



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.

The Project Team
Kosciuszko National Park Wild Horse Heritage Management Plan
National Parks and Wildlife Service
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Dear Sir/Madam

Draft amendment to the Kosciuszko National Park Wild Horse Heritage Management Plan—public consultation

Thank you for the opportunity to provide feedback on the 2023 *Kosciuszko National Park Wild Horse Heritage Management Plan Draft Amending Plan (the draft Plan)*.¹

The main purpose of the draft Plan is to include aerial shooting of horses as a control method in the *Kosciuszko National Park Wild Horse Heritage Management Plan (the current Plan)*.² Since 2000 it has been the policy of the NSW Government not to use aerial shooting as a method of killing wild horses. This policy is reflected in the current Plan which does not adopt aerial shooting as a control method.³

About the Animal Defenders Office

The Animal Defenders Office (**ADO**) is a not-for-profit community legal centre that specialises in animal law. The ADO provides pro bono animal law services to the community. 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.

Summary of the ADO's feedback

In summary, the ADO does not support the draft Plan. This position is based on the following submissions:

1. The proposed amendment to include aerial shooting does not further the object of the *Kosciuszko Wild Horse Heritage Act 2018 (the Act)*.
2. Aerial shooting is inherently inhumane and cannot be made humane through management.
3. The draft Plan does not adequately justify its proposed change of a long-standing government policy against aerial shooting.
4. The standard operating procedure for aerial shooting is not based on current research.

¹ 2023 State of NSW and Department of Planning and Environment.

² 2021 State of NSW and Department of Planning, Industry and Environment.

³ *Ibid* p 21.

5. The environmental impact of aerial shooting has not been adequately addressed.
6. There are inconsistencies between the standard operating procedure for aerial shooting and the draft Plan.
7. The proposed amendment to include aerial shooting is based on questionable population counts of wild horses.
8. The financial viability of aerial shooting is uncertain.

The ADO therefore recommends that the draft Plan not be adopted.

Detailed feedback

Background

Aerial shooting has been explicitly avoided as a method of killing wild horses by successive NSW Governments. This policy position was adopted in the wake of the infamous ‘cull’ of wild horses by aerial shooting in the Guy Fawkes River National Park. The cull of over 600 horses resulted in animal cruelty charges being brought against the NSW National Parks and Wildlife Service (**NPWS**) and significant public concern about the negative animal welfare outcomes for the affected horses. The policy position of the NSW Government has led to the view that aerial shooting is ‘banned’ in NSW as a method of killing wild horses.⁴

Objection: The proposed amendment to include aerial shooting does not further the object of the Act

The object of the Act is specified in section 4:

The object of this Act is to recognise the heritage value of sustainable wild horse populations within parts of Kosciuszko National Park and to protect that heritage.

The ADO submits that in proposing a control method that has serious animal welfare concerns, the draft Plan neither recognises the heritage value of sustainable wild horse populations nor protects that heritage.

The current Plan takes into account the object of the Act (p 3). The current Plan also states that ‘[b]est practice capture and control methods will be used in implementing the plan, consistent with animal welfare requirements’ (p 2) and that ‘[c]ontrol methods will be selected for use based on maximising animal welfare outcomes’ (p 18). The ADO submits that adopting a control method that has serious animal welfare concerns is clearly inconsistent with these principles in the current Plan.

The ADO therefore submits that the draft Plan should not be adopted as it neither furthers the object of the Act, nor is in line with principles set out in the current Plan. On the Act and the current Plan’s own terms, the proposed amendment should be rejected.

Objection: Aerial shooting is inherently inhumane and cannot be made humane through management

The ADO submits that aerial shooting of wild animals is inherently inhumane. This view is based on the following factors:

⁴ Sharp, Trudy., 2011. *Aerial shooting of feral horses. Standard Operating Procedure (HOR002)*, second page (pages unnumbered).
<https://pestsmart.org.au/toolkit-resource/aerial-shooting-of-feral-horses/>. Referred to as ‘SOP (HOR002)’.

