



Animal Defenders Office

Using the law to protect animals

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The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

Wildlife Trade Assessments
Department of Climate Change, Energy, the Environment and Water

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Submissions to the Review of the Code of Practice on the Humane Treatment of Wild and Farmed Australian Crocodiles

Dear Sir/Madam

Thank you for the opportunity to contribute to the review of the Code of Practice on the Humane Treatment of Wild and Farmed Australian Crocodiles (**the review**).

The Code of Practice on the Humane Treatment of Wild and Farmed Australian Crocodiles (**the current Code**) was first published in 2009 and has not been reviewed since that time. The Australian Government is proposing to review the current Code and release a revised Code (**the revised Code**).¹

The submissions of the Animal Defenders Office (**ADO**) are set out below.

1 Overview of the ADO

The ADO is a nationally accredited not-for-profit community legal centre specialising in animal law, with a focus on providing free animal law services to the community.² The ADO is a member of Community Legal Centres Australia Inc., the national peak body representing community legal centres across Australia. The ADO does not receive government funding and exists on donations from members of the public. The ADO was established in 2013 and has been run by volunteers since that time.

2 The ADO's submissions

2.1 Animal welfare laws

The ADO's submissions are based on and informed by the animal welfare laws in the jurisdictions in which crocodiles are removed from the wild and/or born, raised, kept and slaughtered in farms.

¹ <https://consult.dcceew.gov.au/australian-crocodile-code-of-practice-review>.

² Further information about the Animal Defenders Office can be found at: www.ado.org.au.

According to the current Code, crocodiles are farmed in the Northern Territory, Queensland and Western Australia.³

Animal welfare laws in these jurisdictions apply to reptiles and therefore crocodiles.⁴ Crocodiles are not exempted from animal welfare laws in any Australian jurisdiction.

This is an important indication that the welfare of crocodiles matters to contemporary Australians, and that Australians want crocodiles' welfare to be protected.

This in turn raises the issue of whether practices allowed under the current Code at the time of its publication are acceptable today, some 15 years later. In other words, to use contemporary parlance, it raises the question of whether the crocodile farming industry today has a social licence to carry out practices that were routine in 2009.

Many of the practices allowed under the current Code would constitute animal cruelty under Australian animal welfare laws.⁵ But for the Code, these practices would be illegal on the grounds that they inflict unnecessary, unreasonable or unjustified harm on crocodiles. Under animal welfare laws a harmful practice may be justified if, for example, it is in the interests of the animal subjected to the practice (eg a painful veterinary procedure), or if allowed under an industry code of practice⁶.

For this reason, it is essential that the revised Code makes clear why crocodiles are captured in the wild, restrained, transported, confined for years in cramped conditions, then slaughtered by violent means. According to RSPCA Australia, these harmful practices are inflicted on crocodiles to produce 'non-essential luxury items such as handbags, shoes and belts', as well as restaurant and pet food.⁷ The Australian public must be able continually to assess whether the cruel treatment of these native wild animals for these 'non-essential luxury' purposes is justified.

In the ADO's view, the immense harm inflicted on crocodiles by the crocodile industry is not justified. The ADO opposes the farming of crocodiles on that grounds that industry practices such as wild capture and long-term intensive confinement would constitute animal cruelty under any animal welfare law in Australia, but for the exception of practices covered by industry codes of practice. For this reason the ADO also opposes the collection of eggs for the purposes of farming, especially 'late stage

³ Natural Resource Management Ministerial Council, *Code of Practice on the Humane Treatment of Wild and Farmed Australian Crocodiles*, 2009 (**the current Code**), p 1 [1].

⁴ *Animal Protection Act 2018* (NT), s 5(1)(a) An animal is a live member of a vertebrate species, including a... reptile. *Animal Care and Protection Act 2001* (QLD), s 11(1)(a) An animal is any of the following—a live member of a vertebrate animal taxon. Examples—... a reptile. *Animal Welfare Act 2002* (WA), s 5(1) In this Act—animal means—a live vertebrate...other than a human or a fish.

⁵ See for example the *Animal Protection Act 2018* (NT) s 24 'Cruelty to an animal':

(4) A person commits an offence if:
(a) the person intentionally injures or wounds an animal; and
(b) that conduct is unjustifiable, unnecessary or unreasonable in the circumstances.
Maximum penalty: 200 penalty units or imprisonment for 2 years.

⁶ See for example the *Animal Protection Act 2018* (NT) s 21(2) 'Use of codes of practice in proceedings'.

