

Offences and Penalties

The Wildlife Regulations provide for the protection and management of wildlife in Tasmania. These Wildlife Regulations are now due for review and remaking, before 30 November 2020:

- ▶ [Wildlife \(General\) Regulations 2010](#)
- ▶ [Wildlife \(Deer Farming\) Regulations 2010](#)
- ▶ [Wildlife \(Exhibited Animals\) Regulations 2010](#)

The Wildlife Regulations are only effective to the extent that people understand and comply with them. Most Tasmanians are committed to doing the right thing and the Department regularly reviews information and engagement strategies to support, guide and facilitate voluntary compliance. However, penalties and bans have a role to play in compliance management.

Where appropriate, education and informal warnings are the first step taken with any compliance activity. Formal action, including fines, court proceedings or seizure of wildlife or equipment, may commence if a permit or licence holder either intentionally or consistently breaches their permit or licence, or if a person is intentionally or consistently undertaking a prohibited activity. Formal actions vary depending on the type and severity of the offence and the risks that the action poses to people, property, environment or wildlife.

PURPOSE OF THIS INFORMATION SHEET

The purpose of this Infosheet is to help frame the discussion/comments with targeted stakeholders during the first stage of consultation.

This Infosheet provides context on how the Wildlife Regulations manage compliance issues by applying offences and penalties, including infringement notices, seizure rules, permit or licence cancellation and the five year ban upon conviction of a relevant offence.

This Infosheet includes matters that have been identified by various stakeholders, external to the Department, since the Wildlife Regulations were last reviewed in 2009. They do not represent the views of the Department.

The Department is, in this stage of the consultation, seeking the views of identified stakeholders about the efficiency, effectiveness and adequacy of the regulations.

INFRINGEMENT NOTICES, OFFENCES AND PENALTIES

An authorised officer may serve an infringement notice on a person if they are of the opinion that the person has committed a prescribed offence. Offences, in respect of which an infringement notice may be issued, and the penalty specified, are prescribed by the schedules within each of the Wildlife Regulations.

For background information, penalty rates are set as penalty units which are set annually by the *Penalty Units and Other Penalties Act 1987*. For example, taking specially protected wildlife without authorisation will attract a penalty that is a fine not exceeding 100 penalty units. The current penalty unit in Tasmania is \$168, up from

2019 WILDLIFE REGULATIONS REVIEW

\$163 since 1 July 2019. So, the potential fine for taking specially protected wildlife without authorisation during this financial year is \$16,800.

SEIZURE RULES

The seizure provisions relating to deer farming and exhibited animals reflect the Government's intention that certain animals must not be allowed to become wild, particularly farm deer and restricted (special purpose) wildlife. Under the Wildlife Regulations, there are specific provisions to reduce the risk of escape of these types of wildlife and ensure the recapture or destruction of any escaped animals.

The Wildlife Regulations contain further seizure powers from places of exhibition where the animal held under a Wildlife Exhibition Licence is distressed, diseased or contagious, or unlawfully acquired.

CANCELLATION OF A PERMIT OR LICENCE

From time to time it may be necessary for the Department to cancel permits or licences. The circumstance in which this might occur differs under each set of Wildlife Regulations.

Under the *Wildlife (General) Regulations 2010*, cancellation is at the discretion of the Department and is only constrained by the legal rule of procedural fairness. Cancellation may be for reasons such as breaches of conditions, offences committed by the permit or licence holder, changes in policy or to maintain the sustainability of the species. Permits and licences may be cancelled by written notice to the holder of the permit or licence, specifying the grounds for cancellation. The holder of the permit or licence must surrender it to the Secretary as soon as practicable after cancellation.

Wildlife Exhibition Licences or Wildlife Display Permits may be cancelled where the holder has failed to comply with a condition of the authorisation or convicted of an offence. The Wildlife Regulations also make provision to suspend a permit or licence where there are grounds for cancellation, but there is reason to continue to require the holder to comply with new or existing conditions of authorisation.

There is no clear mechanism to revoke an approval of a location of a deer farm, granted in response to a Notice to Operate. However, section 22A of the *Acts Interpretation Act 1931* provides that a power to grant a right includes a power (exercisable in a like manner) to vary or revoke the right.

RELEVANT OFFENCE CONVICTION FIVE YEAR BAN

It is an important function of the Wildlife Regulations to strongly discourage a range of behaviours, including:

- Illegal trade of wildlife;
- Animal cruelty;
- Poaching wildlife, including trespassing to poach wildlife; and
- Actions that threaten the biosecurity of Tasmania, undermine sustainability of wildlife management and/or cause damage to ecosystems.

To this end, the Department will not grant a permit or a licence under the Wildlife Regulations to an applicant who has been convicted of a relevant offence, for a period of five years following the offence. A relevant offence is defined as:

- an offence under the [Nature Conservation Act 2002](#), the [Animal Welfare Act 1993](#), the [Firearms Act 1996](#), the [National Parks and Reserves Management Act 2002](#), or the [Threatened Species Protection Act 1995](#); or
- an offence under the regulations made under any of those Acts; or
- other offences as determined by the Secretary.

ISSUES IDENTIFIED PREVIOUSLY BY STAKEHOLDERS

The following points represent some issues that have been identified by various stakeholders since the regulations were last reviewed. They do not represent the Department's position on any particular matter:

1. There has been feedback that it can be confusing that not all of the possible grounds for cancellation of permits and licences are currently listed within the Wildlife Regulations. The suggestion is that there be a central point of reference to ensure that permit and licence holders can always be certain of their obligations. Additionally, that offences which do not have a direct bearing on the permit or licence should not be included as grounds for cancellation.
2. The five-year ban on receiving a permit or licence, following the conviction of a relevant offence, is noted as being rigid and capable of leading to unintended outcomes. For example, a farm hand may be fined for walking their dog in a national park, leading to the cancellation of their permit or licence, and subsequently lose their job, due to being unable to undertake crop protection tasks. Any possible adjustments will need to balance proportionality, flexibility and transparency.
3. There has been feedback that monetary penalties for offences are too low.
4. Applicants sometimes experience difficulties in making accurate declarations of relevant convictions that occurred within the last 5 years, leading to permit and licence application forms being completed incorrectly.

REVIEW PROCESS – WHEN CAN YOU HAVE YOUR SAY?

This Infosheet has been developed to assist the first phase of consultation with key stakeholders. The Department has engaged with around 90 groups and individuals. The Department is also reviewing existing regulatory practices for regulatory consistency to identify potential improvements.

Draft Regulations will be released in mid-2020 for public comment.

If you have an interest in receiving information on the review process, please contact the Natural Heritage Policy Section on (03) 6165 4422 to register your interest.

Department of Primary Industries, Parks, Water & Environment

For further information about the review email NaturalHeritage.Policy@dipwe.tas.gov.au or visit www.dipwe.tas.gov.au/wildlife-regulations-review