- Previous examples of aerial shooting of wild animals carried out in nature reserves in NSW,
- An interlocutory decision of the NSW Supreme Court about aerial shooting, and
- Inherent aspects of aerial shooting acknowledged in standard operating procedures.

Case studies

Aerial shooting of wild horses in Guy Fawkes River National Park

The killing of wild horses in the Guy Fawkes River National Park in NSW in 2000 demonstrated the potential for aerial shooting to be cruel to the target animals.

The cull was carried out by the NPWS, which is the entity listed on the front cover of the draft Plan, so would presumably be involved in administering aerial shootings under the draft Plan.

The cull was investigated by the RSPCA (NSW) and 12 animal cruelty charges were laid against the NPWS for the treatment of the animals targeted during the shooting. As is often the case with criminal matters, a plea negotiation saw the NPWS plead guilty to one charge in exchange for the remaining charges being dropped. The guilty plea was in relation to a mare found alive with two bullets in her body more than a week after the aerial shooting.⁵

As a result of the public rejection of aerial shooting as a method of killing wild horses following the Guy Fawkes River National Park killing program in 2000, the NSW Government decided not to use it. That ethical stance in relation to this control method has continued until now.

Aerial shooting of wild goats on Lord Howe Island

In 1999 the NSW Government decided to cull wild goats on Lord Howe Island by aerial shooting. After the cull, local residents took photographs of the animals' remains, which were then examined by a forensic pathologist, Dr Lee. According to the Supreme Court of NSW, which considered this cull in a case about a different cull:

Dr Lee expressed a view from what he saw in the photographs that some of the animals showed clear signs of movement and others no visible evidence of any injury, which he found was strongly suggestive that not all had been killed immediately by shots received. He also found that there was no evidence of any finishing up or coup de grace shots on the animals depicted.⁶

Hamilton J of the Supreme Court of NSW concluded that:

I am of the view that an arguable case is shown on the material relating to the Lord Howe Island cull of the potential for shooting from a helicopter to inflict cruelty on the animals to be culled. It seems to me that there is an arguable case on the material led before me that on that occasion some animals were neither killed immediately nor quickly finished off after being wounded. [4]

Proposed aerial shooting of wild goats in Woomargama National Park NSW

In 2003 local animal protection group Animal Liberation Limited applied to the NSW Supreme Court seeking an injunction to stop a proposed aerial shooting program against wild goats in the Woomargama National Park in NSW: *Animal Liberation Ltd v National Parks & Wildlife Service* [2003]

⁵ <https://rspcaanimalcruelty.wordpress.com/2013/11/21/magistrate-dismisses-charges-brought-against-npws-by-the-rspca/>. See also Voiceless, *Case Note: Animal Liberation Ltd v National Parks and Wildlife Service*, <https://voiceless.org.au/case-note-animal-liberation-ltd-v-national-parks-and-wildlife-service/>.

⁶ *Animal Liberation Ltd v National Parks & Wildlife Service* [2003] NSWSC 457 at [2].

NSWSC 457. The plaintiff organisation relied on the evidence gathered from the aerial shooting of goats on Lord Howe Island in 1999. Based on this evidence, the plaintiff argued that the proposed cull was likely to cause cruelty because:

...if animals are shot and only wounded, they may be left to suffer for some perhaps protracted period before dying and that the chance of discovering that animals are wounded only and administering a coup de grace are less if the shooting is from a helicopter. [1]

Hamilton J of the NSW Supreme Court ultimately granted an injunction restraining the proposed cull by aerial shooting in the Woomargama National Park on the grounds that:

If the plaintiff's case be proved to be correct, the cull may be carried out in a way which inflicts cruelty on some of the goats involved and therefore a breach of the cruelty statute. [9]

Hamilton J reached this view about the potential for cruelty in the aerial shooting of wild goats despite the application being conducted on 'exiguous evidence' [6]. That evidence was nonetheless sufficient for the court to grant an injunction to prevent animal cruelty.

