



ACT
Government

Territory and Municipal Services

Licensing & Compliance
GPO Box 158
CANBERRA CITY ACT 2601
Licence Enquiries:
Phone: (02) 6207 6376
Fax: (02) 6207 5956
Email: tams.lc@act.gov.au

COPY 143

Licence Number: LE2011343

Commencement Date: 21/10/2011

Expiry Date: 30/06/2014

Licence to Export

Licence Holder:

WILDCARE QUEANBEYAN INC

P O Box 1404

QUEANBEYAN NSW 2620

Activity:

THIS LICENCE AUTHORISES THE AFORENAMED LICENCE HOLDER TO EXPORT FROM THE ACT THE BELOW LISTED ANIMAL/S IN ACCORDANCE WITH THE SPECIFIED CONDITIONS.

Location:

FROM: THROUGHOUT THE AUSTRALIAN CAPITAL TERRITORY
TO: Members of Wildcare Queanbeyan, C/O Coralie Tarlinton,
18 Stephens Road, Queanbeyan, NSW

Common Name	Scientific Name	Male	Female	Unknown	Total
Eastern Grey Kangaroo	Macropus giganteus	0	0	35	35

This Licence is issued in accordance with the following conditions:

- 1 This licence is not transferable.
- 2 All animals must be transported in a safe, secure and humane manner, protected from extremes of heat and cold.
- 3 Animals must be adequately fed, watered, sheltered and managed to ensure their good health. Fresh clean water must be supplied at all times and animals must be fed with regard to the dietary requirements of each species.
- 4 The Conservator of Flora and Fauna shall be notified annually of the death or escape of any animals or any disease outbreak.
- 5 This licence and any records required to be kept must be available for inspection by the Conservator of Flora and Fauna or any Conservation Officer.
- 6 This licence does not permit the release of Eastern Grey Kangaroos within the Australian Capital Territory.
- 7 Eastern Grey Kangaroos exported under this licence are to be released a minimum of 10 kilometres from the border of the Australian Capital Territory.

See next page for more conditions...

Fee: \$0.00

Date 21/10/2011

Receipt: 0

Conservator of Flora and Fauna

LE2011343 - Page 1 of 2

READ CONDITIONS CAREFULLY

- 8 By 31 July each year the licensee must provide the following records to the licensing officer for each animal exported under this licence:
Unique identification number, eg "QW 001"
Originating incident, eg. "Motor vehicle collision" date and descriptive location eg "Cotter Road"
Outcome for each animal exported under this licence following care at the expiry of this licence eg released to wild, still in care, died/euthanased
Outcome for each kangaroo which was reported still in care at the end of the previous reporting period
Date of the outcome
Release location as latitude and longitude or MGA grid reference or property name or district and block number.
These records are to be provided in a spreadsheet which will be supplied to the licensee by the licensing officer.
- 9 This licence only authorises the export of animals legally taken from the Australian Capital Territory under licence number LT2011525.
- 10 This licence authorises the export of a maximum of 35 dependant animals per financial year.

NOTE: Failure to comply with these conditions may result in cancellation of your licence and/or jeopardise any future applications made under the Nature Conservation Act 1980.



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000002
COPY

142

Licence Number: LT2011525

Commencement Date: 21/10/2011
Expiry Date: 30/06/2014

Licence to Take

Licence Holder:

WILDCARE QUEANBEYAN INC

**P O Box 1404
QUEANBEYAN NSW 2620**

Activity: THIS LICENCES AUTHORISES THE AFORENAMED LICENCE HOLDER TO TAKE AND KEEP THE BELOW LISTED NATIVE ANIMALS, FOR THE PURPOSE OF REHABILITATION AND RELEASE TO THE WILD, IN ACCORDANCE WITH THE CONDITIONS SPECIFIED.

Location: THROUGHOUT THE AUSTRALIAN CAPITAL TERRITORY

Common Name	Scientific Name	Male	Female	Unknown	Total
Eastern Grey Kangaroo	Macropus giganteus	0	0	35	35

This Licence is issued in accordance with the following conditions:

- NOTE: Failure to comply with these conditions may result in cancellation of your licence and/or jeopardise any future applications made under the Nature Conservation Act 1980.
- This licence is not transferable.
- The animal(s) shall not be sold, traded or otherwise disposed of (including giving and donating) without the consent in writing of the Conservator of Flora and Fauna.
- All animals must be transported in a safe, secure and humane manner, protected from extremes of heat and cold.
- Animals must be adequately fed, watered, sheltered and managed to ensure their good health. Fresh clean water must be supplied at all times and animals must be fed with regard to the dietary requirements of each species.
- Sick, diseased, or injured animals must receive appropriate treatment. Where necessary a qualified veterinary surgeon is to attend to the animal.
- Only current financial members of Wildcare Queanbeyan, who are recorded on the Wildcare Queanbeyan membership list provided to the Licensing and Officer, are covered by this licence.

