

The Legal Status of Birds of Prey in Australia

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ABSTRACT

Australia has an independent wildlife authority responsible for regional matters in each of her eight States and Territories, and a Federal authority which deals with Australia's island territories as well as national and international wildlife concerns. All Falconiforms and Strigiforms are protected throughout the country by various regional legislative acts and regulations. All States and Territories have adopted the Australian Endangered Species List.

Australia is an active signatory of CITES. Import and export of wildlife is strictly controlled and at present there is a total ban on the export and import of live fauna. Use can be made of the World Heritage Listing to ensure protection of exceptional habitat anywhere in Australia and all States and Territories have legislation allowing declaration of reserves of various status.

Regulations allow for penalties, such as fines and jail sentences, for offences. A common offence is the destruction of free-flying raptors by vandals, graziers, aviculturists, pigeon racers and duck hunters. Penalties imposed are usually minimal and local magistrates tend to regard wildlife offences as minor. Other problems with enforcement include the paucity of wildlife officers and the lack of education.

Small numbers of some species winter in Papua New Guinea and Indonesia. Some also reach New Zealand as rare stragglers. Papua New Guinea protects only two (non-Australian) species and certain other "restricted species" are protected to the extent that export numbers are limited. Indonesia protects all diurnal raptors.

NATIONAL PROTECTION

The Commonwealth of Australia consists of a federation of six States, each a former British colony, and a number of "Territories". The Commonwealth (national) Government, these States and the Northern Territory, each have their own legislature. With less than perfect clarity, partly owing to the initial difficulty in convincing all parties to federate, the Commonwealth constitution apportions legislative responsibility between the two tiers of Government.

Individual State (and Northern Territory) Acts of Parliament give legal protection to all 32 species of raptor occurring in Australia. The acts and their accompanying regulations have many similarities, however they differ in their precise scope, in the exceptions they allow and in the penalties that apply to offences (Aumann, 1982).

In all States and Territories it is illegal to kill, injure, take from the wild, hold captive, trade or band any raptor without a permit issued by the relevant Government authority, or unless "special conditions" apply. The scope of this protection varies from State to State, and variously extends to some or all skins, feathers and other body parts, eggs and nests. The legislation allows the issue of permits to take raptors from the wild and/or to hold them captive for scientific, artistic, exhibition or rehabilitation purposes. In practice, such permits are only issued for bona fide cases. Permits are also issued, infrequently, to allow the scaring, removal or destruction of raptors causing an economic nuisance to primary producers or other keepers/breeders of animals, or causing a threat to human safety, as at some airports. One State, Victoria, retains a right for citizens to apply for a falconry permit. In practice, such permits are never granted, and falconry is effectively prohibited throughout the country.

Several States retain a right for their wildlife authority to declare an "open season" in special circumstances, notably where the species concerned is alleged to be responsible for significant and widespread economic loss. In recent years, only Western Australia has utilized this provision in respect of raptors. In 1983, an open season of unspecified length was declared for the Wedge-tailed Eagle *Aquila audax* due to its alleged predation of sheep, and Brown Goshawk *Accipiter fasciatus*, considered a threat to poultry; its provisions apply to most areas of Western Australia and are currently still operative.

Penalties for offences involving raptors vary from State to State. Courts may impose substantial fines, penalty maxima ranging from \$A1000 to \$A10,000. Some States also provide for (additional or alternative) imprisonment, with sentences of up to six months. Property used in the illegal killing, injuring, capturing, holding or transporting of fauna can also be permanently confiscated in some States. Further, in most States penalty maxima are more severe for offences involving species designated as "rare" or "threatened". For example, in Western Australia the maximum fine for offences involving most species is \$A4,000, however a \$A10,000 maximum applies for States-designated threatened raptors: Pacific Baza *Aviceda subcristata*, Red Goshawk *Erythrotriorchis radiatus*, Peregrine Falcon *Falco peregrinus* and Grey Falcon *F. hypoleucos*.

Commonwealth law provides similar protection for raptors and other fauna in areas under Commonwealth jurisdiction, and prescribed penalties are generally equal to or stronger than those of the States. An important exception allows Australian aborigines to hunt fauna with traditional weapons on certain designated reserves or other aboriginal lands.