Inherent cruelty

The aspects of aerial shooting that increase the likelihood of inhumane outcomes for animals are recognised as being inherent in the method itself, and include:

- The difficulty in assessing target horses from a helicopter
- The difficulty in shooting at the small, recommended target of a moving wild horse (brain)
- The difficulty in telling whether shot horses are dead or wounded
- The difficulty in spotting target horses camouflaged with the terrain
- The difficulty in killing foals
- The impact on other (non-target) animals from aerial shooting.

Inhumane deaths

The national Standard Operating Procedure for aerial shooting of feral horses (**SOP**) acknowledges that:

Humaneness of aerial shooting as a control technique depends on the skill and judgement of both the shooter and the pilot. If properly done, it can be a humane method of destroying feral horses. On the other hand, if done inexpertly, shooting can result in wounding that can cause considerable pain and suffering.⁷

The ADO notes that in guidelines relating to shooting wild mammals, a 'sudden and humane death' is usually regarded as being achieved through an 'instantaneous loss of consciousness and rapid death without regaining consciousness'.⁸

In terms of achieving the least possible inhumane death from aerial shooting, the SOP recommends that 'only head (brain) or chest (heart/lung) shots must be used. Shooting at other parts of the body is unacceptable' (p 2). If these targets are cleanly hit, the SOP states that a shot to the head would achieve 'instantaneous loss of consciousness and loss of brain function', requiring a second shot to

⁷ Sharp, Trudy, 2011. *Aerial shooting of feral horses. Standard Operating Procedure.* <https://pestsmart.org.au/toolkit-resource/aerial-shooting-of-feral-horses/> p 2.

⁸ See for example the Australian Government's *National code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non-Commercial Purposes* 2008 p 9.

the chest if the head shot is not lethal. However, the SOP states that head shots, being 'the preferred point of aim':

...should only be attempted at short ranges and in ideal conditions. The brain is a relatively small target that is well protected by bone. Only the slightest misplacement of the bullet can result in nonlethal and debilitating wounds, such as a broken jaw. (p 5)

Thus according to the SOP itself, the only shot that would result in what is widely regarded as producing a 'humane kill', is not viable in anything less than 'ideal conditions' (how likely are they to occur?) and can result in significant wounds.

The SOP is also unclear about chest shots, resorting to the somewhat vague assertion that insensibility 'will occur after an interval ranging from a few seconds to a minute or more' (p 2). The SOP does not clarify what is meant by 'or more' in terms of possible length of time a horse would suffer and/or how likely or frequently this would occur.

The ADO submits that these aspects of aerial shooting emphasise the inherent inhumanness of it as a method of killing wild horses.

The SOP ultimately recommends that attempts to shoot an animal be undertaken when 'a humane kill is probable' (p 4). The ADO submits that 'probable' is too low a standard for attempting to shoot wild horses 'humanely' from a helicopter and that negative animal welfare outcomes are inevitable.

Difficulty in assessing animals from a distance

In addition to the difficulty in hitting the recommended target of a moving horse, the SOP acknowledges that 'it is very difficult to assess from a distance if an animal is dead', recommending a practice of 'overkill' requiring at least two shots per animal (p 2), or 'multiple shots to the vital areas to ensure a rapid death. This is because animals can appear to be dead but might only be temporarily unconscious after a single shot' (p 4).

Other commentators point out that wounded horses may not be detected in flyovers due to their colour, making it difficult to see against the landscape, and that stationary animals are 'much more difficult to detect from the air than a moving one'.⁹

Killing foals

The SOP accepts that there will be 'animal welfare implications of leaving dependent foals to die a slow death from starvation' (p 2). Its response is merely to assert that 'it is preferable not to run aerial shooting programs when mares have dependent young at foot' and '[i]f lactating mares are shot, efforts should be made to find dependent foals and kill them quickly and humanely' (p 2).

The ADO submits that these weak guidelines relating to killing foals do little to mitigate the inherent inhumaneness of aerial shooting when undertaken in the harsh realities of Australian natural landscapes.

⁹ Australian Brumby Alliance Inc., *Guy Fawkes River National Park (2000-2002) Aerial Shoot Controversy*. ABA Desktop Review Report October 2014, p 5.

