

Regulatory Impact Statement

Prepared in accordance with the *Legislation Act 2001*, section 34

Changes to licence requirements for keeping non-native animals

DI2019-66

Purpose

This draft Regulatory Impact Statement (RIS) relates to proposed amendments to the *Nature Conservation (Exempt Animals) Declaration 2015 (No 1)* (the declaration) made under the *Nature Conservation Act 2014* (the NC Act).

This RIS establishes whether the proposed amendments to the declared list of animals are reasonable; identifies the benefits and constraints; and assesses the impacts of the proposed amendments on the need to protect native species and significant ecosystems in the ACT, NSW and Australia.

The RIS provides:

- background on the declaration of exempt animals in the ACT;
- a summary of the issues addressed by the proposed amendments to the list;
- consideration of the benefits and constraints of the options;
- consideration of any mutual recognition issues;
- a statement addressing the proposals the consistency with the Scrutiny of Bills Committee Terms of Reference; and
- a conclusion about the preferred amendments to the list.

Background

The main object of the NC Act is to protect, conserve and enhance the biodiversity of the ACT. One of the important means of achieving this outcome is through the licensing of keeping (including breeding), selling, trading or taking of native or non-native animals for research, education and zoological purposes, animal handling or for public exhibition.

Declaration of an exempt animal under the NC Act (Part 6.2, s. 115) means the animal may be legally kept in captivity, or traded, without a licence.

It does not mean that native animals can be taken from the wild, killed or harmed. A licence is needed for these activities irrespective of whether the animal is an exempt animal. It is also an offence to release any animal (both native and non-native) from captivity without a licence.

Licensing allows the Conservator of Flora and Fauna to specify conditions about, for example:

- (a) the type of enclosure that animal must be kept in;
- (b) any feeding, cleaning or hygiene requirements;
- (c) any qualifications or specialist skills required to care for the animal.

A person in possession of any animal which is not listed as an exempt animal, or who undertakes activities not subject to the exemption, and who is not licensed, is subject to the offences and penalties which apply.

Proposed changes to non-native animals

The last review of the Exempt Animals Declaration was made in 2002, under the former *Nature Conservation Act 1980*. A revised *Nature Conservation Act 2014* (NC Act) commenced on 11 June 2015. At that time, all animals on the Exempt Animals Declaration under the 1980 Act were transitioned to the Exempt Animals Declaration under the 2014 Act, without reviewing the list.

Since the last review of the Exempt Animals Declaration in 2002, non-native birds kept in captivity in Australia have been subject to comprehensive reviews of their potential to impact negatively on native wild populations and ecosystems. The first of these reviews of non-native vertebrate animals was conducted and published by the Vertebrate Pest Committee (2007), followed by the subsequent and complementary review by the Invasive Plants and Animals Committee (2015).

The policy objective of the review is to ensure that the Exempt Animals Declaration meets the requirement to protect the native species and ecosystems of the ACT. The primary policy failure being addressed by this review are the risks posed to native species due to the keeping of high risk non-native birds in captivity.

Non-native birds assessed as a ‘Serious’ or ‘Extreme’ pest risk should they escape captivity, and prohibited pest species are proposed to be removed from the Exempt Animals Declaration.

We are also proposing to remove Arabian Camels (*Camelus dromedarius*) from the list. They are sometimes kept as pets or riding stock in other jurisdictions. Camels are large animals requiring large areas and specialised husbandry: licensing their keeping is appropriate and they are not currently managed under other acts such as the Stock Act 2005. If Camels were to escape, they are likely to cause damage to native ecosystems. It is not likely that Camels are currently being kept by any individuals in the ACT.

Animals removed from the exempt animals declaration could still be kept but would require a licence.

An Information Paper has been prepared outlining and justifying the changes to the Exempt Animals Declaration to inform people about the changes and to encourage any impacted people to contact us so we can make transitional arrangements.

