



Animal Defenders Office
Using the law to protect animals

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Biodiversity Conservation Act Review
Department of Planning and Environment
Locked Bag 5022
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By email: biodiversity.review@environment.nsw.gov.au

Dear Sir/Madam

Submission to the Statutory Review of the Biodiversity Conservation Act 2016

Thank you for the opportunity to provide a submission to the statutory review of the *Biodiversity Conservation Act 2016* (NSW) (**the Act**). Our submissions focus on the protection of wildlife. Our responses to relevant questions in the review's Consultation Paper are set out below.¹

About the Animal Defenders Office

The Animal Defenders Office (**ADO**) is a nationally accredited community legal centre that specialises in animal law. The ADO is run by volunteer legal practitioners, academics, law graduates and students. The ADO is a member of Community Legal Centres NSW Inc., the peak body representing community legal centres in NSW.

Further information about the ADO can be found at www.ado.org.au.

RESPONSES TO THE CONSULTATION PAPER

'Regulating impacts on, and caring for, native animals and plants'

Q20. How could the Biodiversity Conservation Act best support the protection of native animals and plants?

Protecting native animals

The ADO agrees with the 'message' in the Consultation Paper that '[t]he Act needs to play more of a role in protecting the welfare of native animals' (p 14).

The Act states that its purpose is 'to maintain a healthy, productive and resilient environment ... consistent with the principles of ecologically sustainable development' (s 1.3).

The ADO submits that it is inappropriate to include the protection of native animals in legislation based on and promoting the principles of ecologically sustainable development. These are often mutually exclusive and conflicting goals. The ADO submits that biodiversity conservation in NSW should move away from the principle of 'sustainable development' and

¹ *Statutory review of the Biodiversity Conservation Act 2016: Consultation Paper*, NSW Department of Planning and Environment, 2023.

instead place greater emphasis on principles that will enhance biodiversity outcomes, wildlife protection, and climate change mitigation.

Protecting all native animals—case study: dingoes

Under the Act, it is an offence to harm a protected animal (s 2.1(1)(c)). Under Schedule 5 to the Act, protected animals include ‘mammals of any species (including aquatic or amphibious mammals **but not including dingoes**)’ that are native to Australia (emphasis added).

The ADO submits that the exclusion of dingoes from the class of protected native animals is unjustifiable. The ADO recommends that the Act recognises that animals are sentient and that it protects all native animals on that basis.

As a result of not being protected, dingoes are subjected to unrestrained lethal control measures in NSW, despite the ecological role they have played for more than 4000 years and the disastrous cascading impacts that lethal control has had on a range of other native Australian animal species.²

Dingoes serve an important role as biodiversity regulators, maintaining a healthy ecosystem through their suppression of introduced predator populations, such as cats and foxes, which are regarded as an extinction threat to smaller native Australian animals.³ Moreover, their predation on large native herbivores, such as kangaroos, is critical for limiting grazing pressure on grasslands and acts as a resource guard for these and many other native species.⁴ Human intervention through lethal control measures has been shown to interfere with natural dingo pack structures by dispersing them, leading to increases in hybridisation with wild dogs.⁵ This is because control measures largely target mature pack members, leaving the younger dingoes with limited skills to hunt wild prey and maintain their territorial integrity.⁶ Dispersal into smaller hybridised packs of dingoes with limited hunting skills has resulted in higher rates of predation on farmed animals, who present as an easier target.⁷ As such, not only does hybridisation threaten dingoes as a species, it counterintuitively increases damages to farmed animals that would not otherwise occur if pack structures had not been systematically fractured.⁸ These cascading effects threaten the extinction of other native Australian animals who face increased predatory pressure from the wildlife that dingoes control when pack structures are maintained.⁹

² Aaron Greenville et al, ‘Demise of the Dingo’ (2019) 44(3) *Austral Ecology* 555, 555-560 (Greenville et al).

³ See Leila A. Brook, Christopher N. Johnson and Euan G. Richie, ‘Effects of Predator Control on Behaviour of an Apex Predator and Indirect Consequences for Mesopredator Suppression’ (2012) 49 *Journal of Applied Ecology* 1278-86; Christopher N. Johnson et al, ‘Rarity of a Top Predator Triggers Continent-Wide Collapse of Mammal Prey: Dingoes and Marsupials in Australia’ (Proceedings of the Royal Society B: Biological Sciences, 2007) 274, 341-6.

