to the contents of this manual.

### **Assessment Guidelines**

#### **When an RP for an international or prohibited animal is and is not required**

Section 91(2) of the NCA exempts the keeping and use of *dead* international and prohibited animals. However, the keeping and use of *living* international and prohibited animals for scientific or research purposes *does* require an RP.

A dead international animal which is to be used for research and which has an approved tag fixed to the animal or part of the animal does not require an RP.

Milk obtained from a prohibited animal is exempt from permit requirements.

In any other research circumstance, an RP is required.

#### **When an RP for a protected animal is and is not required**

An RP is not required for a protected animal if the proposed research activities do not encompass the activities of *take, keep or use*.

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<sup>1</sup> Research permits are not issued for plants. Taking, keeping and use of plants (and parts) for science/research purposes is authorised under a protected plant harvesting licence - Nature Conservation (Plants) Regulation 2020).

<sup>2</sup> Applies only to protected animals.

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Examples of activities that *would not* require an RP are:

- visual or observational research that does not require handling (this includes indirect observation such as through photography, sound recording or observation of tracks), as take, keep, or use would not occur
- call playback where it is unlikely to disturb or interfere with a protected animal in the wild
- As per section 216 of the Animals Regulation the holder of a research permit, or a relevant person for the holder, may sell or give away a part of a dead authorised animal kept under the permit to a person who intends to keep and use the animal under section 34 of the Animals Regulation.

Examples of activities that *would* require an RP with respect to a protected animal that is in the wild are:

- any form of trapping, catching or handling, even if it involves immediate release and no injury or harm to the animal
- activities that injure, pursue or lure an animal
- activities that disturb or interfere with an animal (only with respect to an animal that is in the wild)
- use of any form of bait or attractant where trapping of the animal is intended
- use of any form of repellent<sup>3</sup> (with respect only to use in the wild).

An RP *is required* for removal, keeping, and/or use of dead protected animals and parts that are in the wild.

Note that a researcher who does not hold an RP but who incidentally takes (for example, traps) a protected animal in the wild in the knowledge that the incidental taking could be reasonably avoided commits an offence under the NCA. The *post facto* grant of an RP in these circumstances is not lawful.

#### **‘Test’ to be applied to an application**

The Animals Regulation provide a number of ‘tests’ to be applied by the chief executive in considering whether an RP may be granted. An RP may only be granted if the chief executive is satisfied about all of these matters.

#### **To be applied to Protected, International and Prohibited Wildlife**

##### **The ‘application test’ (s241 Animals Regulation)**

The chief executive must consider an application for an animal authority having regard to each of the following matters—

- whether the chief executive is restricted from granting the authority under part 1 or chapter 4, parts 3 to 18;
- whether the applicant is a suitable person to hold the authority;
- the impact the activities proposed to be carried out under the authority may have on the conservation of native wildlife;
- the effect the grant of the authority may have on the fair and equitable access to nature, in particular, the ecologically
- sustainable use of wildlife;
- any contribution the applicant proposes to make to the conservation of nature;
- any relevant Australian or international code, instrument, protocol or standard or any relevant intergovernmental agreement;
- the precautionary principle;
- public health and safety;
- the public interest;
- any recovery plan for an animal to which the authority is proposed to apply;
- for a flying-fox roost management permit in an area (the permit area) outside an urban flying-fox management area—
- whether the flying-foxes in the permit area are likely to move to, and congregate at, a tree or other place within an urban-flying fox management area, having regard to—
  - the proximity of the permit area to the urban flying-fox management area; and
  - the direction, from the permit area, of trees or other places suitable for the flying-foxes to move to and congregate at;

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- for an animal authority, other than a renewable licence, proposed to take effect immediately after an existing animal authority of the same type ends—
  - whether the existing animal authority was obtained on the basis of false or misleading information; and
  - whether the holder of the existing animal authority, or a relevant person for the holder, has failed to comply with a condition of the existing animal authority;
- any other matter stated in a conservation plan as a matter the chief executive must have regard to when considering an application for the authority.
- anything else the chief executive considers appropriate to achieve the object of the Act.

