



New South Wales

## **Protected Animal Specimens Code of Practice 2023**

under the

### **Biodiversity Conservation Regulation 2017**

I, Penny Sharpe, Minister for the Environment, in pursuance of clause 2.9 of the *Biodiversity Conservation Regulation 2017*, do, by this Order, make the following Protected Animal Specimens Code of Practice 2023.

Dated this 3<sup>rd</sup> day of December 2023.

**PENNY SHARPE MLC**

**Minister for Climate Change, Minister for Energy,  
Minister for the Environment, Minister for Heritage**

### **Explanatory note**

This Order is made under clause 2.9 of the *Biodiversity Conservation Regulation 2017*.  
The Order makes the *Protected Animal Specimens Code of Practice 2023*.

# Protected Animal Specimens Code of Practice 2023

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## Part 1 Introduction

### 1 Name of Code

This Code is the *Protected Animal Specimens Code of Practice 2023*.

### 2 Commencement

This Code commences on the day that the Order making this Code is published on the New South Wales legislation website.

### 3 Nature and status of Code

- (1) This Code is made under clause 2.9 of the BC Reg.
- (2) This Code is a code of practice relating to Dealing in protected animal Specimens.
- (3) It is a defence to a prosecution for an offence under section 2.5 of the BC Act if the Person charged establishes the act carried out was authorised by, and done in accordance with, this Code.
- (4) To the extent of any inconsistency between this Code and the conditions of the BC Licence held by a Person, the conditions of the BC Licence prevail over this Code.

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

*Protected Animal* is defined in Schedule 5 of the BC Act, however clause 8 specifies that this Code does not apply to certain species.

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

#### **4 Object of Code**

The object of this Code is to authorise Dealing in protected animal Specimens in New South Wales subject to the conditions of this Code.

**Note:** This Code does not permit harming an animal, habitat of a threatened species or a threatened ecological community to acquire a Specimen.

#### **5 Interpretation**

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

## Part 2 Authorisation of Dealing actions

### 6 Licence not required under this Code

Subject to the limitations in clause 8, a defence to a prosecution for an offence under section 2.5 of the BC Act is available for a Person who:

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

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

### 7 Eligibility

A Person may only Deal in a Specimen in New South Wales if they:

- (a) are over the age of 16 years
- (b) are registered under this Code in accordance with clause 12(1) and
- (c) have not previously contravened the BC Act, BC Reg or another statutory instrument under the BC Act.

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

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

### 8 Limitations of Code

(1) This Code does not apply to:

- (a) Specimens of threatened species, marine mammals, sea turtles or Birds of Prey
- (b) carcasses of kangaroos harmed for commercial purposes
- (c) carcasses of animals harmed for non-commercial purposes
- (d) Specimens derived from animals that were:
  - (i) captured by a Person where that capture was authorised under a BC Licence
  - (ii) harmed by a Person where that harm was authorised under a BC Licence or
  - (iii) in the possession of a Person who is able to establish a defence under clause 2.15 of the BC Reg for possessing that animal
- (e) the export or import of Specimens
- (f) Unpreserved Specimens, except in accordance with clause 10;  
or

- (g) ambergris.
- (2) This Code does not authorise Cryopreservation or Dealing in Specimen have been subject to a Cryopreservation process.
- (3) Compliance with this Code is not required for Dealing in scat or other animal waste of a protected animal, excluding ambergris.
- (4) This Code does not authorise a Person to Preserve an animal.

**Notes:** Preservation of a Specimen can only be undertaken by a person with appropriate legal authority (such as a BC Licence), or a person who is authorised under the corresponding laws of another jurisdiction. For example, a person may not require a licence in another State or Territory to undertake Preservation.

You are not able to Deal in a Specimen under this Code even if you were lawfully able to harm the animal under the BC Act or a BC Licence.

## 9 General requirements for Dealing in Specimens

- (1) If a Specimen is imported into Australia, a Person may only Deal in that Specimen if it was imported in accordance with the EPBC Act and CITES.
- (2) A Person may only Deal in a carcass, Preserved Specimen or Skeletal Material found by that Person if that Specimen is:
  - (a) found dead; or
  - (b) derived from a pet possessed under a BC Licence euthanised by a veterinary practitioner registered under the *Veterinary Practice Act 2003* for a legitimate health reason; and the Person did not harm or cause its death.
- (3) A Person may only Deal in skin and feathers of a protected animal found by that Person if the skin or feathers were:
  - (a) naturally shed or moulted from an animal; or
  - (b) otherwise not attached to an animal, whether that animal is alive or dead.
- (4) A Person may Deal in a Non-Viable egg or egg shard from a protected animal found by that Person if:
  - (a) the non-viable egg or egg shard was found broken or empty and the Person did not cause the egg to be broken or emptied; or
  - (b) the non-viable egg or egg shard was not collected from a nest.
- (5) A Person may only possess a Specimen found on land not owned by that Person with the prior written consent of:

