



Animal Defenders Office

Using the law to protect animals

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The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

GFAC Regulation Submission
DPI Hunting
Locked Bag 21
Orange NSW 2800

By email: hunting.stakeholders@dpi.nsw.gov.au

Dear Sir/Madam

Submission on the proposed Game and Feral Animal Control Regulation 2022 and RIS

Thank you for the opportunity to provide submissions about the proposed Game and Feral Animal Control Regulation 2022 (“proposed regulation”) and the Regulatory Impact Statement (“RIS”) prepared by the NSW Department of Primary Industries (“DPI”).¹

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 by volunteer professionals and students. The ADO 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 NSW Inc., the peak body representing community legal centres in NSW.

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

The ADO does not support the proposed regulation and RIS because the changes they propose are neither justified nor based on contemporary community attitudes and expectations. This view is based on the following submissions.

Flawed analysis of the benefits and costs of the regulation

The purported justification for the proposed regulation is based on an analysis of the benefits and costs of the proposed regulation and a limited number of alternative options specified in the RIS.²

The ADO submits that the analysis of the benefits and costs of the options is fundamentally flawed.

¹ Available at: <https://www.haveyoursay.nsw.gov.au/dpi-regulation-changes>.

² The RIS specifies the options at [6.1] (p 30):

The GFAC Regulation contains the current regulatory provisions and under the base case (Option 1) these provisions would be remade with no change. Three options will be assessed against the base case:

- Option 2: Make the proposed Regulation
- Option 3: Self-regulation (allowing the GFAC Regulation to lapse)
- Option 4: Co-regulation (allow the GFAC Regulation to lapse).

These are the only options considered feasible in this RIS.

Proposed regulation based on flawed consultation

The proposed regulation regulates how humans may harm animals with lethal weapons. It permits the harm to be undertaken and proposes minimal restrictions on who can inflict the harm and how it can be inflicted.

It is astonishing that the impact on the target animals, referred to in the legislation as ‘game animals’³, is almost absent from the RIS and its consideration of the benefits and costs of the proposed regulation and alternatives. Equally astonishing is the lack of consideration of the impact on landholders who live near hunting zones and whose lives, including their physical and mental wellbeing, are directly and negatively impacted by hunting activities undertaken on adjacent land.⁴

This lack of consideration is exemplified in the failure to identify or consult with relevant stakeholders, such as organisations promoting the interests of animals, or community organisations of landholders opposed to hunting, in preparing the proposed regulation. These organisations or entities are not referred to in the list of stakeholders in the RIS.⁵ On the contrary, the ‘direct’ stakeholders that are specified consist entirely of hunting industry and government entities. The RIS also identifies ‘impacted parties’ as ‘businesses, consumers, the community, government and the environment’.⁶ Inconceivably, animals (and the organisations established to protect them) are not listed as ‘impacted parties’. This kind of skewed consultation arguably amounts to ‘regulatory capture’ of the regulator (DPI) which has prioritised the particular interests of its industry clients over the interests of animal welfare advocates and supporters, local community landholders and groups, the general community, and non-human animals.

This regulatory capture informs not only the RIS’s preference for the proposed regulation (Option 2) but also the failure to consider banning hunting on animal welfare grounds as an option. The RIS acknowledges the likelihood of harm to animals:⁷

Due to the nature of hunting, there is a risk that hunted animals may be killed inhumanely (negative externality).

The RIS even contemplates a partial ban as a potential option when it puts forward the scenario of ‘prohibiting hunting activities on public hunting land’.⁸ Yet the RIS almost instantly dismisses this scenario (it does not reach the status of an option), as ‘high risk’ as it would ‘reduce the economic contribution of hunting to the NSW economy’.⁹ It fails to consider whether *not* hunting would have a positive impact on the NSW economy (eg an increase in alternative recreational activities or tourism), or animal welfare, or community wellbeing.

³ *Game and Feral Animal Control Act 2002* (NSW), s 5.

⁴ For a recent example of the toll of animal hunts on the mental wellbeing of individuals who live close to hunting areas, see L Tindale, ‘Hughes, Deakin locals upset about Red Hill Nature Reserve Canberra kangaroo culling’, *The Canberra Times*, 11/07/2022, <https://www.canberratimes.com.au/story/7805254/brutal-barbaric-decapitated-roos-found-in-red-hill-kangaroo-killing-fields/>.

⁵ RIS p 7 at [1.7]. Animal protection and community anti-hunting organisations are at most inferred in the last category (usually the ‘other’ or ‘miscellaneous’ category) listed as ‘indirect stakeholders’ and consisting of ‘Other indirect stakeholders including general public (non-hunting)’.