⁴ See David Croquenot and David M. Forsyth, ‘Exploitation Ecosystems and Trophic Cascades in Non-Equilibrium Systems: Pasture – Red Kangaroo – Dingo Interactions in Arid Australia’ (2013) 122(9) *Oikos* 1292.

⁵ See Arian D. Wallach et al, ‘More than Mere Numbers: The Impact of Lethal Control on the Social Stability of a Top-Order Predator’ (2009) 4(9) *PLOS ONE* e6861 (Wallach et al).

⁶ *Ibid.*

⁷ Greenville et al (n 1) 555.

⁸ Wallach et al (n 4).

⁹ See Adrian D. Wallach et al, ‘Predator Control Promotes Invasive Dominated Ecological States’ (2010) 13(8) *Ecology Letters* 1008.

Lethal control measures in Victoria have contributed to dingoes being classified as a ‘threatened protected species’¹⁰ that cannot be interfered with on public land per the *Wildlife Act 1975* (Vic). Similarly, dingoes are protected in public areas under the *Territory Parks and Wildlife Conservation Act 1976* (NT), in national parks under the *Nature Conservation Act 1992* (Qld) and in core areas of national park land under the *Nature Conservation Act 2014* (ACT), where they cannot be interfered with.¹¹ The Act could better support the protection of native wildlife by removing the exemption of dingoes from protection status and bringing the Act in alignment with the regulatory treatment of dingoes in the aforementioned jurisdictions. Safeguarding dingo protection is not just a critical necessity for dingoes, it also impacts the protection of many other native Australian species that are threatened by the ecological disruptions caused by human interference with dingo populations.

Keystone species

The ADO submits that the Act should protect native animals regardless of their estimated population status. Under this principle, ‘keystone species’, ie those whose ecological contributions are regarded as essential to the survival of other plants and species, should also be protected, regardless of their impact on human activities such as agriculture. This principle would ensure that species such as kangaroos and other macropods would be recognised for their role in preserving and maintaining local ecosystems and protected at both the individual and species level. The ADO submits that recognition of, and protections for, these species should be incorporated into the Act.

Defences to offences—case study: wildlife on development sites

The ADO submits that the defences specified in Division 2 of Part 2 of the Act are too broad and undermine the minimal protections for native animals that the Act currently affords.¹²

Of particular concern is the defence based on carrying out developments in accordance with a development consent (s 2.8(a)(a)(i)). This defence would operate to legalise conduct that would otherwise constitute an offence under the Act against wildlife on development sites (eg harming a protected animal¹³).

The ADO submits that there needs to be a clearer regulatory framework to protect wildlife on development sites. The NSW Government’s *People and wildlife policy* recently summarised the protection framework for wildlife on development sites as follows:¹⁴

Protection of wildlife on development sites needs to be considered by those proposing to undertake a development. Statutory protections exist to protect wildlife, and it is the role of the relevant planning authority to assess the potential impacts on wildlife of a proposed development or activity.

¹⁰ See the *Flora and Fauna Guarantee Act 1988* (Vic).

¹¹ Without a permit and with the exception of public areas that form the boundaries of private land.

¹² See the Act, Division 1 ‘Offences’.

¹³ Harming a protected animal is an offence under s2.1(1)(c) of the Act.

¹⁴ *People and wildlife policy*, NSW Department of Planning and Environment (DPE) 2022, <https://www.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/park-policies/people-and-wildlife-policy>, pars. 47-48.

Developments or activities that are authorised under the *Environmental Planning and Assessment Act 1979*, including any wildlife management actions authorised by such approvals, have a defence to prosecution for certain offences under the BC Act (Section 2.8(1)(a)).