See next page for more conditions...

Fee: \$0.00

Date 24/10/2011

Receipt: 0

Conservator of Flora and Fauna

LT2011525 - Page 1 of 2

READ CONDITIONS CAREFULLY

- 8 Wildcare Queanbeyan shall maintain and submit to the Conservator of Flora and Fauna : 1) A current list of names and addresses of authorised carers of the organisation and 2) Records of all animals received by the organisation by July 31 each year. These records shall contain: 1. Date and where animal found 2. Name and address of person delivering animal 3. Species and sex of animal/s 4. Date animal received 5. Treatment provided and 6. Date of animal's release, or name and address of person animal delivered to and date delivered.
- 9 Individual members of Wildcare Queanbeyan will maintain detailed records of all animals received in a form specified by the Conservator of Flora and Fauna.
- 10 Wildlife not suitable for rehabilitation and release must be euthanased using suitable humane methods or in accordance with the National Code of Practice for the humane destruction of Kangaroos.
- 11 This licence and any records required to be kept must be available for inspection by the Conservator of Flora and Fauna or any Conservation Officer.
- 12 This licence authorises the taking of a maximum of 35 dependant animals per financial year.
- 13 Animals taken under this licence must be exported from the Australian Capital Territory under export licence number LE2011343.

NOTE: Failure to comply with these conditions may result in cancellation of your licence and/or jeopardise any future applications made under the Nature Conservation Act 1980.



ACT
Government

Territory and Municipal Services

UNCLASSIFIED

Submission No 2011 00795
Schedule No
Date Rec'd Minister's Office

To: Minister for Territory and Municipal Services

From: Director, Parks and Conservation Service

Subject: ACT Civil and Administrative Tribunal Decision to Grant a Licence to Export Eastern Grey Kangaroo Joeys

Critical Date:

For consideration as soon as possible in the event the applicant promotes the ACAT decision with media.

- Director General TAMS
- Executive Director, Parks and City Services
- Director, City Services

6.10/11
7.10/11
.../.../...

Recommendation

1. It is recommended that you:
 - a. note the ACT Civil and Administrative Tribunal (ACAT) decision of 20 September 2011 that reversed ACAT's previous decision and ordered that Wildcare Queanbeyan Incorporated (Wildcare) be granted a licence to export 35 Eastern Grey Kangaroo joeys, subject to conditions;
 - b. note that ACAT has re-listed the matter for 7 October 2011 to hear submissions on license conditions and duration of the new license;
 - c. note the ACT government policy on kangaroos approved by the Chief Minister in 2010 and tabled in the Legislative Assembly the same year (after the Wildcare appeal was lodged), states that the ACT will not issue export licences for eastern grey kangaroo joeys to be reared in other jurisdictions; and
 - d. note the Question Time Brief that has been prepared at Attachment A.

Background

2. In 2006, Wildcare Queanbeyan Incorporated (Wildcare) was issued a license under the *Nature Conservation Act 1980* (NCA) to export up to 35 Eastern Grey Kangaroo (kangaroo) joeys from the Australian Capital Territory (ACT) to New South Wales (NSW) for rehabilitation. This license was issued on a one year trial basis to gauge the viability of the activity.

3. License conditions required Wildcare to provide details relating to all animals received and cared for under the license to the Conservator of Flora and Fauna (the Conservator). The license expired on 26 September 2007. Of the 32 kangaroo joeys exported to Wildcare during the license period:

- 14 were euthanased or died;
- 9 were released to the wild; and
- 9 were still in care at the time the details were provided in 2008.

4. On 20 March 2008, Wildcare applied for a further export license. The Conservator refused to grant the licence. The considerations leading to the Conservator's decision included:

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- a. The 2006/07 licence had been contrary to the intent of the long standing government policy on kangaroos included in 1997 reports prepared by the Kangaroo Advisory Committee (KAC). The KAC reports recommend that although translocation can play a role in the conservation of threatened fauna, it is neither a humane nor an appropriate management technique for abundant species like Eastern Grey Kangaroos in the ACT. Since at least 1974 (before self government, and before the Nature Conservation Act) the rearing of this species had not been allowed in the ACT.
- b. the challenge with this species was to reduce abundance and issuing a licence for hand raising joeys was counter to kangaroo culling policies.
- c. there was no conservation outcome to be achieved by hand rearing joeys for wild release.
- d. there was no scientific basis for the licence application e.g. research.
- e. there is anecdotal evidence from CSIRO scientists that have held kangaroos in captivity for many years that ageing kangaroos are prone to attack people if they have been hand reared as joeys.
- f. advice from the successor to the Kangaroo Advisory Committee, namely the ACT Natural Resource Management Advisory Committee, was that the three Kangaroo Advisory Committee reports were still valid as current knowledge supported the policy against rearing and releasing this species.
- g. Other advisory committees to which the matter was referred supported the licence (Animal Welfare Advisory Committee) or commented that the matter was not a conservation issue and therefore outside of their terms of reference (Flora and Fauna Committee).