Benefits and Constraints

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| Consider the outcomes of risk assessments of non-native birds and remove high risk species | |
| Do not assess the risk that captive non-native animals pose to wild native species and ecosystems. (do nothing) | Benefits There are no benefits of not assessing the risk that captive non-native animals pose to wild native species and ecosystems should they escape captivity. |

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| | <p>Constraints</p> <p>Appropriate measures cannot be targeted to non-native animals capable of impacting wild native species and ecosystems.</p> |
| Use risk assessments on non-native animals to remove animals from the exempt list | <p>Benefits</p> <p>High risk animals are removed from the list allowing for improved risk management through licensing. Measures can be included to reduce risks through licensing conditions.</p> <p>Constraints</p> <p>There may be additional costs of keeping these animals because of licensing requirements.</p> |
| Remove animals inconsistent with declarations under the <i>Pest Plants and Animals Act 2005</i> (PPA Act) | |
| Do not remove prohibited or high risk pest animals under the PPA Act from the Exempt Animals Declaration. (do nothing) | <p>Benefits</p> <p>There are no significant benefits from allowing pest animals prohibited from keeping under the PPA Act to be kept without a licence under the NC Act.</p> <p>Constraints</p> <p>Appropriate measures cannot be targeted to non-native animals capable of impacting wild native species and ecosystems.</p> |
| Remove pest animals under the PPA Act from the Exempt Animals Declaration. | <p>Benefits</p> <p>A consistent approach for species under the NC Act and the Pest Plants and Animals Act reduces the risk of inadvertent non-compliance regarding prohibited pest animals.</p> <p>Constraints</p> <p>There are no significant constraints to adopting a consistent approach in legislation provided timely reviews of legislation are conducted.</p> |
| Remove Arabian Camels from the Exempt Animals Declaration | |
| Do not remove Arabian Camels (<i>Camelus dromedarius</i>) Exempt Animals Declaration. (do nothing) | <p>Benefits</p> <p>There are no significant benefits from allowing Camels to be kept without restriction in the ACT. Camels can cause</p> |

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| | <p>damage to native ecosystems if they escape and need specialised husbandry.</p> <p>Constraints Appropriate measures cannot be targeted to ensure that camels are kept in appropriate facilities and cannot escape.</p> |
| Remove Arabian Camels (<i>Camelus dromedarius</i>) Exempt Animals Declaration | <p>Benefits Animal welfare outcomes for camels can be improved and the risk to native ecosystems from escaped camels reduced by requiring them to be kept under licence.</p> <p>Constraints Any camels currently kept in the Act would need to be licenced.</p> |

Commonly kept animals are proposed to be retained on the Exempt Animals Declaration if they pose little threat to ACT native species or ecosystems in the wild. Adding and maintaining animals on the Exempt Animals Declaration does not have a regulatory impact because there is no requirement for licensing.

There are other minor changes to the Exempt Animals Declaration to update names which has no regulatory impact.

Mutual recognition

A range of legislation operates at local, state/territory and national levels in Australia to manage trade in both native and non-native animals. The proposed changes do not seek to provide an absolute restriction on trade in non-native animals but will provide for the licensing of species that are high risk.

Consistency with Scrutiny of Bills Committee Terms of Reference

The proposal is consistent with the Legislative Assembly's Scrutiny of Bills Committee Terms of reference.

1. The proposed amendments to the Exempt Animals Declaration are within the parameters of the authorising law. The changes would be made under the conservator's statutory power to declare exempt animals to notify the declaration as a disallowable instrument under the Legislation Act (s. 155 of the NC Act).

2. The proposal is in accordance with the general objects of the NC Act to protect, conserve and enhance the biodiversity of the ACT. It is appropriately placed in subordinate legislation to the NC Act.
3. The proposal does not unduly trespass on rights previously established by law. The declaration of exempt animals provides a statutory basis for regulating the keeping of animals in captivity in the context of the following offences and penalty provisions:
 - s. 133. Offence - keep (a) non-exempt animal;
 - s. 134. Offence - sell (a) non-exempt animal;
 - s. 136. Offence - import (a) non-exempt animal; and
 - s. 137. Offence - export (a) non-exempt animal.A person will require a licence for the animal to be legally kept in captivity if an animal is not declared exempt.
4. The proposal does not make rights, liberties and/or obligations unduly dependent on non-reviewable decisions. If a licence is required for keeping or trading a non-exempt animal, a decision to not grant a licence is a reviewable decision.
5. The proposal does not unduly impact on any rights, liberties and/or obligations of individuals. Most non-native animals and native animals require a licence to keep or trade the animal (NC Act, division 6.1.2). The proposal only extends those requirements to new animals proportionate to the risks that have been identified.

Conclusion on proposed amendments

The preferred option achieves the policy objectives and provides the greatest net benefits to the community.

The adoption of proposed amendments to the Exempt Animals Declaration is the preferred policy option. The benefits of including the new and amended provisions outweigh the constraints of maintaining the status quo.

This RIS complies with the requirements for a subordinate law as set out in part 5.2 of the *Legislation Act 2001*. An explanatory statement for the proposed amendments to the instrument will accompany the Declaration when it is notified.