⁶ RIS p 31 at [7.1.2].

⁷ RIS p 12 at [3.2].

⁸ RIS p 40 at [7.3].

⁹ *Ibid.*

Failure to consider animal welfare and impact on non-hunting community

The ADO submits that too often animal welfare is absent from the considerations underpinning the proposed regulation and the RIS. Animal welfare costs are rarely if ever calculated or estimated, resulting in a distorted evaluation of the proposed regulation as the preferred option.

The RIS also fails to weigh any alleged benefit of hunting against the significant costs to community wellbeing and safety. With gun violence in the headlines after international events such as the school shooting in Uvalde, Texas (May 2022)¹⁰ and the assassination of the former Japanese Prime Minister, Shinzo Abe (July 2022)¹¹, the ADO submits that now is not the time to be relaxing regulatory requirements regarding the use of guns and other lethal weapons by adults and children.

ADO submits that the failure to consider the interests of direct stakeholders such as animals and the non-hunting community fundamentally undermines the proposed regulation and it therefore should not be passed.

Specific changes

Allowing children under 12 to hunt

The proposed regulation would remove restrictions on granting a game licence to a person under 12 years of age.¹²

The RIS asserts that benefit of this proposed change include 'improved animal welfare' and [improved] compliance.¹³ It asserts that the costs of this proposal are 'nil or minimal'.

The ADO does not support this change and submits that the RIS's assessment of the proposal is not evidence based and is therefore flawed.

The assertion that it would result in improved animal welfare and compliance is not supported by any explanation or evidence. It is difficult to see how allowing young children to use lethal weapons such as bows and aggressive and dangerous dogs to kill vulnerable sentient animals can improve animal welfare. The ADO submits it would have the opposite effect and has the potential to inflict considerable harm and suffering on animals. This negative impact on animal welfare should, moreover, have been included as a 'cost' of the proposed regulation (Table 5).

The RIS also overlooks the impact of this proposed change on those in the community who would not approve of children under 12 being allowed to use lethal weapons and aggressive dogs to kill other animals. This would be a significant cost to public safety and contemporary community expectations regarding appropriate activities for children.

It is also not clear how this change would lead to 'improved compliance'. On the contrary, it would introduce a new cohort of aspiring child hunters whose hunting activities would need to be closely

¹⁰ CBS News, 'As Texas school shooting confounds the world, CBS News looks at other countries' reactions to their own massacres', 26/05/2022, <https://www.cbsnews.com/news/texas-school-shooting-how-other-countries-changed-gun-laws-after-mass-shootings/>.

¹¹ ABC News, 'World leaders express sadness, outrage over death of Shinzo Abe, paying tribute to 'friend', 'brilliant leader'', 09/07/2022, <https://www.abc.net.au/news/2022-07-09/shinzo-abe-former-japanese-leader-killed-world-leaders-react/101223326>.

¹² Proposed regulation, Part 2, Div 3, cl 11.

¹³ RIS, Table 5, p 35.

monitored at the point of (attempted) kill to ensure that they would not breach animal welfare laws, and the RIS provides no indication of how that would be achieved.

The ADO also does not support the proposal to allow children as young as 16 to hunt without adult supervision.¹⁴ The costs to animal welfare and community safety of having unsupervised children using lethal weapons and aggressive dogs to kill animals outweigh the alleged benefits of this proposed change ('reducing red tape and increasing opportunities for other individuals').¹⁵

The ADO submits that these proposed changes should be rejected as they would lead to significant adverse outcomes for animals and the non-hunting community, who are key direct stakeholders in this regulatory context.

Licence duration

The proposed regulation would increase the maximum game hunting licence duration from five to 10 years.¹⁶

The ADO does not support this proposed change. It prioritises the minor benefit to hunters of fewer licence applications over the significant cost to the community in having reduced scrutiny of hunting licence applicants. Given the world-wide concern about gun violence perpetrated by individuals against members of the public, the ADO submits that regulatory checks on those who wish to use guns and other lethal weapons should be increased rather than decreased.

Native bird management licences

The proposed regulation would allow native game bird management licences to be granted to persons convicted of various criminal offences including offences involving cruelty or harm to animals, personal violence, damage to property or unlawful entry into land.¹⁷

The proposed regulation would also allow native birds to be hunted at night in any conditions (by commercial and professional hunters) or with sufficient lighting and if located near planted crops (by other hunters).¹⁸

The ADO does not support these proposed changes as the potential animal welfare costs to native birds would be considerable and would outweigh the negligible benefit to landholders who would have the dubious convenience of being able to hire a person convicted of animal cruelty to shoot birds, and/or to be able to hire someone to shoot birds at night in the dark.