**The ‘suitable’ person test (s236, Animals Regulation)**

In deciding whether a person is a suitable person to hold an RP, the chief executive may have regard to any matter relevant to the person’s ability to carry out activities under the permit in a competent and ethical way. Refer to s236 of the Animals Regulation for further details.

**The ‘age’ test (s234, Animals Regulation)**

The chief executive cannot grant an RP to a person who is younger than 13 years. Further, if a weapon is to be used in the exercise of the RP, the chief executive cannot grant the permit to a person who is younger than 17 years (s212, Animals Regulation).

However, the chief executive may only grant an RP to a child if the child and the child’s parents or guardians live at the premises for which the permit is granted, and the chief executive is satisfied the parents or guardians will supervise the child while the child is carrying out activities under the permit, and the names of the parents or guardians are stated on the permit (s234, Animals Regulation).

**The ‘ecological sustainability’ test (s234, Animals Regulation)**

The chief executive may grant a wildlife authority (including an RP) only if the chief executive is satisfied that the activities to be carried out under the authority are not likely to adversely affect the ecological sustainability of any wildlife.

Ecological sustainability applies both generally and to particular localities and ecological systems. It is essential to consider if the taking, keeping and use of research animals in a target population would reduce the capacity of the habitat to support any wild plant or animal. The taking, keeping and use must be compatible with maintenance of the diversity of the species and genetic stocks.

The local impact of collecting should be considered when assessing new permit applications, or when considering amendments to existing permits, to ensure that species do not become locally threatened due to excessive collecting.

The current conservation status, distribution and abundance of the proposed research species, including their availability and conservation status outside Queensland, should also be considered.

**The ‘competence’ test (s212, Animals Regulation)**

The chief executive must not grant an RP to a person unless:

- the person is, or is associated with, a tertiary or other institution administered by the Commonwealth or a State, or is an entity that is involved in scientific research, and
- the chief executive is satisfied that the way the scientific purpose is to be achieved is consistent with the requirements of the institution or entity, and
- if the person is an individual, the individual must be receiving, or must have completed, postgraduate training in scientific research relevant to the activities the person proposes to carry out under the permit, or must have achieved a satisfactory level of competence in scientific research relevant to the activities the person proposes to carry out under the permit.

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An 'entity that is involved in scientific research' may be an overseas research institution.

Independent researchers should be advised that they might seek sponsorship from a scientific research institution or from an entity that is involved in scientific research. Such researchers might include authors of biological books applying to trap and release for photography or for researching their books. These will often be independent operators with no formal association with a scientific research institution, and who have little chance of arranging such an association.

### **Supporting information**

While not mandatory, assessment may be expedited if an application is accompanied by supporting information provided by one or more persons to support and/or extend the information provided by the applicant. This information should validate the methodology to be employed and the species and number of animals to be taken or used.

Refer to s241 of the Animals Regulation 2020 for details of the chief executive's power to require further information or documentation.

### **Additional considerations to be applied only to protected wildlife**

In addition to the above tests, the following should be applied to applications involving protected wildlife.

#### **The 'significant contribution' test (s213, Animals Regulation)**

The chief executive may grant a RP permit authorising the holder to take a protected animal only if the chief executive is satisfied that the animal is to be taken, kept, used or processed for research will, or is likely to, make a significant contribution to community knowledge about the research subject.

Relevant matters which the chief executive might consider in this regard include:

- Can the applicant/s clearly articulate the goals of the research?
- Does the nature of the research question(s) being examined relate primarily to personal or esoteric curiosity?
- Is the research likely to make a genuine contribution to knowledge on a topic with some relevance to the community?
- Given that the object of the NCA is the conservation of nature, is the research likely to contribute to knowledge relating to the conservation of nature?
- Will the research results be made available in the public domain (for example, public reports or peer review journals) or retained solely as private intellectual property?
- Will the research advance current knowledge?