5. In September 2009, Wildcare took the matter to ACAT where a decision was made in favour of the Conservator's decision, that no license be granted to Wildcare. Wildcare appealed the decision and the matter was reserved for consideration in March 2010.

6. After an eighteen month hiatus, ACAT reached a decision on 20 September 2011 which set aside the previous decision and determined that Wildcare should be granted a license to export 35 kangaroo joeys, subject to conditions. ACAT has drafted 6 conditions (apparently based on the 2006/07 licence) and has re-listed the matter for 9.00 am on 7 October 2011 to hear submissions on appropriate license conditions and license duration.

Issues

7. Initial advice from the ACT Government Solicitor's Office is that:

Proposea immediate Course of Action

8. The Environment and Sustainable Development Directorate (ESDD) and Territory and Municipal Services (TAMS) Directorate have conferred about export licence conditions and seek to add additional conditions to the ACAT list, including conditions for release of animals and a requirement for ear tagging of released animals. The draft conditions are at Attachment B and will be considered by ACAT on 7 October 2011.

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9. Once the export licence is granted, Wildcare will be required to apply for a Licence to Take a Native Animal, under the Nature Conservation Act. ESDD and TAMS are considering what conditions are required on this licence to define:

- The objectives of actions undertaken under the licence (that is, rehabilitation and return to the wild);
- Circumstances under which animals may be provided to Wildcare (for example, state of physical development, type of injuries etc);
- the means by which joeys would be provided to the licensee;
- kangaroo joey transportation arrangements to be required of the licensee; and
- the nature of regular reporting required, which would include kangaroo joey survivorship.

10. Wildcare will also require the relevant NSW licences including a license to import kangaroo joeys into NSW. Previously, the NSW Parks and Wildlife Service were unsupportive of issuing this license. However, in 2006, the then Minister responsible for the NSW Parks and Wildlife Service over-turned past practice and a NSW Import licence was granted.

11. The manager of NSW Licensing has indicated that NSW will issue an import licence to Wildcare. They are prepared to consider imposing conditions which may be required by ACT Government.

Operational ramifications of the ACAT decision

12. TAMS are developing Standard Operating Procedures for operational staff to ensure consistent, appropriate and efficient procedures for transferring joeys from road kill to Wildcare. Such procedures will:

- take account of animal welfare issues;
- be able to be absorbed into current operational practice with a minimum of procedural change and additional drain on resourcing;
- reduce (but not eliminates) the likelihood of Wildcare volunteers actively searching for orphaned kangaroo joeys from roadside carcasses; and
- allow TAMS to monitor the number, age and condition of kangaroo joeys provided to Wildcare.

Likely ramifications of ACAT's decision – future applications

13. At the time of the 2009 ACAT hearing the public consultation draft of the ACT Kangaroo Management Plan (KMP) had been released. It included a policy of not hand rearing joeys and not exporting them to other jurisdictions for hand rearing. In 2010 the Chief Minister approved the KMP and it was endorsed by the ACT Legislative Assembly. The KMP specifically records the ACT Government's policy that the ACT will not issue an export licence for kangaroos for rearing in other jurisdictions.

14. It is important to note the ACAT decision of 20 September 2011 acknowledged that the (at the time) draft of the ACT Kangaroo Management Plan (the Plan) recommended against hand rearing and release of kangaroos in the ACT. However, it failed to acknowledge that the plan also stated a policy that the ACT will not provide young kangaroos to carers in NSW. ACAT has determined that, as the kangaroos would be released in NSW, granting a license in this case would not be inconsistent with this particular recommendation of the Plan (although it clearly is).

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15. Should a party wish to apply for a license from the Conservator to rear and release kangaroos in the ACT, the Conservator would likely consider this aspect of ACAT's deliberation in deciding on the issue of a license or otherwise.

16. It is likely that future advice from the relevant Directorates to the Conservator would be consistent with the Plan and assert that a license should not be issued for the rearing and release of kangaroos in the ACT.

Financial Implications

17. Providing 35 joeys to Wildcare will result in insignificant operational costs which will be absorbed by the Parks and Conservation Service.

Internal Consultation

18. The Conservator has been advised of ACAT's decision. The Solicitor-General for the ACT Government has provided advice.

