



**Animal Defenders Office**  
*Using the law to protect animals*

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The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

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Flying Fox Code of Practice Review  
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Dear Sir/Madam

**Submission on the draft *Code of Practice Authorising Flying-fox Camp Management Actions 2018***

Thank you for the opportunity to provide a submission on the draft *Code of Practice Authorising Flying-fox Camp Management Actions 2018* (“the code”).

*About the Animal Defenders Office*

The Animal Defenders Office (“ADO”) is a nationally accredited non-profit community legal centre that specialises in animal law. The ADO offers information and representation for individuals and groups wishing to take action to protect animals. We also produce information to raise community awareness about animals and the law, and work to advance animal interests through law reform.

The ADO is based in the Australian Capital Territory and is a member of Community Legal Centres NSW Inc.

**Our submission**

*Flying-foxes in New South Wales (NSW)*

The ADO notes that three species of flying-fox occur in NSW: the grey-headed, black and little red.<sup>1</sup> All three species are native animals protected under the *Biodiversity Conservation Act 2016* (NSW), and the grey-headed flying-fox is listed as a threatened species under that Act<sup>2</sup> and the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999* (Cth)<sup>3</sup>.

*Our concerns—a summary*

Given the potential for humans to inflict serious harm on wildlife, the ADO has concerns regarding any deregulation of human interaction with wildlife. We do not support the move away from a licensing regime for interfering with flying-fox camps if such a move means

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<sup>1</sup> [http://www.environment.nsw.gov.au/topics/animals-and-plants/wildlife-management/flying-fox-management/~/\\_link.aspx?id=EC0BC37F65A446E9A7721F126480E96C&z=z](http://www.environment.nsw.gov.au/topics/animals-and-plants/wildlife-management/flying-fox-management/~/_link.aspx?id=EC0BC37F65A446E9A7721F126480E96C&z=z)

<sup>2</sup> Division 1, Part 3 (‘Vulnerable species’) of Schedule 1.

<sup>3</sup> Section 178 and ‘EPBC Act List of Threatened Fauna’ at <http://www.environment.gov.au/cgi-bin/sprat/public/publicthreatenedlist.pl?wanted=fauna>.

fewer controls, checks and balances regarding human interaction with these animals and their habitat.

However, if the code is adopted and replaces licences for interfering with flying-fox camps, we submit that a number of changes needs to be made to the code before the code can claim to 'avoid or mitigate harm to flying-foxes and damage to their habitat arising from camp management actions' (clause 3(3)).

Our recommended changes are detailed below.

## **Part 1 Introduction**

### *3 Objectives*

In our view the code should aim to ensure that nearby human communities are educated about flying-foxes, their ecology and role in local ecosystems, and how to live with them.

Clause 3(3): This clause sets out the objective of avoiding or mitigating harm to flying-foxes and damage to their habitat from 'camp management actions'<sup>4</sup>.

The ADO submits that the aim of avoiding harm to the flying-foxes and their habitat needs to be prioritised. For example, it could be included in clause 3(1).

## **Part 2 Authorisation of camp management actions**

### *6 Authorisation*

Clause 6(2): The ADO supports the prohibition of intentional or negligent killing of flying-foxes in the course of carrying out camp management actions.

Clause 6(4): This clause authorises the carrying out of camp management actions that are 'reasonably necessary to manage, mitigate or reduce the impacts of flying-foxes on nearby human settlements'.

The ADO submits that the standard set out in this clause is too low. The code should authorise camp management actions only as a last resort.

Clause 6(5): This clause requires that a 'camp manager'<sup>5</sup> must carry out camp management actions in a manner that avoids or minimises any impact on animals, plants and ecological communities.

The ADO submits that this clause be amended so that it authorises camp management actions to be undertaken only in a manner that avoids rather than minimises any impact on animals.

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<sup>4</sup> 'Camp management actions' are defined in the code's Dictionary ("the Dictionary").

<sup>5</sup> 'Camp manager' is defined in the Dictionary and includes local councils.

## *8 Routine camp management actions*

The ADO submits that in order to meet the objective of ‘minimum’ disturbance or impact on animals in clause 3(3) of the code, camp management actions should be limited to these ‘routine’ actions.

Clause 8(g): The meaning of this clause is unclear and should be clarified. In its current form it may be difficult to comply with or to enforce.

## *9 High impact camp management actions*

In our view allowing ‘high impact’ camp management actions to be carried out contradicts the stated aim of the code to avoid harm to flying-foxes and their habitat. We submit that these actions be removed from the code.

If, however, these actions remain in the code, we make the following comments.

Clause 9(a): Spatial limits on the buffer should be included. The buffer should, for example, be no more than ‘x%’ of the entire area. The limit should be as small as possible.

Clause 9(c): Given the difficulty in carrying out the actions listed in clause 9(c) without harming the flying-foxes, the ADO submits that the actions in paragraph (c) be removed from the code, or at most limited to ‘pre-emptive’ actions—that is, when there are no flying foxes in the area.