Examples of research proposals that could be considered to make significant contributions to community knowledge include those that:

- assist with documenting the biodiversity of Queensland.
- provide information on the occurrence of wildlife at a location to assist with planning and management.
- provide new information about distribution of the wildlife in Queensland.
- contribute to our understanding of a species of wildlife, its habitat and/or its management requirements.
- assist with the conservation or management of a cultural resource.
- assist with the management of a protected area.
- document physical assets of Queensland.
- provide information that is not known already, unless repetition is required for the purposes of the verification of earlier results.
- advance knowledge in areas of genuine scientific endeavour other than the conservation of protected wildlife.

### **The ‘commerciality’ test (s213, Animals Regulation)**

The chief executive may grant an RP authorising a person to take a protected animal only if the chief executive is satisfied the animal is not intended to be taken, kept, used or processed for a commercial purpose.

Section 4(1) of the Animals Regulation prescribes that a person does an act for a commercial purpose if the person does the act for gain or reward, and provides in section 4(2) a number of examples of ‘commercial purpose’.

Note that the taking, keeping, use or processing of a protected animal for a genuine scientific purpose by a paid consultant (for example, who is undertaking fauna survey work) would not constitute a commercial purpose.

### **The ‘necessity’ test (s213, Animals Regulation)**

The chief executive may grant an RP authorising a person to take a protected animal from the wild only if the chief executive is satisfied it is necessary to take the animal, including for example, because there are no animals of the same species in captivity that are available or appropriate for the research that is to be carried out under the permit.

### **Release of a living animal at the conclusion of research**

In accordance with section 336 of the Animals Regulation, a person must not release an animal into the wild unless –

- the person is an authorised person; or
- the person is authorised under the Act to release the animal; or
- for an animal other than a dingo—the chief executive has given the person a written approval authorising the person to release the animal; or
- the person reasonably expects to recover the animal after it is released; or
- the person has another reasonable excuse.

As a consequence, these are matters which the chief executive may consider when assessing an application for an RP that proposes release of an animal to the wild.

While a research project that involves the release to the wild and subsequent recapture of an animal does not require the chief executive’s written authority per s336, the RP assessment delegate could reasonably ask the applicant to submit the proposed release/recapture methodology with the application details.

To remove any doubt, the chief executive’s written approval would normally be required to authorise the release to the wild of an animal that has been bred or kept in captivity and that is no longer needed at the conclusion of a scientific research project.

The chief executive’s written authority to release such an animal to the wild may be given via a letter but not as a condition of the RP.

### **Animal Ethics approval**

It is an applicant’s responsibility to obtain Animal Ethics Committee approval where this is required. The relevant legislation is administered by Biosecurity Queensland, a service of the Department of Agriculture and Fisheries. An applicant must be advised of this responsibility by use of the ‘Ethical Clearance Notice’ (see Appendix 1).

**However, under no circumstances should a permit under the *Nature Conservation Act 1992* be withheld due solely to the absence of A.E.C. approval.**

The Animal Care and Protection Regulation 2012, which is administered by Biosecurity Queensland, prescribes the use of animals for scientific purposes. This regulation requires compliance with a code of practice. A requirement is that proposed research procedures must be examined and approved by an A.E.C. properly constituted under the relevant code.

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It is preferable, but not mandatory, that all scientific research projects (except those limited to, for example, the trapping, banding and immediate release of wild birds) should have prior approval from the appropriate A.E.C. An applicant for an RP should be encouraged to provide a copy of the approval with the application, if it is available.

### Other considerations

Section 214 of the Animals Regulation prescribes the following restrictions on the grant by the chief executive of an RP for taking, keeping, using or processing whales and dolphins:

The scientific research must be recommended by -

- a scientific advisory committee, or
- a person who is recognised in the research community as a person who is highly experienced and qualified in scientific research about whales or dolphins.