All States and Territories have legislation allowing declaration of reserves of various status to afford protection to habitat and can close this habitat to the public during nesting periods.

All banding of raptors is controlled through a national system. Banders must have a permit to band and additional permits from State authorities to catch the birds. In several States, additional permission is required to colour band. No offences have been recorded.

Generally, public display of raptors is discouraged. All zoos must hold possession permits. Rehabilitation is usually controlled under "shelter permits". Often it is a requirement that non-releasable raptors are destroyed. Problems with falconry have occurred when rehabilitation programmes have exceeded their charters e.g. when birds are kept and flown past the point when they should have been released. Confiscations but not prosecutions have occurred. Museum and research institutes must hold collection and possession permits. One State allows possession of one specimen of protected wildlife (e.g. a raptor) by a private individual provided it was legally obtained. In several States, taxidermists must be licensed. Most States do not allow private individuals to possess protected species, dead or alive.

Captive breeding has not yet been controlled past the normal requirement for possession permits. However, captive breeding of raptors is now widespread in Australia and specific legislation based on that of other countries may have to be introduced.

The export of raptors without a permit is prohibited by Commonwealth law. Penalties include confiscation of property involved and fines up to \$A100,000 (\$A200,000 for body corporates). At present a ban exists on the import and export of all protected species.

VIOLATIONS OF PROTECTION LAWS

Background

On paper, the legal protection given to raptors is far stronger in Australia than in most countries. In practice, however, offences probably occur daily. Prosecutions are few, about one per year per

State. Convictions are fewer, and penalties rarely approach the allowed maxima. Wildlife offences are seldom regarded as serious by magistrates and the courts are reluctant to impose heavy fines (e.g. Falkenberg, 1983).

The reasons for the disparity between theory and practice are complex, and related to Australia's large size and low (human) population density (approximately 1.3 persons/km²), the low value traditionally placed on indigenous flora and fauna, and the national reliance on primary industry.

Although about three-quarters of Australia's human population is based in a small number of urban centres on the southern and eastern coasts, nearly three-quarters of the country is used for grazing or agriculture of some kind. While much of this involves non-intensive grazing of sheep or cattle on native grasses, habitat clearance has been widespread, and fertilizers and pesticides extensively used in more heavily farmed areas. In addition to the indirect persecution that this implies (Olsen & Olsen 1979), fauna species (including many raptors) considered to be depressing primary productivity have been persecuted directly on a large scale. Raptors have traditionally been regarded as a threat to stock, and most were unprotected by the law in most States until a few decades ago.

Just as a low priority for the conservation of indigenous flora and fauna is demonstrated by widespread vegetation clearance and direct persecution, it is also indicated directly by low-level Governmental expenditure in policing wildlife protection legislation. State and national Governments employ few officers whose specific duty is wildlife law enforcement; this responsibility falls largely on police, customs employees or other wildlife authority personnel, all of whom have much broader areas of responsibility and sometimes little knowledge of wildlife. The problem is exacerbated by the vastness of the sparsely populated interior, and by long stretches of almost uninhabited coastline. A likely consequence, then, is that many offences go undetected.

No estimate can be made of the incidence of offences involving raptors in any part of Australia. However, with the obvious exception of the widespread destruction of some species by primary producers (e.g. Debus 1981), or special interest groups such as pigeon fanciers, there is no basis for presuming violations of the legislation to be numerous. Indeed, direct persecution has declined over the last few decades, and probably continues to do so. On the other hand, wildlife authorities in all States acknowledge that raptors are still deliberately poisoned, trapped and shot on the pretext that they significantly affect primary income or are a nuisance to traditional pastimes (Czechura 1981; Elford 1945; Du Guesalin *et al.* 1983; Hunt 1977; Mooney and Hunt 1983; Morris 1979; Olsen and Peakall 1983; Price 1986; Pruett-Jones *et al.* 1981; Saunders and Cooper 1982; Stokes 1982).

