

## Enforceable Undertaking

### Statutory context

Given under section 13.27 of the *Biodiversity Conservation Act 2016 (BC Act)* by Australian Wildlife Ark Limited (ACN 665 776 205) (**AWA**).

### 1. Person giving the undertaking

This Undertaking is given to the Secretary of the Department of Climate Change, Energy, the Environment and Water (**the Department**), being the Environment Agency Head for the purposes of the BC Act, by AWA.

### 2. Background

- 2.1. AWA is an unlisted public non-profit company that was registered on 15 June 2023. Prior to being registered the company was incorporated as 'Australia's Wildlife Ark Incorporated' on 5 October 2011. AWA is a registered charity.
- 2.2. AWA proposes to establish a robust insurance population of Australian threatened native fauna that are threatened by extinction. The insurance populations are to be maintained at land owned and/or managed by AWA at Barrington Tops and Somersby and facilities at the Australian Reptile Park (ARP).
- 2.3. AWA's core activities including building insurance populations, fire management, feral cat and fox exclusion, feral herbivore control, weed eradication, bush rejuvenation, field science programs, rewilding and wildlife translocations.
- 2.4. Between about March 2021 and September 2022, AWA submitted licence applications for Biodiversity Conservation licenses with the Department which sought approval to capture, possess, translocate and breed a number of endangered Australian native species including the Giant Barred frog, Bell's Turtle and the Broad-Toothed Rat. It was intended that the captured animals would be transferred to AWA's facilities as founder animals to establish captive breeding insurance populations for conservation projects to be conducted by AWA.

2.5. Without lawful authority:

2.5.1. AWA collected ten Giant Barred Frogs between about 6 December 2021 and about 7 December 2021;

2.5.2. AWA collected seven Bell's Turtles between about 13 and about 17 December 2021; and

2.5.3. AWA collected six Broad-toothed Rats between about 10 May 2022 and about 11 May 2022.

2.6. Prior to each collection, AWA notified the Department in writing of the proposed collections. All specimens collected were transferred to AWA's purpose-built facilities at Barrington Tops and Somersby and subject to veterinary check-ups.

2.7. At the time each of the specimens was collected, AWA's licence applications, which had been lodged with the Department in March 2021 and July 2021 for those species, along with a number of other species, had not been approved and were being considered by the Department.

2.8. On numerous occasions both before and after the specimens were collected, the Department had warned AWA that the collection of animals without a valid licence was an offence, and advised that AWA did not possess a valid licence to collect the Giant Barred Frog, Bell's Turtles or Broad-toothed Rat.

2.9. The Department considers the collection, translocation and possession of the animals as outlined above was conduct in contravention of the BC Act.

### **3. Acknowledgments**

3.1. AWA acknowledges that the collection of the animals as outlined above is likely to have constituted offences under the BC Act and that, notwithstanding the good intentions of AWA to translocate the animals to establish a captive breeding insurance population for each of the endangered species, it was wrong to have collected the animals without a valid licence and to have failed to have accepted the Department's advice and warnings that AWA was not licensed to take the

animals.

#### **4. Commencement of this Undertaking**

4.1. This Undertaking comes into effect when both of the following have occurred:

4.1.1. This Undertaking is executed by AWA; and

4.1.2. This Undertaking so executed is accepted by an authorised delegate of the Secretary of the Department of Climate Change, Energy, the Environment and Water (**Commencement Date**).

#### **5. Undertaking**

5.1. AWA undertakes for the purposes of section 13.27 of the BC Act that it will:

5.1.1. Not collect, translocate or possess animals for which a licence is required under the BC Act without first obtaining a written licence from the Department to do so.

5.1.2. Make a payment of \$50,000 to the Department within 28 days of the date of this Undertaking.

5.1.3. Develop and implement a new procedural safeguard which is to be followed prior to any collection, translocation, possession or breeding of any species for which a licence is required under the BC Act. The procedural safeguard will require:

- the preparation of a Board Paper which is to include a hard copy of the licence; and
- Board approval and acknowledgement that a hard copy licence has been reviewed by the Board.

A copy of the procedural safeguard is to be provided to the Secretary of the Department within 14 days of the date of this Undertaking.

5.1.4. Develop and implement a formal training program for all AWA volunteers regarding the operation of the BC Act, with a focus on compliance with the BC Act and licensing requirements. This training is to be included in the induction training for new volunteers and annual training for existing volunteers. As part of this undertaking:

- AWA will provide a draft training program to NPWS within 30 days of the date of this Undertaking;
- NPWS will provide feedback (acting reasonably) on the draft training program to AWA with 30 days of receipt of the draft

training program;

- AWA will incorporate any suggested feedback from NPWS, to NPWS satisfaction (acting reasonably).