External Consultation

19. Mr Michael Linke, the Chief Executive of the RSPCA-ACT, has been informed of ACAT's decision. In the recent past, the RSPCA is on the record as not supporting the re-location of kangaroos on animal welfare grounds. The NSW Parks and Wildlife Service in Queanbeyan, which will also be approached by Wildcare for a licence to import the kangaroo joeys, is aware of the decision.

Benefits/Sensitivities

07

20. In deciding not to challenge ACAT's decision in the Supreme Court the Government is compelled ~~the Government is compelled~~ to comply with ACAT's decision and grant a licence to Wildcare following agreement on the terms and conditions hearing on 7 October 2011.

Media Implications

21. Previous experience has indicated Wildcare may launch a media campaign around the granting of the licence. A Question Time Brief has been prepared (Attachment A) in advance of any media that may be initiated by Wildcare.

Stephen Alegria
5 October 2011

A/Director Parks and Conservation Service x76997
Contact Officer: Rod West x72581

AGREED/NOT AGREED/NOTED/DISCUSS

Simon Corbell MLA

Performance Assessment

- Satisfactory
- Unsatisfactory



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Territory and Municipal Services

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CANBERRA CITY ACT 2601
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Phone: (02) 6207 6376
Fax: (02) 6207 5956
Email: tams.l@act.gov.au

Licence Number: LE2011343

Commencement Date: 08/10/2011

Expiry Date: 07/10/2012

Licence to Export

Licence Holder:

WILDCARE QUEANBEYAN INC

P O Box 1404
QUEANBEYAN NSW 2620

Activity: THIS LICENCE AUTHORISES THE AFORENAMED LICENCE HOLDER TO EXPORT FROM THE ACT THE BELOW LISTED ANIMAL/S IN ACCORDANCE WITH THE SPECIFIED CONDITIONS.

Location: FROM: THROUGHOUT THE AUSTRALIAN CAPITAL TERRITORY
TO: Members of Wildcare Queanbeyan, C/O

Common Name	Scientific Name	Male	Female	Unknown	Total
Eastern Grey Kangaroo	Macropus giganteus	0	0	35	35

This Licence is issued in accordance with the following conditions:

- 1 NOTE: Failure to comply with these conditions may result in cancellation of your licence and/or jeopardise any future applications made under the Nature Conservation Act 1980.
- 2 This licence is not transferable.
- 3 Housing of animals is to be in a structure/s approved by the Conservator of Flora and Fauna & must ensure good husbandry & security for the animal/s.
- 4 All animals must be transported in a safe, secure and humane manner, protected from extremes of heat and cold.
- 5 Animals must be adequately fed, watered, sheltered and managed to ensure their good health. Fresh clean water must be supplied at all times and animals must be fed with regard to the dietary requirements of each species.
- 6 The Conservator of Flora and Fauna shall be notified annually of the death or escape of any animals or any disease outbreak.
- 7 This licence and any records required to be kept must be available for inspection by the Conservator of Flora and Fauna or any Conservation Officer.

See next page for more conditions...

Fee: \$0.00 _____ Date _____

Receipt: 0 _____ (Delegate of the Conservator) _____

LE2011343 - Page 1 of 2

READ CONDITIONS CAREFULLY

- 8 This licence is valid for one year from date of issue.
- 9 This licence does not permit the release of Eastern Grey Kangaroos within the Australian Capital Territory.
- 10 Eastern Grey Kangaroos exported under this licence are to be released a minimum of 15 kilometres from the border of the Australian Capital Territory.
- 11 Within 28 days of expiry of this licence, the licensee must provide the following records to the licensing officer for each animal exported under this licence:
Unique identification number, eg "QW 001"
Originating incident, eg. "Motor vehicle collision" date and descriptive location eg "Cotter Road"
Outcome for each animal exported under this licence following care at the expiry of this licence eg released to wild, still in care, died/ethanased
Outcome for each kangaroo which was reported still in care at the end of the previous reporting period
Date of the outcome
Release location as latitude and longitude or MGA grid reference, property name or District and block number, identity of property owner.
These records are to be provided in a spreadsheet which will be supplied to the licensee by the licensing officer.
- 12 Prior to release, a small permanent tag is to be fitted to each ear. Appropriate care is to be taken to ensure that tags do not introduce infection. Tags are to be placed so that they are neither readily torn out, nor liable to chafe the kangaroos ear lobes. A digital colour photograph of each tag in position, showing any numbers or other unique identifiers, is to be provided to the licensing officer with the annual record return.
- 13 This licence only authorises the export of animals legally taken from the Australian Capital Territory under licence number LT???????