- (a) the Park Authority, where the Specimen is found in NPW Lands;  
or
  - (b) the owner, where the Specimen is found on any other land.
- (6) A Person who advertises a Specimen for sale, trade or gifting must include the notice in Schedule 1 (“**Notice**”) to this Code in the advertisement, or a notice of similar wording to the same effect of the Notice.
- (7) Nothing in this clause 9 restricts the ability of a Person to Deal in a Specimen purchased or received from another Person, subject to the limitations in clause 11.

**Notes:** ‘Owner’ is defined by section 1.6 of the BC Act and includes the registered proprietor of land, or a person who leases land under the *Crown Land Management Act 2016*.

A person may Deal in processed animal products such as meat or manufactured articles derived from the skin of a protected animal without a licence or compliance with this Code in accordance with clause 2.20 BC Reg.

In New South Wales, a BC Licence is required to possess or farm emus.

Section 2.8(k) of the BC Act provides a defence to an offence under Division 1 of the BC Act for certain acts done by an Aboriginal person for their own domestic purposes, subject to exemptions or requirements provided by the BC Reg.

## **10 Possessing a carcass for the purpose of Preservation**

- (1) A Person in possession of a carcass or Unpreserved Specimen intended for Preservation must take that carcass or Unpreserved Specimen to a person legally authorised to undertake the relevant Preservation process within three months of first possessing it.
- (2) Preservation processes may only be carried out by a person with legal authority to undertake that activity, such as a BC Licence.

## **11 Limit on number of Specimens a Person may Deal**

- (1) A Person registered under this Code may only make a maximum of 5 Transactions in any 12-month period from the date of registration under this Code.
- (2) For the purpose of this clause 11, a **Transaction** means:
  - (a) the buying or selling of one individual Specimen between one Person and another person on a single date; and
  - (b) the buying or selling of multiple Specimens derived from the same individual animal between one Person and another person on a single date.

**Notes:** for example, if you sell 4 feathers which come from the same bird to one person on the same day, that is one transaction.

If you sell 4 feathers from the same bird to 4 different people, that is four transactions.

If you sell 4 feathers from four different birds to one person, that is four transactions.

## 12 Registration, Record Keeping and Notification

- (1) A Person may Deal in a Specimen if they:
  - (a) register their Personal Details and Specimen Information for each Specimen that Person possesses at the time of registration with the Department online;
  - (b) update their Personal Details with the Department within 28 days of these details changing; and
  - (c) update the Department with the Specimen Information for each Specimen that Person:
    - (i) buys;
    - (ii) sells;
    - (iii) trades;
    - (iv) acquires; or
    - (v) gifts.

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

- (d) For the purpose of clause 12(1)(c), **Anniversary Date** means the day and month one year after the date a Person registers their Personal Details and Specimen Information with the Department under clause 12(1)(a), and each succeeding date one year after the previous Anniversary Date.

- (2) For the purposes of clause 12(1) of this Code, a Person may register or update their Personal Details and Specimen Information with the Department by contacting the following:

Online: <https://www.environment.nsw.gov.au/licences-and-permits/wildlife-licences/codes-of-practice/protected-animal-specimens-code-of-practice>

- (3) If the Specimen included a Specimen tag or label, this must be retained with the Specimen.
- (4) A Person must retain records on the Specimen Information and Other Third-Party Information for the Specimens in which they Deal. Specimen Information and Other Third-Party Information must be

retained for at least seven years after the Specimen leaves the possession of that Person.

- (5) A Person must produce Specimen Information, Other Third-Party Information, Specimen tags or labels to an authorised officer of the Department under the BC Act upon request.

**Notes:** Refer to the Dictionary of this Code for definitions of Specimen Information and Other Third-Party Information.

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

The term 'acquire' includes situations where a Person collects a Specimen or carcass or receives a specimen as a gift.

You must update the Specimen Information for the Specimens you buy, sell, trade, acquire or gift once every twelve months. The deadline to update Specimen Information is the anniversary of the date you first registered your details under this Code. For example, if you register your details on 25 June 2023 you will need to update the Species Information for the Specimens you buy, sell, trade, acquire or gift by 25 June every year. You don't need to update your Specimen Information if you only possess a Specimen within that 12-month period.

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

When disposing of Preserved Specimens, please consider offering them to an educational institution or organisation, such as the Australian Museum.