⁷ RSPCA Australia, 'What is RSPCA's view on crocodile farming?', updated 6 August 2021, <https://kb.rspca.org.au/knowledge-base/what-is-the-rspcas-view-on-crocodile-farming/>.

embryos' which the current Code states shows 'signs of consciousness' and 'must be treated humanely' (p 3 [15]). In short, the ADO agrees with RSPCA Australia which:

does not support the farming of crocodiles due to the inherent animal welfare risks from their physical and behavioural needs not being met.⁸

2.2 Changes to the current Code

In light of the above concerns, the ADO submits that several practices specified in the current Code should be phased out, banned immediately, or severely limited due to the harm they inflict on crocodiles.

2.2.1 Capture

Capturing, restraining and transporting crocodiles in and from the wild are complex processes that, according to the current Code, cause the animal stress and harm (p 6 [33-34]; p 8 [43-45]; p 13 [81]), which is often long-term (p 14 [83]).

Once captured in the wild, crocodiles can be restrained for lengthy periods of time (p 9 [51]).

The current Code allows a crocodile's jaws to be tied with rubber bands, cord or tape (p 5 [30]; p 8 [45]), upon capture and/or for transporting (p 13 [80]). This is despite growing awareness of the highly sensitive sensory receptors around a crocodile's mouth and jaws.⁹

The current Code allows crocodiles to be harpooned in the wild which results in the animal struggling for a substantial period of time (even when undertaken by experienced handlers, the animal can still struggle for minutes (p 6 [36])).

Indirect methods of capture are unattended and have a risk of 'causing prolonged suffering' (p 7 [39]).

Baited fishing hooks and snares carry such a risk of injury and suffering that even the current Code restricts their use (p 7 [41]).

The ADO submits that these harmful practices should be phased out in the revised Code due to the unreasonable and unnecessary pain and suffering they inflict on crocodiles.

2.2.2 Handling

The ADO submits that the revised Code should require that procedures with the potential to cause pain must not be undertaken without pain relief.¹⁰ This would apply to procedures such as marking crocodiles by removing 'scutes' (p 18 [97]), especially if it is not known whether the procedure causes pain.

⁸ Ibid.

⁹ Vanderbilt University, 'Despite their thick skins, alligators and crocodiles are surprisingly touchy', *Research News*, 8/11/2012, <https://news.vanderbilt.edu/2012/11/08/alligators-and-crocodiles/>.

¹⁰ This issue is dealt with in the current Code at p 10 [62].

Given the acknowledged variability of the effect of drugs on individual crocodiles (p 11 [68]), and the potential lack of data regarding the effect of doses on differently sized crocodiles (p 11 Table 3), the revised Code should require that drugs be administered only by qualified veterinarians.

2.2.3 Confinement and accommodation

According to the current Code, saltwater crocodiles are 'highly mobile' (p 2 [12]). Yet farmed crocodiles are kept in captivity for a long time¹¹, often several years,¹² in closely confined conditions involving high densities of animals.¹³

The ADO submits that the current Code's recommended maximum densities are too high and result in cramped and unnatural conditions for the animals that deny them the opportunity to perform natural behaviours or even basic movements such as moving around:

densities of animals vary with size and pen design, but should be around 2-4 individuals per square metre of water and land at 1 m long (0.5 to 0.25 m² per individual) and 1-2 individuals per square metre of water and land at 2 m long (1 to 0.5 m² per individual. (p 16 [92])

While the current Code refers to providing crocodiles with 'optimum conditions' for their 'physiological functions' (p 14 [88]), the Code does not require this and instead promotes an inappropriate captive raising environment. For example, there is no reference to enrichment in the current Code. According to RSPCA Australia:

Maintaining crocodiles in cramped conditions where they are unable to move freely and without mental stimulation or environmental enrichment is likely to compromise animal welfare.¹⁴

The ADO submits that the revised Code should:

- phase out keeping crocodiles in intensive conditions for farming purposes, and
- recommend humane densities and appropriate enrichment for crocodiles who are kept in captivity for example due to being translocated for conservation or public safety purposes or when recovering from veterinary treatment.

The current Code also fails to specify housing requirements, stating that they are determined by State or Territory authorities 'and vary greatly between facilities' (p 14 [89]). While it asserts that 'in all contexts maintaining appropriate welfare standards is a priority' (ibid), this is impossible to substantiate or enforce when the current Code does not specify the standards. The ADO submits the revised Code should specify best practice (as opposed to 'appropriate') housing standards rather than leave it to individual lower jurisdictions.