READ CONDITIONS CAREFULLY

MINUTE



ACT
Government

Environment and
Sustainable Development

SUBJECT: WILDCARE QUEANBEYAN LICENCE

→ Helen McKenna

Penny Farnsworth
Conservator of Flora and Fauna

9

Mac Hovsl.
URGENT.

Purpose

To seek your signature on the attached documentation.

Background

In 2006, Wildcare Queanbeyan (Wildcare) were issued a licence under the *Nature Conservation Act 1980* (NCA 1980) to export up to 35 Eastern Grey Kangaroo (EGK) joeys from the ACT to NSW for rehabilitation. This licence was issued on a one year trial basis to gauge the viability of the activity. Licence conditions required Wildcare to provide details to the Conservator relating to all animals received and cared for under the licence. Of the 32 joeys exported to Wildcare during the licence period;

- 14 were euthanased or died
- 9 were released to the wild; and
- 9 were still in care at the time the details were provided in 2008.

The licence expired on 26 September 2007. On 20 March 2008, Wildcare submitted a further application to the Conservator for a licence under the NCA 1980 to take and release EGK joeys sourced from the ACT for rehabilitation and later release in designated areas of New South Wales close to Queanbeyan.

The application for the licence was refused on advice from the ACT Natural Resource Management Advisory Committee, policy direction provided by the recommendations of the ACT Kangaroo Advisory Committee (1st report issued in February 1996 and 3rd report issued in October 1997) and ecologists within the ACT Parks and Conservation Service.

The outcomes of the first licence to export EGK granted to Wildcare were reviewed and it was also determined that the conservation outcome as evidenced by the results of the rehabilitation and subsequent release of EKG provided by Wildcare did not justify a reissue of the licence.

Wildcare took the matter to ACAT, where the decision was made in September 2009 in favour of the Conservator's decision. Wildcare appealed this decision and in March 2010 the matter was reserved for decision.

In September 2011, ACAT handed down its decision which set aside the original decision and substituted a decision that Wildcare be issued with a licence to export 35 joeys subject to conditions. One of these conditions related to the term of the licence. Advice from the GSO v


Wildcare has agreed to this and the licence will expire on 30 June 2014 (not quite 3 years).

The Wildcare matter was finalised in ACAT this morning (21 October 2011). The order has been amended by consent of the parties. A formal order under S55 will be issued to reflect this. The reasons for the decision were previously placed on the tribunals website and Austlii and these will be updated with the new order.

The final licence to export and the licence to take have been prepared and are attached for your signature.

Recommendation

That you sign the attached Licence to Take and Licence to Export 35 Eastern Grey Kangaroos, licence holder Wildcare Queanbeyan Inc.



Helen McKeown
Conservator Liaison

21 October 2011

Avenell, Clement

From: McKeown, Helen
Sent: Monday, 24 October 2011 9:43 AM
To: Avenell, Clement
Subject: FW: Wildcare Queanbeyan v Conservator Flora and Fauna - appeal decision

This when it started

*Helen McKeown
Conservator Liaison Officer
Conservation Planning and Research
Environment and Sustainable Development Directorate*

Ph: 6207 2247 fax: 6207 5956

From: McKeown, Helen
Sent: Tuesday, 20 September 2011 1:47 PM
To: Meyer, John
Cc: Mangeruca, Maria; Lane, Sharon; Fletcher, Don
Subject: FW: Wildcare Queanbeyan v Conservator Flora and Fauna - appeal decision

FYI. The AAT has set aside a Conservator's decision to refuse a licence and substituted with a decision that Wildcare be issued with a licence to export 35 joeys subject to conditions. This is liable to be reported in the Canberra Times.

*Helen McKeown
Conservator Liaison Officer
Conservation Planning and Research
Environment and Sustainable Development Directorate*

Ph: 6207 2247 fax: 6207 5956

From: Bauer, Jo-Anne
Sent: Tuesday, 20 September 2011 1:37 PM
To: McKeown, Helen
Subject: FW: Wildcare Queanbeyan v Conservator Flora and Fauna - appeal decision

Attached to bottom of this is the decision. It is against the decision the Conservator made to not renew the export licence for 35 joeys to NSW, Wildcare Queanbeyan

Jo Bauer

 Please consider our environment before printing this e-mail.