The ADO submits that this approach is inadequate, as recently demonstrated by the ‘Mirvac’ development in West Pennant Hills in NSW.¹⁵ The project involves building a large residential area in urban bush habitat. The project was approved by the Hills Shire Council in 2021, subject to several conditions including the preparation of a fauna management plan (FMP).¹⁶ Mirvac commissioned an ecology company to prepare the FMP to support the approved Demolition Development Application (DA) for the site.¹⁷ The FMP set out processes and procedures for matters including ‘fauna protection, rescue, [and] relocation’.¹⁸ The measures relating directly to wildlife included:

- Relocation of individuals into areas of retained native vegetation within the site;
- Fauna handling protocols;
- Procedures for the rescue and relocation of fauna encountered during the clearing/demolition process, including number and type of personnel required to undertake each task, including recording of details for the treatment and rehabilitation of any injured fauna; and
- Humane euthanasia protocols for ‘pest’ species.¹⁹

The FMP appeared to require that any interaction with animals under the DA must be carried out in accordance with an ‘Animal Ethics Licence’, presumably granted under the *Animal Research Act 1985* (NSW):

All personnel undertaking fauna works required under this FMP will hold/be covered by appropriate NSW Animal Ethics Licences and NSW Scientific Licences to conduct ecological works.²⁰

Yet there is no evidence of any scientific research licence or research authority being granted for activities involving animals at that specific site. This implies that no licence or permit process had been undertaken to assess the risks to animals on that site. This is a concern as high-risk activities such as handling, trapping and euthanasia were expected to be undertaken at the site.

¹⁵ Kurt Johnson, ‘Bulldozing trust: when the big build back tramples on communities and wildlife’, *MichaelWestMedia—Independent Journalists*, 27 Aug 2022, <https://michaelwest.com.au/covid-recovery-projects-endanger-animals-and-environment/>.

¹⁶ FMP p4.

¹⁷ FMP p1. DA reference number 585/2021/HC for proposed works at 55 Coonara Avenue, West Pennant Hills NSW.

¹⁸ FMP p4.

¹⁹ FMP p1.

²⁰ FMP p2.

The ADO submits that as a minimum, the Act should establish a regulatory framework for ensuring that wildlife on development sites is protected. The framework should require:

- Mandatory FMPs for all development sites.
- Mandatory compliance with the FMPs—failure to comply would mean that the defence in s 2.8(1)(a)(i) would not be available.
- Mandatory approvals in the form of a licence for specific activities affecting wildlife on individual sites, including a licence for ‘spotting and catching’ activities.
- Mandatory requirement that high-risk activities involving wildlife be undertaken by experts and in accordance with relevant guidelines and codes of practice such as the *Code of Practice for Injured, Sick or Orphaned Protected Fauna*.²¹

The Act should also clarify that the *Prevention of Cruelty to Animals Act 1979* (NSW) and regulations apply to the treatment of all animals on site.

Risk-based approach to regulating interaction with wildlife

The purpose of the Act is to maintain a healthy, productive and resilient environment. One of the principles by which the Act will achieve this is ‘to regulate human interactions with wildlife by applying a risk-based approach’ (s 1.3(g)).

This ‘risk-based approach’ differentiates between ‘low’ and ‘high’ risk activities involving wildlife. The risk-based approach to regulating human interactions with wildlife is applied to many species of native animals, including Australia’s unique kangaroos and other macropods.

A risk-based approach to regulating interaction with wildlife raises the questions of who determines the level of risk and according to what criteria. The ADO submits that the Act should specify that risks to the welfare of individual sentient animals must be taken into account when determining ‘risk levels’. Explicitly requiring that animal welfare be included in assessments of risk may lead to meaningful protections for native wildlife. The ADO notes that the NSW Government’s *People and wildlife policy* is moving in this direction:²²

NPWS takes a balanced, **risk-based approach** to managing wildlife incidents, applying scientific principles based on best available evidence, the precautionary principle and **prioritising animal welfare**.

Animal welfare is a key consideration in managing wildlife issues. Non-lethal methods to manage wildlife will be used where possible and where this supports optimal animal welfare or conservation outcomes.

²¹ <https://www.environment.nsw.gov.au/research-and-publications/publications-search/code-of-practice-for-injured-sick-and-orphaned-protected-fauna>.

²² Op.cit., emphases added.

Q21. Are the requirements and conditions for biodiversity conservation licences in the Act suitable?

Regulatory framework based on licences—case study: non-commercial kangaroo shooting

The ADO is particularly concerned about the removal of the requirement for biodiversity conservation licences for the killing of kangaroos by non-commercial shooters.

As noted earlier, harming a protected native animal is *prima facie* an offence under section 2.1(1)(c) of the Act. However, under section 2.10 of the Act it is a defence if the alleged offending conduct was authorised by a biodiversity conservation licence. A licence to harm granted under the Act is therefore necessary to render lawful the killing of a protected animal, which would otherwise be a breach of the Act.

