



# 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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Principal Researcher  
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**By email:** [kangaroo.code@dpi.nsw.gov.au](mailto:kangaroo.code@dpi.nsw.gov.au)

Dear Sir/Madam

## **Submission to the kangaroo commercial code review**

Thank you for the opportunity to provide a submission to the kangaroo commercial code review. Our comments on the public consultation draft of the National Code of Practice for the Shooting of Kangaroos and Wallabies for Commercial Purposes<sup>1</sup> (“the revised Code”) are set out below.

### **About the Animal Defenders Office**

The Animal Defenders Office (“ADO”) is a nationally accredited not-for-profit community legal centre that specialises in animal law. The ADO is run entirely by volunteer lawyers, law students and other professionals. It offers information and representation for individuals and groups wishing to take legal action to protect animals. The ADO also produces information to raise community awareness about animal protection issues and works to advance animal interests through law reform.

The ADO is a member of Community Legal Centres Australia, the peak body representing community legal centres in Australia.<sup>2</sup>

Further information about the ADO can be found at [www.ado.org.au](http://www.ado.org.au).

### **Commercial kangaroo and wallaby industries**

The ADO does not support the killing of native wildlife by humans. In our view humans should co-exist with wildlife rather than kill it. The routine practices engaged in by the commercial kangaroo and wallaby industries, particularly the treatment of female and young animals, are in our view unconscionable. It is a serious stain on Australian society that treating animals in this way is *prima facie* legal and actively encouraged by governments.

However, since the killing of kangaroos and wallabies for commercial purposes is currently legal in Australia, the ADO has made submissions on the revised Code as set out below.

### **General comments**

The revised Code states that it ‘sets an achievable standard of humane conduct and is the minimum required of persons shooting kangaroos and wallabies for commercial purposes’ (p3). This is far from best practice. It is disappointing that the revised Code sets such a low standard. We therefore disagree with the revised Code’s assertion that meeting the minimum standards can ‘achieve an acceptable

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<sup>1</sup> April 2019.

<sup>2</sup> Formerly known as the National Association of Community Legal Centres Inc: <http://www.naclc.org.au/>.

level of animal welfare during commercial harvesting' (p4). In the ADO's view, it is extremely unlikely that, even if the revised Code were to be rigorously complied with, the outcome would be 'humane conduct'.

The ADO rejects the alleged justification for the commercial kangaroo and wallaby industries, which claim they are an option to 'reduce the damage caused by overabundant kangaroos and wallabies'.<sup>3</sup> There is little credible and peer-reviewed evidence that these native wild animals are overabundant. Even if they were, the anthropogenic causes for this should be acknowledged, human activity should be modified to manage the impact we have on native wildlife populations and, only if absolutely necessary, non-lethal measures directed towards the animals themselves should be adopted (for example, fertility control).

The revised Code does not deal with the fundamental problem of enforcement. Shooting takes place at night<sup>4</sup> in remote bushland. Monitoring the shooting and the shooters' interaction with the animals is virtually non-existent. The revised Code states that '[r]equirements must be met for animal welfare purposes' (p4). Yet it provides no information or assurances as to how compliance with the requirements will be enforced.

The ADO's specific concerns are set out below.

### **Shooting kangaroos and wallabies**

The objective of the revised Code is that the 'shooting of kangaroos and wallabies for commercial purposes is conducted in a humane and effective manner that minimises animal pain, suffering and distress' (p10).<sup>5</sup>

For the reasons outlined in this submission, it is the ADO's view that the requirements in the revised Code cannot possibly achieve this objective, and therefore the objective should be revised, or the practices which cannot meet this objective should be proscribed.

The ADO submits that merely 'minimising' pain and suffering is too low a standard, and as such it cannot guarantee that kangaroo and wallaby 'harvesting' will be humane and leads to ineffective requirements.

For example, the revised Code states that shooters should 'avoid shooting during adverse weather that would affect the accuracy of shooting' (p26). The ADO submits that merely advising shooters to 'avoid' shooting is too weak. The revised Code should state that shooters must not shoot in these conditions.

Requirement 2.5 in the revised Code states that:

No more than 3 target kangaroos or wallabies in a group can be shot before the carcasses are checked and retrieved by the harvester.

As there is no timeframe that applies to this requirement, the ADO submits it should be changed to require shooters to check each kangaroo or wallaby after they are shot. This is the absolute minimum required to ensure a basic level of animal welfare. This would ensure the animal is properly killed if not killed outright from the original shot. If the animal is an adult female it would also ensure her pouch is checked and any pouch young dealt with immediately. If there is a delay waiting for three carcasses to be retrieved (a period of time which could include several more animals being shot but not

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<sup>3</sup> The revised Code, p4.