From: Katavic, Kristy
Sent: Tuesday, 20 September 2011 1:00 PM
To: Bauer, Jo-Anne
Cc: Tomlins, Lisa; Perkins, Dale
Subject: Wildcare Queanbeyan v Conservator Flora and Fauna - appeal decision

ACT GOVERNMENT SOLICITOR
(see confidentiality notice below)

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**ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT) DECISION IN
RESPECT TO QUEANBEYAN WILDCARE Inc V CONSERVATOR OF FLORA
AND FAUNA AND A LICENCE TO EXPORT EASTERN GREY KANGAROO
JOEYS**

Background

Licence Issued 2006

1. In 2006, Wildcare Queanbeyan (Wildcare) were issued a licence under the *Nature Conservation Act 1980* (NCA 1980) to export up to 35 Eastern Grey Kangaroo (EGK) joeys from the ACT to NSW for rehabilitation in 2006. This licence was issued on a one year trial basis to gauge the viability of the activity.
2. Licence conditions required Wildcare to provide details relating to all animals received and cared for under the licence to the Conservator. Of the 32 joeys exported to Wildcare during the licence period;
 - 14 were euthanased or died
 - 9 were released to the wild; and
 - 9 were still in care at the time the details were provided in 2008.
3. The licence expired on 26 September 2007.

New Licence Application

4. On 20 March 2008, Wildcare submitted a further application to the Conservator of Flora and Fauna (The Conservator) for a licence under the NCA 1980 to take and release EGK joeys sourced from the ACT and for rehabilitation and later release in designated areas of New South Wales close to Queanbeyan.
5. The Conservator refused to grant the licence in accordance with Section 104 (1) (b) of the NCA 1980. In making the determination the Conservator considered:
 - Advice from the ACT Natural Resource Management Advisory Committee and;
 - policy direction provided by the recommendations of the ACT Kangaroo Advisory Committee (1st report issued in February 1996 and 3rd report issued in October 1997) and ecologists within the ACT Parks and Conservation Service.
6. Recommendation 11 of the ACT Kangaroo Advisory Committee states that *"Translocation is not an appropriate management strategy for free ranging kangaroos in the ACT"*
7. Recommendation 5 of the 3rd report states that *"Although translocation can play a role in the conservation of threatened fauna, it is neither a humane nor an appropriate management technique for abundant species like the Eastern Grey Kangaroo in the ACT"*

8. The ACT Natural Resource Management Advisory Committee recommended that the licence not be issued in accordance with Recommendation 17 of the 3rd report issued by the ACT Kangaroo Advisory Committee.

9. Recommendation 17 reads as follows:

In considering the range of human safety and animal welfare issues, and the absence of an agreed conservation goal, the present policy of not issuing licences for the keeping of injured or orphaned Eastern Grey Kangaroos should be maintained.

10. The ACT Natural Resource Management Advisory Committee further cite that no scientific information has become available since the publication of the reports which would make any of the recommendations obsolete.

11. The Conservator also reviewed the outcomes of the first licence to export EGK granted to Wildcare and formed the view that the conservation outcome as evidenced by the results of the rehabilitation and subsequent release of EKG provided by Wildcare did not justify a reissue of the licence.

ACAT Decision September 2009

12. Wildcare Queanbeyan took the matter to ACAT, where the decision was eventually made in favour of the Conservator's decision in September 2009. Wildcare appealed the decision and the matter was reserved for decision in March 2010.

ACAT decision 20 September 2011

13. The decision under appeal has been set aside and substituted with a decision that Wildcare be issued with a licence to export 35 joeys subject to conditions. The Tribunal has re-listed the matter with a view to hearing submissions on licence conditions to be imposed and the duration of the new licence. The proposed date is **7 October 2011 at 9am.**

14. In the period leading up to today's decision, Government has not been advised by ACAT or by the ACT Government Solicitor's Office (GSO) that might have suggested ACAT was about to deliver a decision.

15. TAMs was advised today by the ACT Government Solicitor's Office (GSO) that ACAT intended to announce a decision on this matter today. The last minute advice from the GSO made it impossible for TAMS staff to attend the ACAT hearing.

16. Licensing and Compliance have advised the Conservator of Flora and Fauna of today's ACAT decision.

17. Initial advice from the ACT Government Solicitor's Office is that;

- ACAT's decision is appealable, but at this stage would be considered unlikely to succeed; and
- should Government pursue an appeal and lose, all costs would be awarded to the

Respondent.

18. The RSPCA will be informed this afternoon of ACAT's decision. Mr Michael Linke is on the record in the recent past as not supporting the re-location of Eastern Grey Kangaroos on animal welfare grounds.
19. A full briefing is being prepared for your consideration.

Rod West – Senior Manager Licensing and Compliance 20/9/2011.

Action Officer Jo Bauer 54876

ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT) DECISION IN RESPECT TO QUEANBEYAN WILDCARE Inc V CONSERVATOR OF FLORA AND FAUNA AND A LICENCE TO EXPORT EASTERN GREY KANGAROO JOEYS

LIKELY MEDIA Q AND As

1. What is the Government's response to ACAT decision?

Government accepts the roles and responsibilities of ACAT and respects the decision.

Government notes that ACAT has scheduled a hearing for 7 October 2011 to receive submissions regarding licence conditions and duration.