### **13 Breach of the Code**

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



# Dictionary

**Anniversary Date** has the meaning set out in clause 12(1)(d).

**Articulation** means assembling the Skeletal Material of a Specimen into its anatomical shape. This may include the process of removing and cleaning.

**BC Act** means the *Biodiversity Conservation Act 2016*.

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

**BC Reg** means the Biodiversity Conservation Regulation 2017.

**Birds of Prey** means animals classified as Falconiformes (eagles, hawks, falcons) or Strigiformes (owls).

**CITES** means the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*.

**Classification** means the specific type of Specimen in which a Person Deals, including the examples listed under the definition of Specimen. For example, carcass, Preserved Species, etc.

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

**Cryopreservation** means the process of freezing Specimens using liquid nitrogen at very low temperatures, but does not include freezing Specimens through other methods, such as storing the Specimen in a regular freezing appliance.

**Deal, Dealt and Dealing** mean to:

- (a) possess
- (b) buy
- (c) sell
- (d) trade
- (e) gift or
- (f) acquire

a Specimen, but for the purposes of this Code, does not include importing or exporting a Specimen.

**Department** means the New South Wales Department of Planning and Environment or any department replacing it acting as delegate for the Environment Agency Head.

**EPBC Act** means the *Environment Protection and Biodiversity Act 1999* (Cwlth) or any subsequent Federal legislation regulating the trade of fauna to and from Australia.

**Non-Viable**, in reference to an egg, means a part of an egg where there is no chance of a live animal hatching from it when that egg was found or otherwise in the possession of a Person.

**NPW Act** means the *National Parks and Wildlife Act 1974*.

**NPW Lands** means land reserved under the NPW Act or acquired under Part 11 of the NPW Act.

**Other Third-Party Information** means the

- (a) name;
- (b) postcode;
- (c) email or phone number; and
- (d) details of the person's legal authority to Deal in Specimens (if known);

of a person from or to whom a Specimen is Dealt, or who Preserved the Specimen. This definition only applies to information of a person who does not hold a BC Licence or is registered under this Code.

**Park Authority** has the same meaning as in the National Parks and Wildlife Regulation 2019.

**Personal Details** means a Person's:

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

but does not include Third-Party Information.

**Person** means a natural person registered under this code seeking a defence under this Code.

**Preservation** means the process of cleaning and preparing whole animal carcasses, skeletons or parts thereof for display or study including by means of Articulation, Taxidermy, Wet Preservation or other similar methods, but does not include Cryopreservation.

**Preserved Specimen** means a Specimen that has undergone Preservation.

**Skeletal Material** means whole or part of the skeleton of a dead protected animal, including teeth and intact limbs or bones with or without skin or other coverings such as feathers or scales.

**Specimen** includes:

- (a) Preserved carcasses;
- (b) eggs or egg shards;
- (c) feathers;
- (d) Preserved Specimens;
- (e) Skeletal Materials;
- (f) Preserved skins; and

any other part of a protected animal that is not living, but does not include the scat, ambergris or other waste of a protected animal.

**Specimen Information** means the following information applicable to Specimens Dealt in by a Person:

- (a) the number, species and Classification of Specimens;
- (b) the date on which the Specimen was Dealt;
- (c) the location from which the Specimen was collected, if found dead in the wild;
- (d) if applicable, the written consent of the Park Authority or owner giving the Person permission to take the Specimen;
- (e) the details of any tags or labels, if not already captured by this definition; and
- (f) Third-Party Information.

**Taxidermy** means the process of preparing, filling and mounting skins of animals so they have a lifelike appearance.

**Third-Party Information** means the:

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

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

**Unpreserved Specimen** means the blood, tissue, reproductive fluids, saliva or organs of an animal, but does not include:

- (a) clean bones;
- (b) feathers;
- (c) fur attached to Preserved skin;

- (d) nails; or
- (e) horns.

***Wet Preservation*** means the Preservation of whole animals or part thereof via immersion in a preserving liquid in a jar or resin.

## Schedule 1

### Notice to be published in advertisements for sale, trade or gifting of Code Specimens:

This animal specimen is being advertised for sale under the *Protected Animal Specimen Code of Practice 2023* (“**Code**”). You may only possess or otherwise deal in this animal specimen if you are able to fully-comply with the Code, or if you are lawfully permitted to purchase and possess this specimen under New South Wales law. If you intend on importing or exporting this specimen to or from NSW, you must obtain a Biodiversity Conservation Licence to do so. The laws of another Australian State or Territory may also apply to the import or export of this specimen.

Further information on dealing with animal specimens in New South Wales can be found at:

<https://www.environment.nsw.gov.au/licences-and-permits/wildlife-licences>