The ADO notes that ‘a person is not eligible to hold a biodiversity conservation licence unless the Environment Agency Head is satisfied that the person is a fit and proper person to hold the licence’.²³

The inference is that harming a protected animal is considered sufficiently serious that a person can only do it if they have applied for and been granted a licence to harm, and that the applicant’s suitability to hold a licence to harm will be assessed during the application process.

For this reason the ADO does not support the NSW Government’s 2018 policy changes that removed the requirement for non-commercial kangaroo shooters to hold a biodiversity conservation licence.²⁴ As a result of the changes only the landholder is required to hold a licence, while the persons interacting with the wildlife (ie the shooters) are not subjected to any licence requirements or conditions. The changes also mean the authorising agency has no control over whether non-commercial shooters, ie the persons actually killing the animals, are ‘fit and proper persons’ because the shooters are not the licence applicants.

It is also unclear what defence applies, if any, to non-commercial shooters who are harming protected animals without a licence, which is *prima facie* an offence under the Act.

“Shoot and let lie” policy

Before the requirement for shooters to hold non-commercial licences to harm was removed in 2018, both commercial and non-commercial shooters were required to obtain tags that had to be affixed to every kangaroo shot by the shooter. The tags are issued according to species, location and year. The tagging system purportedly enables authorities to track the killing of kangaroos against quotas and to maintain population health.²⁵

²³ *Biodiversity Conservation Regulation 2017* (NSW), clause 2.27.

²⁴ ‘How has non-commercial kangaroo licensing changed over the last few years?’, DPE, <https://www.environment.nsw.gov.au/licences-and-permits/wildlife-licences/licences-to-control-or-harm/licences-to-harm-kangaroos>.

²⁵ Office of Environment and Heritage (NSW) 2017, *New South Wales Commercial Kangaroo Harvest Management Plan 2017–2021*, Office of Environment and Heritage, Department of Planning and Environment (NSW), Sydney, pp 10, 18.

In the NSW Legislative Council on 15 August 2018 Niall Blair MLC, the then Minister for Primary Industries, announced:

...Under the new system carcasses will no longer need to be tagged and left in the paddock and landholders will be able to use the carcasses for a range of non-commercial purposes such as bait meat. ...the condition of the "shoot and let lie"—leaving paper tags sitting on carcasses—was something that no-one was engaging with appropriately.²⁶

By the then-Minister's own admission, the process of 'tagging' and leaving shot kangaroo bodies in the field was not being complied with. However, rather than trying to improve compliance and enforcement of relevant laws and policies, the NSW Government simply removed the requirement altogether.

Another problem with abolishing the 'shoot and let lie' policy is that removing carcasses equates to removing evidence. For example, if a kangaroo is shot in the body, this does not meet the definition of 'humane death' in the relevant code of practice, because it does not result in an 'instantaneous loss of consciousness and rapid death without regaining consciousness'.²⁷ A body-shot kangaroo carcass is therefore potential evidence of animal cruelty. However, if carcasses can lawfully be removed from the field, there is no evidence of compliance – or non-compliance – with the relevant animal welfare code of practice. By way of comparison, mandatory conditions are imposed on commercial licences to harm requiring body-shot carcasses or underweight carcasses to be tagged and mandating that the kangaroo 'must not be moved from where it was shot'.²⁸

For these reasons, and because the non-commercial killing of kangaroos inflicts immense harm on many animals,²⁹ the ADO submits that removal of the requirement for a licence for non-commercial kangaroo shooters should be overturned and the requirement for a licence for all kangaroo shooters be specifically included in the Act.

'Compliance and enforcement'

Q23. Are the Biodiversity Conservation Act's penalties and enforcement instruments an effective way to support the Act to achieve its objectives?

Q24. How can the Act give the community more confidence and clarity in the approach to regulation?

²⁶ *Hansard*, NSW Parliament, Legislative Council, Wednesday 15 August 2018, pp765-6.