Through the Conservator of Flora and Fauna, Government will take the time to review today's decision and seek legal advice as to the appropriate course of action.

2. Why did the Government refuse to issue a licence to Wildcare in the first place?

The Conservator of Flora and Fauna took advice from experts within Government, and its expert Advisory Committees to determine a licence should not be issued. In arriving at this decision the Conservator took into account:

- **Animal welfare concerns** - it is known that Eastern Grey Kangaroos do not cope well with translocation and translocation can often result in high mortality rates;
- **No Ecological benefits** – could be demonstrated; and
- **Public safety concerns** – there is some evidence to suggest that hand reared joeys lose their natural fear of humans, thus when released are not as likely to flee from human contact.

3. Will Government issue licences to other applicants looking to raise orphaned Eastern Grey Joeys.

The Government will take the time to review the 27 page ACAT decision and take its own legal advice. For the reasons outlined above, Government does not consider it appropriate for Eastern Grey Kangaroo joeys to be hand-reared.

ACT CIVIL & ADMINISTRATIVE TRIBUNAL

**WILDCARE QUEANBEYAN NSW INC & CONSERVATOR OF
FLORA AND FAUNA (Administrative Review) [2011] ACAT 68**

AA 23 of 2009

Catchwords:

ADMINISTRATIVE REVIEW – appeal under s 82 of the of the *ACT Civil and Administrative Tribunal Act 2008* – dealing with appeal as a review of the original Tribunal decision and on papers – allowing fresh evidence in appeal - licence to export kangaroo joeys – the purposes of the *Nature Conservation Act 1980* – “have regard to” –application of policies – animal welfare considerations

List of legislation:

ACT Civil and Administrative Tribunal Act 2008, ss. 79, 82
Nature Conservation Act 1980, ss. 6, 45, 46, 47, 49, 103, 104, 105, 106 and 107

List of Regulations:

Nature Conservation (Licensing Criteria) Determination 2001, criteria 5, 7, 10, 12 and 13
Nature Conservation Strategy (Disallowable Instrument 263 of 1997)

List of cases:

BHP Direct Reduced Iron P/L -v- Chief Officer, Australian Customs Service (1998) 1346 FCA
Croft -v- Minister for Health (1983) 45 ALR 449
Darling Casino Ltd v New South Wales Casino Control Authority [1997] HCA 11
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Mendoza -v- Minister for Immigration, Local Government and Ethnic Affairs (1991) 31 FCR 405
Pelka v Secretary FASCLA (2008) FCAFC 92
Pickering v DCT (1997) 37 ATR 41
Re Control Investments P/L and ABC (1981) 39 ALR 281
Re Deacon and SDFHCS & IA [2009] AATA 88
Robobatini -v- Minister for Immigration and Multicultural Affairs (1999) FCA 1238



List of Texts/Papers: *ACT Kangaroo Management Plan of March 2009 (Public Consultation Draft)*
The Code of Practice for the Humane Destruction of Kangaroos in the ACT.

Tribunal: Ms L. Crebbin, General President
Mr A. Anforth, Senior Member

Date of Orders: 20 September 2011
Date of Reasons for Decision: 20 September 2011



AUSTRALIAN CAPITAL TERRITORY)
CIVIL AND ADMINISTRATIVE TRIBUNAL)

NO: AA 09/23
(AT 111 OF 2008)

RE: WILDCARE
QUEANBEYAN INC
Appellant

AND: CONSERVATOR OF
FLORA
AND FAUNA
Respondent

Appeal Tribunal : Ms L. Crebbin, General President
Mr A. Anforth, Senior Member
Date : 20 September 2011

ORDER

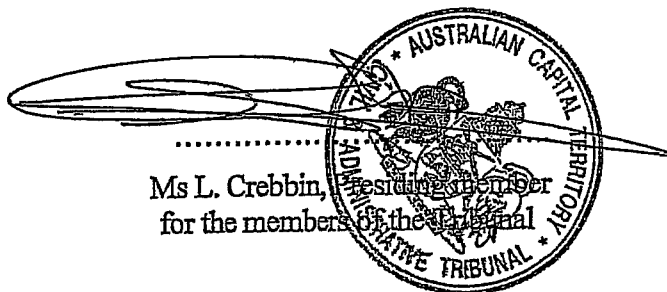
The decision of the Tribunal dated 10 September 2009 is set aside and the following decision is made in substitute:

1. The Tribunal orders that the Respondent issue the Appellant with a licence to export 35 orphaned eastern grey kangaroo joeys from the ACT on an annual basis on the following conditions:



- (i) all animals must be transported in a safe, secure and humane manner, protected from extremes of heat and cold;
 - (ii) the respondent must be notified within 48 hours of the death or escape of any animal;
 - (iii) no animals must be released within the ACT;
 - (iv) the appellant shall keep records of all animals exported out of the ACT as is prescribed as well as information concerning their species, the number of animals exported, the date of their export, the name and contact details of the person responsible for the export and the place outside the ACT to which the animals have been re-located;
 - (v) the records referred to above shall be produced for inspection by the Respondent and/or the Respondent's officers within 2 working days of being requested to produce the records;
 - (vi) such other condition imposed by this tribunal or by the respondent pursuant to section 105 of the *Nature Conservation Act 1980*.
2. The Tribunal will re-list this application to consider submissions concerning the conditions to be placed on the licence or the duration of the licence.