<sup>4</sup> The revised Code, p26: 'Most commercial harvesting of kangaroos and wallabies is done at night with the aid of a spotlight.'

<sup>5</sup> The revised Code, p10. See also p26.

retrieved), the animals shot earlier (ie the first or second animal), and/or any injured or distressed pouch young, could experience considerable pain, suffering and distress before the shooter checks the bodies.

This requirement therefore arguably conflicts with the revised Code's statement that '*as soon as possible* after a female kangaroo or wallaby has been shot it is important to check the pouch and euthanase any pouch young without delay' (p14; emphasis added). The ADO submits that this is a further reason to change the requirement to check victims from three carcasses to checking after every shot.

Similarly, the requirement that harvesters 'must confirm that shot kangaroos and wallabies are dead before processing the carcass' (requirement 2.8, p12) should include a timeframe. Otherwise considerable delays could occur between shooting and processing the carcass, which means an animal who was not killed outright would endure pain, suffering and distress before the shooter dispatches the animal completely.

### **Treatment of wounded and young animals**

The ADO submits that the standards in requirements relating to wounded and young-at-foot animals are unacceptably low. Requiring shooters merely to make 'every reasonable effort'<sup>6</sup> or to do something 'whenever [practically] possible'<sup>7</sup> is inadequate and subjective, and will result in unacceptable levels of pain, suffering and distress in wounded animals and orphaned dependent young.

Studies have shown that shooters will not go after wounded animals or orphaned young who flee from the shooting site. There is no commercial benefit to the shooter in retrieving these animals. The carcasses cannot be sold commercially if under-weight<sup>8</sup>, or if the animal was shot in the body<sup>9</sup>.

Previous government-commissioned reports into commercial harvesting have found that shooters find it difficult to kill larger young because of their size and the hazard of shooting them at close range.<sup>10</sup> Further, they found that the main method of disposal of large pouch young was by releasing them into the bush.<sup>11</sup> One report declared that its research:

... shows that kangaroo harvesters need to make a greater effort to locate and euthanase orphaned young-at-foot. Failure to do so will have significant animal welfare implications.<sup>12</sup>

The animal welfare implications are enormous. Studies have estimated that in a 10-year period:

...a conservative estimate indicates that nearly 4,600,000 young at foot, not including pouch young, were left to suffer an inhumane death during that period.<sup>13</sup>

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<sup>6</sup> The revised Code, pp16-17, 28, 41, 53.

<sup>7</sup> Ibid pp 15, 16, 28, 37, 44-46, 53.

<sup>8</sup> In NSW, see condition 17 in *Licence conditions for Commercial Harvester (Kangaroo) Professional 2020*: <https://www.environment.nsw.gov.au/research-and-publications/publications-search/licence-conditions-commercial-harvester-kangaroo-professional>.

<sup>9</sup> In NSW, see condition 18 in *Licence conditions for Commercial Harvester (Kangaroo) Professional 2020*, *ibid*; and condition 6 in *Licence Conditions Animal Dealer (Kangaroo) 2020*:

<https://www.environment.nsw.gov.au/research-and-publications/publications-search/licence-conditions-animal-dealer-kangaroo>.

<sup>10</sup> Pople, T. and G. Grigg, *Commercial harvesting of Kangaroos in Australia*. Department of Environment, Water, Heritage and the Arts, 1999.

<sup>11</sup> *Ibid*. See also Ben-Ami, D, *A Shot in the Dark. A Report on Kangaroo Harvesting*, 2009, p23.

<sup>12</sup> McLeod S, Sharp T (2014) *Improving the Humaneness of Commercial Kangaroo Harvesting* (Project No. PRJ 004103). Canberra, ACT: Rural Industries Research and Development Corporation, piii.

<sup>13</sup> Ben-Ami, D, *A Shot in the Dark. A Report on Kangaroo Harvesting*, 2009, p22.

In relation to animals wounded but not killed by shooting, requirement 2.6 in the revised Code states:

If there is any concern that the shot animal has only been wounded and not killed, then no further animals can be shot until all reasonable efforts have been made to locate and euthanase the wounded animal.<sup>14</sup>

Again, the ADO is concerned that the revised Code merely requires a shooter to make ‘all reasonable efforts’ to locate a wounded animal. This is a subjective standard and would therefore allow a wide spectrum of circumstances in which shooters could lawfully choose not to go after a fleeing wounded animal. This would have unacceptable animal welfare outcomes for the animal who would presumably die a slow and painful death.