²⁷ *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes*, AgriFutures Australia 2020 (**Commercial Code**), p8 and 13, <https://www.agrifutures.com.au/wp-content/uploads/2020/11/20-126-digital.pdf>; and *National code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non-Commercial Purposes*, Natural Resource Management Ministerial Council 2008, (**Non-commercial Code**) p9, <http://www.environment.gov.au/biodiversity/wildlife-trade/publications/national-code-practice-humane-shooting-kangaroos-and-wallabies-non-commercial>.

²⁸ *Professional Kangaroo Harvester Licence. Conditions of Licence*, NSW Department of Planning and Environment, effective 1 January 2023, conditions 41 and 43, <https://www.environment.nsw.gov.au/topics/animals-and-plants/wildlife-management/kangaroo-management/fees-and-forms>.

²⁹ The *2021 Annual Report for NSW Commercial Kangaroo Harvest Management Plan 2017-21* estimates a maximum non-commercial cull figure of 72, 246 kangaroos (p14).

Compliance and enforcement mechanisms

The ADO submits that the Act's compliance and enforcement framework in relation to protecting native animals is characterised by regulatory weaknesses and 'lacklustre enforcement mechanisms'.³⁰ The shooting of kangaroos and other macropods will be used to illustrate the shortcomings of the compliance and enforcement regime relating to wildlife under the Act.

Commercial kangaroo killing

Individual shooters can apply for and obtain a licence to harm kangaroos for commercial purposes under the Act.³¹ Commercial kangaroo killing is reportedly monitored by inspectors from the relevant government agency responsible for administering the Commercial Kangaroo Harvesting Management Plan.³²

It is a condition of a commercial shooting licence that kangaroos are 'harvested' in accordance with the Commercial Code.³³ It is an offence under the Act not to comply with the condition of a licence granted under the Act (s 2.14(4)).

Kangaroo shooting occurs in vast remote areas and at night. In 'The Role of Inspections in the Commercial Kangaroo Industry', a seminal article published in 2013, several NSW academics considered how compliance with the licence conditions and other legal requirements relating to shooting is monitored and enforced.³⁴ The authors found that the legal framework underpinning commercial kangaroo killing across Australia, including in NSW, was characterised by regulatory weaknesses and 'lacklustre enforcement mechanisms'. These mechanisms mainly consisted of periodic inspections by government agencies. However, the authors found that:

- The general lack of inspections of shooters by the enforcement agencies meant that the agencies could not ensure that shooters were complying with the relevant animal welfare shooting code (p 11);
- Where inspections did occur, they did detect some breaches directly linked to the animal welfare objectives of the Code, calling into question the extent to which those objectives were being met (p 2);
- In general, inspections of shooters in NSW did not relate to compliance with the animal welfare code but instead related to other matters (p 11);
- The majority of offences detected in NSW related to reporting requirements (p 13);
- Relevant details such as the total number of carcasses inspected were not disclosed in reports (p 12);³⁵ and

³⁰ K Boom, Dr D Ben Ami, L Boronyak, and Dr S Riley, 'The Role of Inspections in the Commercial Kangaroo Industry,' *International Journal of Rural Law and Policy*, 2013, p2.

³¹ The Act, Part 2, Division 3.

³² The current regulator is the NSW Department of Planning and Environment.

³³ *Professional Kangaroo Harvester Licence. Conditions of Licence* (2023), condition 14.

³⁴ K Boom, Dr D Ben Ami, L Boronyak, and Dr S Riley, 'The Role of Inspections in the Commercial Kangaroo Industry,' *International Journal of Rural Law and Policy*, 2013.

³⁵ Only the Queensland government agency disclosed this detail: p12.

- The ability and resolve of the agencies to inspect, charge and prosecute offenders may have been impeded by conflicts of interest between operating a kangaroo management program and ensuring the welfare of kangaroos (pp 7, 18).

Recent compliance measures in commercial killing zones

NSW government regulators have continued to report on compliance aspects of commercial kangaroo killing on an annual basis since at least 2010.³⁶

The ADO submits that these reports show that not much has changed since the publication of the article in 2013. The legal framework applying to commercial kangaroo killing is still characterised by regulatory weaknesses and lacklustre enforcement mechanisms, with no noticeable improvement in the intervening decade.