Section 16 of the Nature Conservation (Koala) Conservation Plan 2017 (Koala Conservation Plan) prescribes the following restrictions on the grant of an RP for koalas –

- release of a wild-taken koala –
  - the koala is to be released into a *prescribed natural habitat* for the koala, or
  - the chief executive is reasonably satisfied that the *prescribed release conditions* for the koala are satisfied.

Refer to Schedule 2 of the Koala Conservation Plan for the meaning of *prescribed natural habitat* and *prescribed release conditions*.

- release of a captive-bred koala –
  - the chief executive is reasonably satisfied that the *prescribed release conditions* for the koala are satisfied, or
  - the chief executive is otherwise reasonably satisfied that the koala is capable of surviving in the wild.

### Sample permit conditions

The following are examples of RP conditions that may be applicable. It is not implied that all should appear in a permit.

- [All RPs] Unless otherwise specified, all practices and procedures undertaken pursuant to this permit are to be in accordance with those details contained in and attached to the Application for a Scientific Purposes Permit signed by the permit applicant on (date).
- [Trap and release RPs] Animals must not be moved from the point of capture and are to be released unharmed at the point of capture.
- Any mortality during capture or subsequent handling is to be reported immediately in writing to the Manager (Southern), Wildlife Operations.
- Up to (#) voucher specimens of each of the species/taxa listed may be taken and kept by the permit holder for subsequent lodgement forthwith with the Queensland Museum unless released from this obligation by the Queensland Museum.

Other conditions may need to be inserted where necessary, providing they are within the head of power of the nature conservation legislation. Note that appeals against conditions are available - see s243 of the Animals Regulation.



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The following information should appear as advice (for example, by letter - **not by permit condition**) requesting each licence holder's co-operation:

- Environmental impact should be kept to a minimum (except for road kill applications).
- Collecting activities should be affected away from public view.
- [if relevant] A copy of Animal Ethics Committee approval is requested and should be submitted to the Regional Manager (Southern), Wildlife Operations, including upon its renewal.
- The permit holder should provide the Museum Voucher Number in Section 3 of the Permit Holder's Data Registration form.
- A copy of any resulting report/publication from this research should be provided to the DES Regional Manager (Southern), Wildlife Operations.
- Collection of wildlife is not permitted in a national park or any other protected area under this permit.

#### Authorities

*Acts Interpretation Act 1954*

*Nature Conservation Act 1992*

Nature Conservation (Animals) Regulation 2020

#### Approved By

Kirstin Kenyon

Signature

Date

Executive Director,  
Wildlife and Threatened Species Operations,  
Department of Environment  
and Science

#### Human Rights Compatibility

The Department of Environment and Science is committed to respecting, protecting and promoting human rights. Under the [Human Rights Act 2019](#), the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. When acting or making a decision under this code of practice, officers must comply with that obligation (refer to [Comply with Human Rights Act](#)).

#### Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.



## Appendices

### Appendix 1 - Ethical Clearance Notice

#### **IMPORTANT NOTICE - ETHICAL CLEARANCE**

Please note that legislation relating to the use of animals for scientific purposes is in effect in Queensland.

That legislation - the *Animal Care and Protection Act 2001* - is administered by the Department of Agriculture and Fisheries.

Compliance with the *Australian code for the care and use of animals for scientific purposes* (8th ed., 2013) is mandatory under the *Animal Care and Protection Act 2001* where an animal is to be used for scientific purposes. The term 'scientific purposes' is defined in the code as activities performed to acquire, develop or demonstrate knowledge or techniques in any area of science including:

- teaching
- field trials
- environmental studies
- research
- diagnosis
- product testing
- production of biological products.

Activities not regarded as scientific purposes are:

- Fish tagging
- Bird banding
- Diagnosis by a veterinarian within routine veterinary practice or biosecurity inspectors undertaking a disease response.

You are required by law to comply with the above Code of Practice if your proposed use of an animal is subject to the *Animal Care and Protection Act 2001*. A cardinal requirement of the Code is that proposed procedures must be examined and approved by an Animal Ethics Committee (AEC) properly constituted under the Code.