¹¹ The current Code, p 16 [92].

¹² RSPCA Australia, 'What is RSPCA's view on crocodile farming?', updated 6 August 2021, <https://kb.rspca.org.au/knowledge-base/what-is-the-rspcas-view-on-crocodile-farming/>.

¹³ Ibid: 'Hatchlings are housed in pens with limited space and with many more crocodiles in close proximity compared to the wild'.

¹⁴ Ibid.

2.2.4 Killing

The current Code allows several methods of killing crocodiles that potentially inflict pain and suffering on the animal and are therefore neither humane nor in line with contemporary community expectations.

For example, the current Code recommends decapitating young crocodiles using a hammer and chisel (p 5 [21]), and killing crocodiles by severing their spine and inserting a rod into the brain (p 18 [104]). Other methods include shooting then severing the spinal cord at the top of the neck (p 18 [104]), and heart-lung shots where the time it takes to render the animal unconscious followed by death is not specified (p 19 [109]).

By any reasonable standard, these are brutal ways of treating native wild animals. If the industry is unable to devise less inhumane methods of killing crocodiles, the ADO submits that the inherent violence of these methods and their potential to inflict significant pain and suffering on the target animals should lead to a phasing out of the farming of crocodiles.

2.3 What should be included in the revised Code?

2.3.1 Sentience

RSPCA Australia states that:

Reptiles have been shown to demonstrate evidence of sentience (ability to experience pain, stress, fear and anxiety); this is an area which should be researched further.¹⁵

The revised Code must acknowledge that crocodiles are sentient. Acknowledging sentience is an essential aspect of contemporary animal welfare laws in Australia and other Common Law jurisdictions.¹⁶

Scientific literature on the sentience of crocodiles must be considered by the review.

2.3.2 Five Domains

The Five Domains model is the contemporary model for thinking about and assessing animal welfare.¹⁷ It:

... allows for consideration of both negative and positive experiences that arise from physical and functional factors, which affect the overall mental state and welfare of the individual animal.¹⁸

The mental state of an animal is important in the Five Domains paradigm, which focuses on emotions and subjective experiences associated with physical experiences. In particular, it focuses on positive

¹⁵ Ibid, referencing Lambert H, Carder G, D'Cruze N (2019) 'Given the cold shoulder: A review of the scientific literature for evidence of reptile sentience.' *Animals* 9, 821.

¹⁶ See the *Animal Welfare Act 1992* (ACT) s 4A(1), Prevention of Cruelty to Animals Amendment (Animal Sentience) Bill 2022 (NSW), Animal Care and Protection Bill, Exposure Draft (VIC) s 6, *Animal Welfare Act 1999* (NZ) Long Title, *Animal Welfare (Sentience) Act 2022* (UK).

¹⁷ RSPCA Australia, 'What are the Five Domains of Animal Welfare', <https://kb.rspca.org.au/knowledge-base/what-are-the-five-domains-of-animal-welfare/>, updated 19/01/2024.

¹⁸ Ibid.

welfare states and ensures an animal kept by humans has a 'good life' rather than just a life with minimal negative experiences:

To help ensure animals have a 'a good life' they must have the opportunity to have positive experiences, such as anticipation, meaningful social connection, satisfaction, and satiation.¹⁹

This focus on the 'overall mental state and welfare of the individual animal' is not necessarily at odds with the current Code. Its definition of 'humane treatment' refers to 'physiological and psychological welfare of the animal'.²⁰ However by allowing the harmful practices detailed earlier in these submissions, and by failing to include any requirement for welfare enhancing measures such as enrichment for crocodiles kept in captivity, the current Code fails to adopt in any meaningful way the Five Domains model. For example, the current Code requires that as 'a minimum standard, all captive crocodiles will require...a water area of sufficient width/length...to promote good health' (p 15 [90]). The ADO submits that the goal of promoting 'good health' is inadequate by contemporary community expectations regarding animal welfare. Positive animal welfare outcomes must be promoted, not merely (physical) health.

The ADO therefore submits that the revised Code should acknowledge and adopt the Five Domains model of animal welfare.

2.3.3 Best practice standards

While the current Code refers to the concept of 'best practice' (p 1 [6]), it arguably fails to require or recommend that standard in practice.