The most recent annual report on the commercial kangaroo ‘harvest’ in NSW reports that 497,285 macropods were killed for commercial purposes and there were 571 licensed commercial shooters.³⁷

The last four annual reports state that ‘[c]ompliance audits of licensees are performed continuously’.³⁸ According to the reports, the ‘audits’ consisted of inspections of carcasses, harvesters and/or harvesters’ vehicles and equipment, chiller premises, and processors for compliance with licence conditions.³⁹

There is no explanation of what ‘continuously’ means. The only actual inspection numbers provided are in relation to chiller premises, processing works and meat harvester vehicles.⁴⁰ The number of carcasses inspected continues to be a notable omission from the reports. Most importantly from an animal welfare perspective, there is no information in any of the reports about audits or monitoring carried out at shooting locations.

Inspections at the point of kill

The ADO submits that failing to inspect or monitor the shooting locations, or ‘point of kill’, is a serious flaw in the compliance regime under the Act, as this is where pain and suffering is inflicted on animals. It is also where evidence of non-compliance with animal welfare laws and codes will be most readily available.

The codes of practice for kangaroo shooting require shooters to aim for the target kangaroo’s brain to achieve instantaneous loss of consciousness and rapid death without regaining consciousness.⁴¹ When a head shot is not achieved and the animal is instead shot in the neck

³⁶ The NSW Department of Planning and Environment’s webpage ‘Kangaroo management plans, reports and research—Annual Reports’ contains Annual Reports from 2010 to 2021:

<https://www.environment.nsw.gov.au/topics/animals-and-plants/wildlife-management/kangaroo-management/kangaroo-population-monitoring-and-reporting/reports-and-research>.

³⁷ 2021 Annual Report for NSW Commercial Kangaroo Harvest Management Plan 2017-21, p2 table 1, and p16. For all Annual Reports relating to NSW commercial kangaroo shooting see:

<https://www.environment.nsw.gov.au/topics/animals-and-plants/wildlife-management/kangaroo-management/kangaroo-population-monitoring-and-reporting/reports-and-research>.

³⁸ 2018 Annual Report, p12; 2019 Annual Report, p17; 2020 Annual Report, p20; 2021 Annual Report, p16.

³⁹ 2019 Annual Report, p17; 2020 Annual Report, p20, 2021 Annual Report, p16.

⁴⁰ 2018 Annual Report, p13; 2019 Annual Report, p17; 2020 Annual Report, p21, 2021 Annual Report, p17.

⁴¹ Commercial Code, pp8, 13; Non-commercial Code, p9.

or body, the animal will not be killed outright and will suffer. This is acknowledged in the Commercial Code,⁴² and has been accepted by the Commonwealth Administrative Appeals Tribunal.⁴³ This first-hand account by a former commercial kangaroo shooter attests to the painful consequences of a body shot for the target animal:

The mouth of a kangaroo can be blown off and the kangaroo can escape to die of shock and starvation. Forearms can be blown off, as can ears, eyes and noses. Stomachs can be hit expelling the contents with the kangaroo still alive. Backbones can be pulverized to an unrecognizable state etc. Hind legs can be shattered with the kangaroo desperately trying to get away on the other or without the use of either...⁴⁴

From an animal welfare perspective, establishing accurate figures of the number of kangaroos who are mis-shot and wounded each year should be a key priority, as this could help determine whether the shooting codes are achieving their animal welfare objectives. The obvious place to do this would be in the field at the point of kill, but there is no evidence that this critical point in the process is monitored. Instead, long after the killing has occurred and far away from the point of kill, chillers are inspected for ‘non-head-shot carcasses’ as just one of several other (administrative) matters such as ‘valid tags’.⁴⁵ The last four Annual Reports also refer to investigating ‘instances of non-head-shot kangaroo carcasses’ originating in NSW and reported by animal dealers or processing works from other jurisdictions.⁴⁶ Almost identical wording is used in each report, and no details are provided as to number or outcome. The point of repeating this standard sentence in each report is not clear, other than to confirm that non-head-shot kangaroo carcasses from NSW do end up in processing facilities in other jurisdictions.