Examples

1. Shooting

- a) Vandalism (all species): This certainly involves daily offences across the country and is extremely hard to police. Conviction usually relies on confession. Education may be effective in reducing this problem.
- b) Alleged predation of sheep and goats by eagles: In the past some Governments offered "bounties" for Wedge-tailed Eagle carcasses, e.g. in the years 1940-42 the Western Australian Government paid five shillings per bird for respectively 3,697, 3,998 and 4,649 individuals. Despite the demise of the bounty system, it was still common until the mid 1960s to see 10-20 carcasses of several species hanging on a farm fence in rural Australia (Walker 1982). This changed with the spread of legal protection, and with some attempt by Governments and pro-wildlife groups to disseminate research findings and the idea that raptors present a negligible threat to viable stock.
Other raptors, particularly White-bellied Sea Eagles *Haliaeetus leucogaster* and Whistling Kites *Haliastur phenurus*, are also affected. Better communications between stock owners and wildlife authorities are obviously needed. Small efforts at education can be amply rewarded.
- c) Hawks and harriers and the threat they pose to poultry and aviary birds: Offences are common in autumn. In Tasmania probably over 20% of the yearly recruitment of Grey Goshawk *Accipiter novaehollandiae* are killed each year. This species is bold, tame and very obvious. Advice on better refuges and cover for stock and relocation of hawks by wildlife authorities can have a very positive effect on local problems. Offences are often not repeated after such help.

- d) Shooting of raptors by duck hunters: Locally a problem during the three-month duck hunting season. Education, prosecution and policing are often effective at reducing this problem.
- e) The shooting of Peregrine Falcons by pigeon fanciers: A regular and locally serious problem in South-East Australia. In Tasmania private bounties were openly advertised and are still paid despite protection; such persecution probably accounts for 5-10% of the population per year. Peregrines are mainly shot at nests. Unfortunately, this affects the most important part of the falcon population, not necessarily the part most affecting the pigeons. Education so far has had limited success.

2. Trapping

On mainland Australia many Wedge-tailed Eagles are caught in large cage traps baited with carrion. Otherwise the most common offences involve steel-jawed traps set around carrion (for eagles) or live bait (for hawks and falcons). Efforts by pigeon fanciers to catch Peregrine Falcons often involve setting traps and checking them weekly. Because of the reluctance of Peregrines to land at traps other species are often caught instead. For example, at one trap in Tasmania over 300 raptors were caught over 4 years. The vast majority were migratory Marsh Harriers and only 2 were Peregrine Falcons, the target species. In Tasmania convictions have resulted in fines up to \$A600 and prosecution has been effective in reducing this problem.

3. Poisoning

Most offences involve topical poisons such as strychnine or organophosphate pesticides, particularly "lucijet", a fly-strike pesticide with the active ingredient fenthionethyl. Such pesticides are registered with health authorities for a particular use, and application for other purposes is an offence. Target species are often foxes, feral pigs, dogs or corvids but most stock owners using poison are well aware that raptors will be killed and sometimes they are even the target species. Prosecution is extremely difficult, especially regarding continuity of evidence (poison samples) and often relies on confessions. Education and the encouragement of less harmful, more specific control methods can be locally effective.

4. Falconry

There have been several prosecutions resulting in fines of up to \$A200 (for single offences) and confiscation of birds; some blatant offences have occurred, birds even being advertised for in newspapers. Probably several hundred would-be falconers exist in Australia, using whatever local species are available. Associated with this are people taking nestlings as pets. Again, locally available species are mostly used. Efforts are seldom made to obtain rare species.

5. Egg Collectors

In some States this is a serious problem particularly affecting rare species. Wildlife authorities in New South Wales estimate that there are approximately 40 major egg collectors operating illegally in that State. One recently discovered collection contained 38 Osprey *Pandion haliaetus* eggs. Another collection in Queensland is rumoured to hold nearly 1,000 eggs of the rare Letter-winged Kite *Elanus scriptus* (Hardy, 1984). Another collection confiscated in the Northern Territory contained 144 raptor eggs including 12 Osprey and 35 uncommon falcons. That offender was fined \$A1090 and the collection confiscated.

Policing is an effective deterrent although some collectors verge on the fanatic and are very difficult to control. Marking eggs to render them useless to collectors (prevention) has been practiced locally by wildlife authorities in preference to invisible marks for subsequent tracing.

6. Disturbance

States and Territories have the legal power to temporarily close certain areas from the public to limit disturbance to nesting birds. Disturbance usually involves recreation - walkers and rock climbers, fishermen and campers.