## *10 Pre-emptive camp management actions*

Clause 10(1): This clause purports to allow camp management actions to be carried out before a flying-fox camp is established. ‘Camp’ is defined in the code as ‘a flying-fox camp’ (the Dictionary). It is not clear how camp management actions can be carried out where there is no flying-fox camp.

## **Part 3 Manner of carrying out camp management actions**

### *11 Notification of Environment Agency Head*

Clause 11(1): This clause allows a minimum of 5 business days for camp managers to notify the relevant authority of proposed camp management actions.

The ADO submits that this minimum notification requirement is too short.

Clause 11(2): After receiving a notification under clause 11(1), the authority has 3 business days to provide written directions.

The (short) notification periods in paragraphs (1) and (2) are unsatisfactory because the camp manager may have commenced the proposed camp management actions before receiving the written directions from the authority.

### *13 Requirement for a flying-fox expert*

Clause 13(1): This clause requires a camp manager to obtain advice from a ‘flying-fox expert’<sup>6</sup>.

While the ADO supports the requirement to consult with relevant experts, we note that the clause does not stipulate a minimum period for consulting experts before camp management actions may be carried out. Without a minimum period, there is no guarantee an expert will have enough time to provide advice regarding the matters set out in paragraphs 13(1)(a) and (b).

Clauses 13(2) and (3): The ADO supports the prohibitions on camp management actions in the circumstances outlined in these clauses.

### *14 Before carrying out camp management actions*

Clause 14(1): This clause requires camp management actions to be carried out to ‘minimise adverse impact on the life cycle of flying-foxes, especially the breeding and rearing of young flying-foxes’.

The ADO submits that the adverse impacts referred to in this clause should be avoided altogether rather than minimised.

Clause 14(2): This clause requires a camp manager to monitor the camp for a minimum of 5 business days before any ‘high impact’ camp management actions are carried out.

The ADO notes that this ‘monitoring’ period occurs after the time set out in clause 11(1) by which camp managers must notify authorities of proposed camp management actions. It would therefore appear possible that notifications of the authorities will not refer to, or be based on, the monitoring required under clause 14(2).

Clause 14(3): This clause requires local wildlife rehabilitation groups to be notified before ‘high impact’ camp management actions are carried out.

As these groups would usually consist of volunteers with full-time jobs and/or other commitments, the clause should stipulate a minimum period for notifying such groups; for example, 10 business days before the camp management actions are carried out. This will give the groups time to coordinate a response amongst their members. Representative groups should be consulted to determine an appropriate minimum time.

### *15 While carrying out camp management actions*

Clause 15(3): This clause requires that in certain circumstances an area within the camp be designated as a rest area where ‘disturbance actions’<sup>7</sup> are not to be carried out. ‘Rest area’ is not defined in the code. The ADO submits that it be defined as a percentage of the entire camp and that the area be a comparatively large area (that is, compared to the total area).

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<sup>6</sup> ‘Flying-fox expert’ is defined in the Dictionary.

<sup>7</sup> ‘Disturbance actions’ are set out in paragraph 9(c) of the code.

Clause 15(7): This clause requires that camp management actions must not result in removal of more than 50% of the area of vegetation that existed in a camp before the camp management actions began. The ADO submits that 50% is too high, and would breach the requirement that a camp manager carry out camp management actions in a manner that avoids or minimises any impact on plants and ecological communities (clause 6(5)).

#### 16 *Community Education and Engagement*

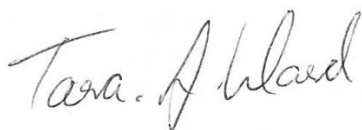
Clause 16(2): This clause requires that a camp manager must notify residents of properties within 300 metres of a camp at least 3 days before carrying out high impact camp management actions.

The ADO submits that this is inadequate notification, and would not allow the objective in clause 3(4) to be met.<sup>8</sup>

Clause 16(4): This clause requires that a camp manager must allow 'community members to provide information or comments to the camp manager in relation to flying-fox camps and must take that information or comment into account where reasonable when determining how and whether to carry out camp management actions'.

The ADO queries whether this is possible when the community may only have been given 3 (calendar) days' notice under clause 16(2) in relation to high impact camp management actions.

In conclusion, the ADO submits that the code would be strengthened by the adoption of the recommendations contained in this submission. Adopting these recommendations would go some way to enabling the code to meet its stated goal of avoiding or mitigating harm to protected and threatened flying-foxes and damage to their habitat arising from camp management actions (clause 3(3)).



Tara Ward  
Executive Director  
Animal Defenders Office

24 May 2018

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<sup>8</sup> Clause 3(4): 'To ensure that communities impacted by flying-fox camps have access to accurate information, are consulted in the process of planning camp management actions and notified prior to implementation of camp management actions.'