The failure to monitor for body shots at the point where they occur is reflected in the low number detected in inspections further down the commercial killing process. The 2021 Annual Report shows that of the 30 ‘compliance response outputs for 2021’, nine were for ‘non-head shot’, resulting in one advisory letter, four official cautions, two warning letters, and two penalty infringement notices.⁴⁷

The ADO submits that monitoring the prevalence of body shots at chillers or ‘animal dealer processing works’ is completely inadequate from an animal welfare compliance perspective because it will never reflect the true number of mis-shot animals. Commercial shooters are not paid for body-shot kangaroos and therefore do not bring them to processing facilities.⁴⁸ Wounded animals who escape will not be counted. Any wounded animal who is not retrieved will not be tagged, so there will be no evidence linking that animal to the shooter responsible for the pain and suffering inflicted on the animal.

⁴² Commercial Code, p26.

⁴³ *Wildlife Protection Association of Australia Inc and Minister for the Environment, Heritage and the Arts [2008] AATA 717* at [47].

⁴⁴ D Nicholls, ‘The Kangaroo – Falsely Maligned by Tradition’ in M Wilson and D B Croft (eds), *Kangaroos Myths and Realities* (Australian Wildlife Protection Council, 3rd ed, 2005), 38.

⁴⁵ See for example 2021 Annual Report, p17.

⁴⁶ 2018 Annual Report, p13; 2019 Annual Report, p17; 2020 Annual Report, p21, 2021 Annual Report, p17.

⁴⁷ 2021 Annual Report, p18 table 6.

⁴⁸ Voiceless, ‘How are kangaroos killed?’, <https://voiceless.org.au/hot-topics/kangaroos/>.

As an illustration of the extent of the problem, RSPCA Australia has estimated that in one year, over 100,000 kangaroos presented to processors would not have been head or brain shot.⁴⁹ Again, this number is conservative because it would not include animals unretrieved by the shooter.

The ADO therefore submits that killing points should be frequently monitored and inspected by enforcement officers. A moratorium on kangaroo shooting should also be considered until adequate inspection and compliance measures are implemented to reduce the incidence of body shots and the suffering they inflict.

Other enforcement mechanisms

Recent reporting periods are characterised by a preponderance of low-level enforcement outcomes such as cautions, warning notices, compliance letters, and penalty infringement notices.

By contrast, no licence or registration was cancelled between 2012 and 2019 or in 2021.⁵⁰ Only one licence is reported as having been cancelled in 2020.⁵¹

Similarly, in 2012, 2015-2019, and 2021 no prosecutions were reported.⁵² The 2013, 2014 and 2020 annual reports state that there was one prosecution in each year,⁵³ but no details are provided about the reason for the prosecutions.

Between 2012 and 2019, OEH (the enforcement agency at the time) confirmed it received reports of illegal shooting during the relevant year but did not provide the number of reports received, investigated, or dismissed.⁵⁴ Virtually identical wording was used in all reports, suggesting standard words rather than an accurate report on events during the particular year.⁵⁵ Subsequent annual reports do not appear to report on illegal shooting per se.

No surveillance activities were conducted between 2014 and 2018. Subsequent reports do refer to surveillance activities conducted with other agencies⁵⁶, but no information is provided to clarify whether non-compliance with the relevant animal welfare code, or potential animal cruelty offences, were detected or investigated.

This case study highlights how the current compliance framework under the Act in relation to the commercial shooting of wildlife continues to be characterised by low inspection rates, poorly targeted inspections, inadequate monitoring, and insufficient reporting data. More sophisticated compliance measures and regulatory responses such as licence cancellations, surveillance or prosecutions are used rarely, if at all.

⁴⁹ RSPCA Australia, *A Survey of the Extent of Compliance with the Requirements of the Code of Practice for the Humane Shooting of Kangaroos*, 2002.

⁵⁰ The NSW Department of Planning and Environment's webpage 'Kangaroo management plans, reports and research—Annual Reports', <https://www.environment.nsw.gov.au/topics/animals-and-plants/wildlife-management/kangaroo-management/kangaroo-population-monitoring-and-reporting/reports-and-research>.

⁵¹ 2020 Annual Report, p22.

⁵² For example: 2018 Annual Report, p14; 2019 Annual Report, p18; 2021 Annual Report, p18.

⁵³ 2013: prosecution completed. 2014: no additional information. 2020: prosecution commenced.

⁵⁴ 2018 Annual Report, p12; 2019 Annual Report, p17.

⁵⁵ The 2012 Annual Report contains slightly more detail about the process but not subject matter (p18).

⁵⁶ Eg NSW Police Force and NSW Department of Primary Industries Game Licensing Unit: 2021 Annual Report, p16.