INTERNATIONAL AGREEMENTS

Australia became a signatory to the Convention on International Trade in Endangered Species of Wild Fauna (CITES) in 1978. Three Australian raptors, the Red Goshawk, the Christmas Island

Hawk-Owl *Ninox squampila natalis* and the Norfolk Island Boobook *Ninox novaeseelandiae undulata* (royana) are listed under Appendix I of CITES. Initially, the Bureau of Customs acted as the management authority, while the Australian National Parks and Wildlife Service (ANPWS) was the scientific authority. When the Wildlife Protection (Regulation of Exports and Imports) Act 1982, which implements Australia's obligations under CITES, came into force in 1984, ANPWS assumed responsibility for its administration. ANPWS occasionally issues permits for the export of raptors to approved institutions and has allowed the presentation of Peregrine Falcons to Middle East statesmen. At present there is a total ban on the export and import of live birds, but this is under review.

No seizures or prosecution for violations of the Act involving raptors have been recorded. Fertile eggs of Brown Goshawks were recently smuggled into the USA and seized, but this was apparently dealt with by the US Fish and Wildlife Service. South Australian wildlife officials recently expressed concern that Peregrine Falcons were being smuggled out of Australia to the Middle East (Anon. 1986).

In 1986, Australia also became signatory to an agreement with the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment (CAMBA), which lists the White-bellied Sea Eagle in its annex.

LEGISLATION IN NEIGHBOURING COUNTRIES

No Australian raptor undertakes large-scale migration to other countries. Nonetheless, several species regularly reach Papua New Guinea and perhaps Indonesia, particularly in the winter. These include the Australian Kestrel *Fecenchroides*, Australian Hobby *F. longipennis* and Brown Goshawk.

All raptors except two, the Osprey and New Guinea Harpy Eagle *Harpyosis novaeguineae*, are unprotected in Papua New Guinea (Aumann 1982). Indonesia (West Irian Jaya) protects all diurnal raptors but only one owl (Aumann 1982).

Some Australian raptors occasionally reach New Zealand, where they are fully protected.

OFFENCES IN NEIGHBOURING COUNTRIES

In Papua New Guinea, the New Guinea Harpy Eagle and Long-tailed Buzzard *Henicopernis longicauda* are both regularly shot for use in feather decorations. Occasionally carcasses are offered for sale in native markets. Only once has a prosecution resulted. All raptor nestlings (including Harpies) are considered potential food by indigenes. Legislation allows taking by traditional means (e.g bow and arrow). However, shotguns are often used, greatly increasing the take. Details of offences in Indonesia are not known.

In New Zealand, New Zealand Falcons *F. novaeseelandiae* are occasionally shot while attacking domestic pigeons and poultry or while harrassing sheep dogs near nest sites. Many Australasian Harriers are shot by duck hunters and until recently private bounties were offered by acclimitization societies.

RECOMMENDED IMPROVEMENTS TO RAPTOR LEGISLATION IN THE AUSTRALIAN REGION

1. Increased education of the public (and wildlife officials) on the identification of raptors and their ecological value, with particular emphasis on dispelling the myth that they cause substantial stock loss.
2. Higher emphasis on the enforcement of wildlife protection legislation through
 - a) the employment and training of more field officers
 - b) more vigorous prosecution of offenders with exemplary penalties closer to the prescribed maxima.
3. Removal of important inconsistencies in the law as it applies in different States and Territories, particularly through

- a) abandonment of open season provisions in respect of raptors (as used in Western Australia),
 - b) provision of higher penalties for offences involving rare or threatened species where such does not currently exist (e.g. in the Northern Territory),
 - c) extending protection (where it does not currently exist) to cover eggs and nests and to prohibit disturbance.
4. Use of wardening/safe egg-marking techniques to deter egg collectors, with particular use of the former in the case of widely-known nests of rare or threatened species, and of the latter in research areas.
 5. An attempt to strengthen unsatisfactory import/export laws in Indonesia and other South-east Asian countries thought to function as staging points in the illegal export of Australian fauna to the Northern Hemisphere.
 6. Formulation and encouragement of an agreement between Australia and Papua New Guinea for the protection of Australian raptors reaching there as migrants or vagrants.
 7. Encouragement of Papua New Guinea to provide better protection for its own raptors.

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