The ADO submits that the revised Code must commit to a higher standard than the 'minimum standards for the humane treatment of crocodiles' in the current Code (p 1 [4], emphasis added). This will be essential if the revised Code is to meet the Government's objectives:

The Australian Government is committed to undertaking an independent review of the Code of Practice to ensure it is appropriate and represents industry best practice.²¹

The ADO also submits that the revised Code must not allow practices that are inconsistent with current animal welfare laws.

The ADO further submits that the revised Code must continue to adopt, and actually apply, the precautionary approach 'in the light of incomplete knowledge' about crocodile sentience and welfare (Glossary, p iii; p 1 [4], [6]), and that the principle must be applied in the interests of the crocodiles.

¹⁹ Ibid.

²⁰ The current Code, Glossary p ii, emphasis added.

²¹ Department of Climate Change, Energy, the Environment and Water, 'Consultation Paper: Review of the Code of Practice on the Humane Treatment of Wild and Farmed Australian Crocodiles', p 1.

2.4 Implementation and enforcement

2.4.1 Adoption of Code under State and Territory animal welfare laws

The current Code states that 'State and territory authorities are responsible for the enforcement of this Code as a normal component of their wildlife management, compliance and enforcement functions' (p 1, [2]).

Yet the ADO notes that the current Code is not adopted in two out of the three jurisdictions where the current Code asserts that crocodiles are farmed. The current Code is adopted under Northern Territory animal welfare laws,²² but it is not referenced in Queensland²³ or Western Australian²⁴ animal welfare legislation.

The ADO therefore submits that the Australian Government should seek the agreement of States and Territories to give legal effect to the revised Code in their animal welfare legislation.

2.4.2 CCTV monitoring

In terms of compliance measures, the revised Code should require that any facility holding crocodiles must be monitored by CCTV which can be independently reviewed by enforcement agencies or other relevant government authorities.

2.4.3 Mandatory review of Code

The current Code specifies two different periods within which it must be reviewed (neither of which was met). The inside front cover of the current Code states that:

The Code is based on the knowledge and technology available at the time of publication and may need to be varied in the light of new knowledge. ...

First Edition. Effective from 21st May 2009

This edition of the Code will be reviewed in five years time.

In its Introduction, however, the current Code states that it 'will be reviewed and updated within 10 years or at an earlier stage at the request of relevant jurisdictions' (p 1 [5]).

The ADO submits that the revised Code must stipulate the shortest reasonable period, being no more than five years, within which it must be reviewed. Measures to mandate a review must be considered and implemented.

²² *Animal Protection Regulations 2022* (NT) reg 4 and Sch 1 Item 7, <https://legislation.nt.gov.au/Legislation/ANIMAL-PROTECTION-REGULATIONS-2022>.

²³ *Animal Care and Protection Regulation 2023* (QLD) Part 2 and Sch 9.

²⁴ *Animal Welfare (General) Regulations 2003* (WA) reg 6.

3 The ADO's recommendations

The ADO makes the following recommendations:

1. That several practices specified in the current Code be phased out, banned immediately, or severely limited due to the harm they inflict on crocodiles, including:
 - a. Wild capture;
 - b. Tying or tethering crocodiles' jaws;
 - c. Harpooning;
 - d. Indirect methods of capture (leaving victims unattended);
 - e. Baiting fishing hooks and snares;
 - f. Confining crocodiles in intensive conditions;
 - g. Killing crocodiles by outdated and inhumane methods.
2. That the revised Code require that:
 - a. Procedures with the potential to cause pain be undertaken with pain relief;
 - b. Drugs be administered only by qualified veterinarians.
3. That the revised Code recommend:
 - a. Humane densities and appropriate enrichment for crocodiles kept in captivity for translocation or veterinary purposes;
 - b. Best practice housing standards.
4. That the revised Code acknowledge that crocodiles are sentient.
5. That the revised Code adopt the Five Domains model of animal welfare.
6. That the revised Code:
 - a. Commit to high or best practice rather than minimum standards for the treatment of crocodiles;
 - b. Not allow practices that are inconsistent with current animal welfare laws;
 - c. Adopt and apply the precautionary approach for the benefit of crocodiles;
 - d. Require that any facility holding crocodiles be monitored by CCTV which can be independently reviewed by enforcement agencies or other relevant government authorities;
 - e. Stipulate the shortest reasonable period, being no more than five years, for the revised Code to be reviewed, and consider ways to ensure the review is carried out.

Thank you for taking these submissions into consideration.

Yours sincerely

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Animal Defenders Office