Non-commercial kangaroo shooting—compliance and enforcement issues

The NSW Department of Planning and Environment (the current regulator), states on its website that:⁵⁷

All non-commercial shooting of kangaroos and wallabies must comply with the [National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non-Commercial Purposes](#) to ensure kangaroos are killed in a way that minimises pain and suffering. Landholders must ensure all shooters operating under their licence are provided with a copy of this code.

While compliance with the Commercial Code is a mandatory condition on commercial shooters' licences,⁵⁸ the same cannot be said for non-commercial shooting as the shooters are not required to obtain a licence. It is, however, a condition on the landholder's licence to harm that '[a]ll kangaroos including dependent young (i.e. pouch young, young at foot) must be harmed in accordance with the National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non-commercial Purposes.'⁵⁹

However, neither the website nor the kangaroo management program annual reports provide information about how compliance with the Code by non-commercial shooters is monitored or enforced. There is no data in relation to inspections, surveillance, or compliance activity conducted at any point in the non-commercial killing process. This lack of compliance information makes it impossible to determine whether the Code is implemented effectively or at all.

It therefore appears that the degree to which animal welfare laws and codes are complied with in non-commercial killing zones is unknown or unknowable. This point is acknowledged in a recent article:

...although enforcement of animal welfare standards is feasible in the commercial system since there are points in the supply chain (e.g. chillers and processing works) where carcasses can be checked for compliance with the Code of Practice, this is much more difficult with the non-commercial cull as there are no definable locations where checking can occur.⁶⁰

The ADO submits that there is no framework in place in NSW for monitoring or reporting on compliance with animal welfare codes or guidelines by non-commercial kangaroo shooters. This is unacceptable, given the significant numbers of kangaroos killed in NSW on a non-commercial basis.⁶¹

The ADO also submits that compliance with the Non-commercial Code must be monitored and its animal welfare standards enforced. At the very least, the same level of 'compliance audits' and monitoring currently performed in commercial killing zones should also be carried out at non-commercial killing sites.

⁵⁷ <https://www.environment.nsw.gov.au/licences-and-permits/wildlife/licences/licences-to-control-or-harm/licences-to-harm-kangaroos>.

⁵⁸ *Professional Kangaroo Harvester Licence. Conditions of Licence*, op.cit, condition 10.

⁵⁹ Licence conditions, Licence to Harm Kangaroos, effective 8 August 2018, condition 6.

⁶⁰ McLeod and Hacker (2020), 'Balancing stakeholder interests in kangaroo management - historical perspectives and future prospects,' *The Rangeland Journal*, 41, p571.

⁶¹ The 2021 Annual Report estimates a maximum non-commercial cull figure of 72, 246 kangaroos, p14.

The 2013 article discussed earlier suggests various improvements to achieve more effective enforcement of animal welfare shooting codes of practice, including:

- More monitoring, to inform whether the code is operating as intended and whether more or less government intervention is required (p11);
- Integrating the code into State regulations ‘to ensure that its provisions are enforceable in relation to all persons participating in the commercial kangaroo industry’ (p18) and ‘with more focus on its objective of animal welfare’ (p19); and
- Enhancing inspection capability by mounting video surveillance on shooters’ trucks (p18).

The ADO endorses these recommendations and submits that they are as urgent today as they were in 2013.

Finally, the ADO submits that monitoring and inspections relating to animal welfare should be reported in wildlife management program annual reports, and that compliance officers should monitor shooting of wildlife at killing points, to ensure compliance with the Act and animal welfare laws.

Conclusion

In 2005 the internationally renowned Australian philosopher Peter Singer proposed how the law in Australia should be reformed to protect native animals:⁶²

We need a Mabo decision for Australia’s wild animals, a legal recognition of their special status as original residents of Australia, alongside its original [human] inhabitants. The only ethical approach is one that gives their interests equal consideration alongside similar human interests.

Given the vast numbers of native animals harmed by humans in NSW and the fundamental flaws and gaps in the legal framework that purports to protect them, the ADO commends this proposal to the review of the Act.

Thank you for taking these submissions into consideration.

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⁶² Peter Singer, ‘Preface’ to *Kangaroos: Myths and Realities*, ed. M Wilson and DB Croft, Australian Wildlife Protection Council, 2005.