The numbers of ‘misshot’ animals are impossible to know, given the animals who flee after being wounded and the misshot carcasses left in situ due to being commercially worthless. Estimates have, however, been made. For example, RSPCA Australia has estimated that in one year, over 100,000 kangaroos presented to processors would not have been head or brain shot.<sup>15</sup> Again this number is extremely conservative because it would not include animals not retrieved by the shooter.<sup>16</sup>

The ADO therefore submits that the revised Code should contain mandatory requirements that an injured animal or orphaned joey be located. No further shooting should take place until that happens. The shooter is solely responsible for the injury, pain and/or suffering experienced by the animal. The only just and ethical response in that situation is to find the animal and to put her or him out of misery if required. Any lower standard is ethically unacceptable.

#### **Euthanasia by concussive blow to the head**

The revised Code will allow kangaroo shooters to kill young joeys or wounded animals ‘using a concussive blow to the head delivered with sufficient force to crush the skull and destroy the brain’ (requirement 3.10). Studies have revealed that one of the methods used to kill animals in this way by shooters is to hold joeys by the back legs and to hit them on the head with an iron bar.<sup>17</sup> This was found to have serious negative animal welfare consequences, as the joeys ‘struggled and moved their head, making it a more difficult target to hit. These animals sometimes required two or more blows to cause unconsciousness, which is unacceptable as it could result in pain and suffering prior to losing consciousness.’<sup>18</sup>

In relation to delivering a concussive blow to the head, the revised Code states that the ‘efficiency and humaneness of this method depends on the operators’ skill and determination’ (p35). The ADO submits that delivering ‘a concussive blow to the head ... with sufficient force to crush the skull and destroy the brain’ is too specialised a procedure to allow shooters to administer rather than veterinarians or other experts.

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<sup>14</sup> See also requirement 3.8: ‘All reasonable efforts must be made to locate and euthanase kangaroos and wallabies that are wounded during shooting or otherwise injured as part of harvesting operations.’

<sup>15</sup> RSPCA Australia, *A Survey of the Extent of Compliance with the Requirements of the Code of Practice for the Humane Shooting of Kangaroos*, 2002. A head/brain shot is the stipulated way of shooting to achieve a so-called ‘humane’ death: requirement 2.2 in the revised Code, p11.

<sup>16</sup> As previously noted, carcasses of animals who have not been shot in the head are commercially worthless – see notes 8 and 9.

<sup>17</sup> McLeod S, Sharp T (2014) *Improving the Humaneness of Commercial Kangaroo Harvesting* (Project No. PRJ 004103). Canberra, ACT: Rural Industries Research and Development Corporation, p22.

<sup>18</sup> *Ibid.*

In light of the specialised nature of the procedure, and the established practice of implementing this procedure by now discouraged methods,<sup>19</sup> the ADO submits that this form of euthanasia should be removed completely from the revised Code.

### **Enforcement**

The above submissions have noted several questionable practices that are entrenched in the commercial kangaroo and wallaby industries, such as not retrieving wounded animals or orphaned joeys, and hitting juveniles with iron bars as a form of euthanasia. These practices are discouraged in the revised Code, but this raises the important question of how compliance with the requirements under the revised Code will be monitored or enforced so as to change industry practices.

Monitoring and enforcement are already virtually non-existent given the remote conditions in which kangaroo and wallaby shooting takes place. It is not clear therefore how the revised Code will make the commercial kangaroo and wallaby industries any less inhumane than they already are.

This means the same kind of pain and suffering endured by young and wounded animals under the existing Code<sup>20</sup> will in all likelihood continue under the revised Code.

### **Capacity to feel pain – unfurred pouch young**

The ADO is concerned about the revised Code's contention that unfurred pouch young do not feel pain.<sup>21</sup> This suggestion appears to be based on a single source from 11 years ago.<sup>22</sup>

The emphasis in the revised Code on brain function may create too high a threshold regarding the capacity to feel pain. Brain function is not the *sine qua non* of the ability to feel pain. When considering the ability to feel pain, consideration should also be given to the existence of pain sensors as in fish, or the production of pain-reducing endorphins as in nematodes such as earthworms.<sup>23</sup>

The ADO therefore suggests that the precautionary principle should apply and, considering that the revised Code is an animal welfare code, it should presume that all unfurred pouch young can feel pain.

### **Removing young kangaroos and wallabies from pouch**

The ADO is concerned that the revised Code provides no guidance to shooters as to how to remove young joeys from pouches. For example, when discussing killing a joey by concussive blow, the revised Code simply states: 'To deliver the concussive blow, remove the young from the pouch'.<sup>24</sup>

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<sup>19</sup> The revised Code recommends against suspending joeys upside down and trying to hit them with an iron bar (or similar), p35.

<sup>20</sup> *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes*: First Edition published 2008, endorsed by the Natural Resource Management Ministerial Council. McLeod S, Sharp T (2014) *Improving the Humaneness of Commercial Kangaroo Harvesting* (Project No. PRJ 004103). Canberra, ACT: Rural Industries Research and Development Corporation.

<sup>21</sup> The revised Code, pp 32-33.