The first formal training session is to be conducted within 3 months of the date of this Undertaking. The formal training program is to be in place for a period of at least 10 years from the date of this Undertaking.

5.1.5. Develop and implement a threatened species education program for secondary school and tertiary education students, comprising of 12 sessions to be held at either the AWA's Barrington Tops facility, the Australian Reptile Park at Somersby or at the secondary or tertiary institution. The education program will cover topics including:

- threatened fauna species in NSW, including reasons for decline; and
- the strategies implemented by Government and non-government entities to protect threatened species.

As part of this undertaking:

- AWA will provide a draft education program to NPWS within 60 days of the date of this Undertaking;
- NPWS will provide any suggested feedback on the education program to AWA with 30 days of receipt of the draft education program;
- AWA will incorporate any suggested feedback from NPWS to NPWS satisfaction (acting reasonably).
- AWA will confirm once each presentation has been completed and to whom.

The 12 sessions are to be completed within 2 years of the date of this Undertaking.

5.1.6. Attend 6 community events to present threatened species education sessions. The education sessions will cover topics including:

- threatened fauna species in NSW, including reasons for decline; and
- the strategies implemented by Government and non-government entities to protect threatened species.

As part of this undertaking:

- AWA will provide draft presentations to NPWS within 60 days of the date of this Undertaking;
- NPWS will provide any suggested feedback to AWA with 30 days of receipt of the draft presentations; and
- AWA will incorporate any suggested feedback from NPWS to NPWS satisfaction (acting reasonably).

The 6 community presentations are to be completed within 2 years of the date of this Undertaking.

5.1.7. Publish a media release on AWA's public website within 14 days of the date of this Undertaking. The media release will acknowledge that AWA was charged with a number of offences in the Local Court of NSW alleging AWA had committed offences contrary to the BC Act, that AWA along with the Department have resolved those proceedings by entering into this Enforceable undertaking and will set out key elements of this EU as follows:

- (a) that AWA made licence applications to the Department to establish insurance populations of the Giant Barred Frog, the Bell's Turtle and the Broad-toothed Rat in July 2021;
- (b) that before the licence applications had been approved, AWA collected 10 Giant Barred Frogs, 7 Bell's Turtles and 6 Broad-toothed Rats and that the collection of the animals are likely to have constituted offences under the Biodiversity Conservation Act 2016 because they were collected without a licence;
- (c) AWA has now given an undertaking to the Department that it will not collect animals without a licence if a licence is required and it will develop procedural safeguards to ensure this will not occur as well as carry out various training sessions in relation to compliance with the Biodiversity Conservation Act; and

(d) AWA will also pay the Department \$50,000.

5.1.8. As part of this undertaking:

- AWA will provide a draft of the media release to NPWS within 7 days of the date of this undertaking;
- NPWS will provide feedback on the media release to AWA within 3 days of receipt of the draft media report;
- AWA will incorporate any suggested feedback from NPWS to NPWS satisfaction (acting reasonably).

**6. Acknowledgements on publication**

6.1. AWA acknowledges that this Undertaking may be:

6.1.1. published on the Department's website;

6.1.2. referenced in materials or documents prepared by or on behalf of the Department; and

6.1.3. where appropriate, published or referenced in newspapers, Departmental media statements or other publications.

**7. Statement of capacity to comply with the terms of the undertaking**

7.1. AWA has the financial ability to comply with the terms of this undertaking.

**Executed as an Undertaking**

**Executed by Australian Wildlife Ark Limited (ACN 665 776 205)**

Pursuant to section 127(1) of the *Corporations Act 2001* (Cth)

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Director

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Signature

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Signature

28/4/24


29/4/24

**Executed as an Undertaking**

**Execution by Australian Wildlife Ark Limited (ACN 665 776 205)**

|                                 |  |
|---------------------------------|--|
| Signature of AWA Representative |  |
| Name of Individual              |  |
| Date                            |  |

**Accepted by the Environmental Agency Head of the Department pursuant to section 13.27  
*Biodiversity Conservation Act 2016 (NSW)* on 30 April 2024 and signed on behalf of the Department.**

|                    |  |
|--------------------|--|
| Delegate Signature |  |
| Name of Delegate   | Atticus Fleming, Deputy Secretary, National<br>Parks and Wildlife Service          |
| Date               | 30.04.2024   |