Hunting deer

The ADO notes that the seasonal limits on hunting deer¹⁹ have been removed in the proposed regulation, meaning that these animals could (continue to²⁰) be killed all year round.

¹⁴ Proposed regulation, Sch 2, Part 1, cl 2(1).

¹⁵ RIS, Table 5, p38.

¹⁶ Proposed regulation, cl 13.

¹⁷ Proposed regulation, cl 20.

¹⁸ Proposed regulation, Sch 2, Part 3, cl 12.

¹⁹ *Game and Feral Animal Control Regulation 2012* (NSW), Sch 1, Part 1, cl 5.

²⁰ DPI NSW:

Deer remain a game animal for the purpose of public land hunting by NSW R-Licence holders. However, some hunting regulations were suspended in 2018 and then re-suspended on Tuesday 16 November 2021. Suspended regulations include: deer hunting seasons – all deer species may be targeted year-round.

<https://www.dpi.nsw.gov.au/hunting/game-and-pests/managing-feral-deer-in-nsw>.

The ADO notes that the proposed regulation would also remove the current limits on using dogs to hunt deer²¹, meaning that up to five dogs²² could be used to hunt deer rather than two²³. Under the proposed regulation these restrictions would apply only on public land²⁴, whereas the current restrictions on the use of dogs for hunting deer apply regardless of location²⁵.

The ADO notes that the ACT has banned the use of pigs for hunting purposes, classifying it as a 'violent animal activity'.²⁶ Under ACT law, a violent animal activity is defined to include 'the use of an animal to fight, injure or kill another animal'.²⁷

The ADO does not support these changes in the proposed regulation on the grounds that the animal welfare costs far exceed any (putative) benefit to hunters. The ADO notes that no benefit to hunters for these proposed changes has been identified in the RIS. The ADO therefore submits these proposed changes should be discarded and instead replaced with a prohibition on the use of dogs for hunting other animals as a violent animal activity.

Code of Practice

The proposed regulation would remove the mandatory provisions of the code of practice for holders of game hunting licences currently specified in Schedule 2 to the *Game and Feral Animal Control Regulation 2012* (NSW).

This would have the effect of repealing the current code of practice. The explanation for this fundamental change is the assertion that:²⁸

It is no longer best practice to include a code of practice in legislation.

Licence holders must continue to comply with any code of practice approved by the Regulatory Authority

No discussion of a replacement code of practice, or how (or if) it would have legal effect, is included in the explanatory material for the proposed regulation.²⁹

A critical part of the regulatory framework is therefore absent from the proposed regulation. The ADO submits that the code of practice should continue to be included in legislation which would give the code clear legal force. The ADO submits also that the proposed regulation should not be passed until a new code of practice is released with a clear explanation of how it will have legal effect.

²¹ Ibid cl 12.

²² Proposed regulation, Sch 2, Part 2, cl 7(1)(g).

²³ *Game and Feral Animal Control Regulation 2012* (NSW), Sch 1, Part 3, cl 12(c).

²⁴ Proposed regulation, Sch 2, Part 2, cl 7(1).

²⁵ *Game and Feral Animal Control Regulation 2012* (NSW), Sch 1, Part 3, cl 12.

²⁶ *Animal Welfare Act 1992* (ACT), s 17.

²⁷ Ibid s 17(6).

²⁸ *Summary of changes and context – proposed Game and Feral Animal Control Regulation 2022*, NSW Government, <https://www.haveyoursay.nsw.gov.au/78456/widgets/375803/documents/234951> ("Summary of Changes").

²⁹ RIS and Summary of Changes.

Penalty notices

The ADO notes that several proposed penalty infringement notice amounts would be significantly reduced in the proposed regulation.³⁰ No explanation is provided for the reduction in these penalty amounts.

The ADO does not support these reductions in penalty amounts. The ADO submits that the penalty amounts should be increased so as to function as disincentives and to reflect the opprobrium with which the community at large would regard non-compliance with animal hunting laws.

Conclusion

The ADO recommends that hunting animals be banned as a violent animal activity that unjustifiably harms sentient animals.

If, however, hunting is to continue in NSW, the ADO urges that the proposed regulation be amended along the lines recommended in this submission, including giving greater weight to the interests of animals, non-hunting landholders living near hunting areas, and the general non-hunting community. Failure to consider the interests of these key stakeholders will lead inevitably to the hunting industry losing its viability and any social licence it may currently claim to have.

Thank you for taking these submissions into consideration.

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³⁰ RIS, Table 11, p 52; for example penalties would reduce from \$550 to as low as \$100 (s 5(2)).