<sup>22</sup> Cited as: Diesch, TJ, Mellor, DJ, Johnson, CB, Lentle, RG (2008) Responsiveness to painful stimuli in anaesthetised newborn and young animals of varying neurological maturity (wallaby joeys, rat pups and lambs). *AATEX*, 14, 549-552.

<sup>23</sup> Jabr, F, 'It's official: fish feel pain', *Smithsonian Magazine*, 8 Jan 2018: <https://www.smithsonianmag.com/science-nature/fish-feel-pain-180967764/>.

<sup>24</sup> The revised Code, p35.

Some experts suggest that if the joey is attached to the mother's teat, it causes pain to the joey if he or she is removed from the teat, and that instead the teat should be cut off.<sup>25</sup>

The ADO submits that guidelines based on current expert opinion about how to remove pouch young attached to teats should be included in the revised Code to reduce pain and suffering to the animal.

### **Shooting female kangaroos**

The revised Code allows adult female kangaroos or wallabies to be killed as part of the commercial industries. Given the immense pain and suffering that can be inflicted on both the adult animal and, where applicable, her orphaned dependent young<sup>26</sup>, the ADO submits that the revised Code should proscribe the killing of adult females.

The ADO strongly disagrees with the suggestion that offspring could be killed before their mothers are shot, and presumably within eyeshot of their mothers.<sup>27</sup> This would cause immense distress to the mother, especially if the dependent young is only wounded, and/or flees.

### **Lack of representation of animal protection organisations on Project Reference Group**

The ADO notes that RSPCA Australia was the only genuine animal welfare representative on the Project Reference Group that has overseen the development of the revised Code.<sup>28</sup> As a welfarist organisation, RSPCA Australia has an extremely valuable perspective. However, it is not an animal protection perspective, in that it does not advocate for the protection of animals' interests in fundamental matters such as remaining alive, being free from exploitation, preserving family structures, preservation of habitat, and so on. Furthermore we note that according to the membership of the Project Reference Group, only two persons were described as representing animal welfare, compared to a long list of industry and pro-exploitation stakeholders.<sup>29</sup>

The ADO therefore submits that kangaroo and wallaby interests have not been adequately represented during the development of the revised Code. For a more balanced and fair representation, an animal protection organisation<sup>30</sup> should have been part of the Project Reference Group.

### **Other comments**

The 2008 Code commits to being reviewed within 5 years. The revised Code should contain a statement setting out a time by which it will be revised.

The comprehensive dictionary ('Definitions and terms', p6) is an improvement on the existing Code, which contains very few definitions. The ADO suggests, however, that the terms should be listed alphabetically for ease of use. Also in the definition of 'harvester' we query whether the term 'licenced' should be spelt 'licensed'.

The requirement at 1.1 (p8) is awkwardly phrased. In particular, the use of the plural in 'they understand' is ambiguous. The plural nouns that immediately precede it are 'kangaroos and

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<sup>25</sup> Khan, J, 'How to avoid road kill and other tips to help keep wildlife safe this summer', ABC News, 20 December 2019: <https://www.abc.net.au/news/science/2019-12-20/help-injured-wildlife-road-kill-summer/11781534>.

<sup>26</sup> The revised Code, p37.

<sup>27</sup> The revised Code, p39.

<sup>28</sup> The revised Code, pp 3 and 51. The Australian Veterinary Association is not counted as an animal welfare organisation or representative as veterinary practice is a commercial activity carried out for commercial gain.

<sup>29</sup> Pro-exploitation members include AgriFutures Australia (2), pastoral industry (2), kangaroo industry (1), kangaroo management (2), wildlife trade (1), and kangaroo harvesters (input via forums): the revised Code, p51.

<sup>30</sup> For example, Animal Liberation, Animals Australia, or PeTA.

wallabies'. Presumably, however, 'they' is intended to refer back to 'A person' at the start of the sentence. We suggest this requirement be reworded for clarity.

The materials listed in the References (pp18-19) appear dated, with the more recent texts being either generic<sup>31</sup>, or about animals at slaughterhouses<sup>32</sup>, rather than kangaroos and/or wallabies.

Finally, there is a typographical error in the second dot point on page 22 ('must be hold').

Thank you for taking our submissions into consideration.

Tara Ward  
Executive Director and Senior Lawyer (Volunteer)

Animal Defenders Office

31 December 2019

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<sup>31</sup> OIE (2018). Terrestrial Animal Health Code.

<sup>32</sup> Terlouw, C., Bourguet, C. & Deiss, V. (2016). Consciousness, unconsciousness and death in the context of slaughter. Lambooij, B. & Algers, B. (2016). Mechanical stunning and killing methods. In: Verlade A, Raj M (eds) *Animal Welfare at Slaughter*.