.....
Ms L. Crebbin, Presiding Member
for the members of the Tribunal



REASONS FOR DECISION

1. On 20 March 2008 the Appellant sought a licence under the *Nature Conservation Act 1980* to take and export 35 eastern grey kangaroo joeys from the ACT for release in NSW. The Appellant had previously had a licence (the earlier licence) to relocate orphaned joeys from the ACT to NSW but this licence had expired.
2. On 1 December 2008 the Respondent rejected the Appellant's application on the bases that it was inconsistent with prevailing government policy and on the advice of the ACT Flora & Fauna Committee and the ACT Natural Resource Management Advisory Committee. The Respondent's reasons for decision usefully explain the basis of the application for the issue of the licence as well as the Respondent's decision to refuse it. The reasons for decision read:

On 20 March 2008 Wildcare Queanbeyan Inc. submitted an application to the Conservator of Flora and Fauna (The Conservator) for a licence under the Nature Conservation Act 1980 (hereafter referred to as NCA 1980) to take and release Eastern Grey Kangaroo joeys sourced from the ACT and for rehabilitation and later release in designated areas of New South Wales. The application was to renew a previously issued licence to export Eastern Grey Kangaroos from the ACT to NSW for the purpose of rehabilitation which expired on 26 September 2007. Included with the application were statistics to meet the conditions of the expired licence. The decision of the Conservator of Flora and Fauna on the application for renewal was to refuse to grant the licence in accordance with Section 104 (1) (b) of the NCA 1980.

The Conservator of Flora and Fauna uses the NCA 1980 Determination of Licensing Criteria, Instrument no 47 of 2001 to assist in the decision making process.

The findings on material facts

Based on the recommendations of the ACT Kangaroo Advisory Committee (1st report issued in February 1996 and 3rd report issued in October 1997), the licence to export Eastern Grey Kangaroos from the ACT to NSW is inconsistent with the ACT Government's accepted scientific advice.

Recommendation 11 of the 1st report states that "Translocation is not an appropriate management strategy for free ranging kangaroos in the ACT"



Recommendation 5 of the 3rd report states that "Although translocation can play a role in the conservation of threatened fauna, it is neither a humane nor an appropriate management technique for abundant species like the Eastern Grey Kangaroo in the ACT"

Recommendation 17 of the 3rd report states that "In considering the range of human safety and animal welfare issues and the absence of an agreed conservation goal, the present policy of not issuing licences for the keeping of injured or orphaned Eastern Grey Kangaroos should be maintained"

The evidence or other material on which those findings are based

On receipt of the application to renew the licence, the Conservator sought advice from the ACT Natural Resource Management Advisory Committee, the ACT Flora and Fauna Committee and the Animal Welfare Advisory Committee.

On receipt of the responses, a minute was sent to the Conservator, detailing the recommendations of the various committees. A copy of each response was attached to the minute.

The ACT Natural Resource Management Advisory Committee recommended that the licence not be issued in accordance with Recommendation 17 of the 3rd report issued by the ACT Kangaroo Advisory Committee. They further cite that no scientific information has become available since the publication of the reports which would make any of the recommendations obsolete. This information is further detailed in a letter to Dr Maxine Cooper, Commissioner for Sustainability and the Environment dated 16/06/08 seeking advice in relation to the Kangaroo Advisory Committee Reports.

The ACT Flora and Fauna Committee did not make a recommendation as they felt it fell outside their gambit of providing advice in relation to Nature Conservation. They felt that this matter was largely an animal welfare issue. They did however, express concern that approving the activity would portray a conflicting signal to the community "where on the one hand, the government is supporting the rescue and rehabilitation of joeys, while on the other hand authorising kangaroo culls on ACT land".

The Animal Welfare and Advisory committee were not able to meet during the response time provided however, after canvassing it's members, the secretariat replied "While the views of the members varied, I think it is fair to say that in general the committee is unsure of the value of a licence given that there may be limited success of rehabilitation and release. Despite these reservations, on balance the Committee would not oppose the granting of a licence for a small number of joeys, as sought last year and again this year".