If you are in doubt whether your proposed procedures do require AEC approval, you should contact the Department of Agriculture and Fisheries at the following address before proceeding:

Biosecurity Queensland  
Department of Agriculture and Fisheries  
GPO Box 46, BRISBANE Qld 4001  
Telephone: 13 25 23

Copies of the Animals Protection legislation and the Code are available as follows:

Act and Regulations - GOPRINT (Queensland Government Printer) or the Acts and Legislation website:

[www.legislation.qld.gov.au/Acts\\_SLs/Acts\\_SL.htm](http://www.legislation.qld.gov.au/Acts_SLs/Acts_SL.htm)

Code:

<https://www.nhmrc.gov.au/about-us/publications/australian-code-care-and-use-animals-scientific-purposes>

**Your attached permit issued under the *Nature Conservation Act 1992* does not authorise you to proceed without ethical clearance, if that is required.**

The above information is provided for your assistance by the Department of Environment and Science.

## Reference materials

### Meaning of terms

Under the *Acts Interpretation Act 1954*, the term 'person' includes an individual and a corporation. In this document, the term "chief executive" includes a delegate of the chief executive.

In accordance with the NCA, *Animal* means –

- any member of the animal kingdom (other than human), (whether alive or dead), and includes any amphibian, bird, coral, fish, invertebrate, mammal, or reptile, and
- the whole or any part of the progeny, larvae, pupae, eggs or genetic or reproductive material of an animal; and
- the carcass or another part of an animal.

*Carcass* of an animal includes its flesh, organs, body fluids, feathers, hair, fur, skin, scales, shell or exoskeleton, bones, horns, antlers, teeth or tusks.

*Disturb* an animal includes approach, harass, harm, lure, pursue, tease or touch the animal, or attempt to do any of these actions.

*Interfere with* a protected animal includes destroy, damage, and move.

*Keep* includes have in possession, or under control, in any place (whether for the use or benefit of the person in relation to whom the term is used or another person), even though another person has the actual possession or custody.

*Precautionary principle* means the principle that, if there are threats of serious or irreversible environmental damage, lack of full scientific certainty must not be used as a reason for postponing measures to prevent threatening processes.

*Protected animal* means an animal that is prescribed under the NCA as endangered, vulnerable, near threatened or least concern wildlife, but does not include a processed product that -

- is made or derived from a protected animal, and
- is declared under a regulation or conservation plan for the protected animal to be a processed product that is not included in this definition.

*Take* includes hunt, shoot, wound, kill, skin, poison, net, snare, spear, trap, catch, dredge for, bring ashore or aboard a boat, pursue, lure, injure or harm the animal, or an attempt to do any of these actions.

*Use* includes buy, sell, give away, process, move or gain any benefit from the resource or wildlife.

*Wildlife* means any taxon or species of an animal, plant, protista, procaryote or virus.!

**Adherence with Management Principles for Protected, International and Prohibited Wildlife**

Protected, International and Prohibited Wildlife are to be managed in accordance with the management principles prescribed by sections 73 to 75 of the NCA.

**NCA provisions regarding keeping and using international and prohibited animals**

The management principles for international and prohibited animals provide information that may be used to guide the assessment of an application for an RP for these animals. For example, the management principles for both international and prohibited animals prohibit the release of these animals into the wild without a licence, permit or authority given under the NCA (sections 74 and 75).

**NCA provisions regarding taking, keeping and using protected animals**

A protected animal remains the property of the State of Queensland (NCA, section 83) whether the animal is in the wild or is held in captivity, subject to the provisions of any relevant captive breeding agreement. A protected animal may cease to be the property of the State if the animal is taken under a licence, permit or other authority issued under a regulation *and* property in the animal passes from the State under a conservation plan (NCA, section 83). For example, a part of a kangaroo lawfully taken under a wildlife harvesting licence in accordance with the provisions of an approved macropod harvesting conservation plan would cease to be the property of the State.