Impact on non-target animals

The SOP notes that 'sensitive livestock' including 'domestic horses' can be 'easily frightened by gunshots, helicopter noise, wind and so on and might injure themselves by running into fences and other obstacles' (p 3).

The ADO submits that this would apply to all horses, including wild horses, and to other animals in the wild, and that therefore these impacts on non-target animals should be factored into an assessment of the inherent potential for negative animal welfare outcomes from aerial shooting.

Objection: inclusion of aerial shooting despite inherent cruelty is not justified

Given the inherent aspects of aerial shooting that increase the likelihood of poor animal welfare outcomes, a proposal to include this control method would need directly to address these concerns, and/or indicate what has changed to warrant its inclusion, and in the ADO's view the draft Plan does neither of these things.

Proponents of aerial shooting routinely assert that it is an acceptable killing method because it is humane when carried out correctly and by experienced personnel.¹⁰

However, in the matter regarding the proposed cull of wild goats in the Woomargama National Park, the Supreme Court of NSW acknowledged that it was not enough to rely on the 'broad, although no doubt well-intentioned, statement that the shoot will be conducted properly' [8].¹¹ Hamilton J noted in relation to the 1999 cull on Lord Howe Island:

...the fact is that the Director General [of NPWS] gave similar assurances concerning that shoot, both before and after it, whereas, as I have said, there is an arguable case on the material presented to me that there were associated with that shoot circumstances of cruelty. [8]

Hamilton J later pointed out that:

...the Director General conveyed assurances that the New Zealand organisation contracted to carry out that shoot had "extensive ... experience" and "established quality assurance programmes". Further, all people to be involved in the programme were trained and experienced in the methods to be used. Even the dogs that were to be employed were said to have appropriate and specific training. The contract it was said required "all goats to be destroyed in a humane manner in accordance with legislative requirements and applicable codes of conduct".

In my view, bearing in mind the arguable case that has been made out of the potentiality of shooting from a helicopter to cause cruelty in the culling of feral goats, **I do not regard the broad based assurances given as negating the potentiality of cruelty arising from a helicopter conducted cull in this instance.** [8]-[9] (emphasis added)

¹⁰ See for example NSW Department of Planning and Environment, 'Would aerial shooting offer good animal welfare outcomes and what safeguards would be in place?' at <https://www.environment.nsw.gov.au/topics/animals-and-plants/pest-animals-and-weeds/pest-animals/wild-horses/managing-wild-horses/kosciuszko-national-park-wild-horse-management/amending-the-kosciuszko-national-park-wild-horse-heritage-management-plan#hys>.

¹¹ *Animal Liberation Ltd v National Parks & Wildlife Service* [2003] NSWSC 457.

Further, in its recently updated policy on feral horse control (July 2023), the Australian Veterinary Association still regards aerial shooting as being more inhumane (or less humane) than ground shooting.¹²

The ADO therefore submits that 'broad based assurances' regarding how well the aerial shoots of wild horses in Kosciuszko National Park (**KNP**) would be carried out and about the experience of those carrying them out, do not 'negative the potentiality of cruelty' (to use the language of the Supreme Court in this context) to the point where aerial shooting should now be included as a control method in the management plan for wild horses.

Further objections militating against reversal of 'ban' on aerial shooting

The ADO submits that other factors militate against the use of aerial shooting as a control method, including:

- The SOP has not been updated
- The environmental impact of aerial shooting
- Inconsistency between the SOP and the draft Plan
- Reliance on dubious population counts
- Uncertainties about the financial cost of aerial shooting

SOP out of date

The current Plan commits to reviewing standard operating procedures 'to update and adjust control methods based on best practice approaches to animal welfare and the outcomes of any animal welfare assessments undertaken during use of the control method' (p 19).

The ADO submits that aerial shooting would not meet the standard of 'best practice approaches to animal welfare'. Moreover, the aerial shooting SOP was published 12 years ago (2011) and there is no reference to a review since then.¹³ This contrasts with the Australian Veterinary Association's policy on 'feral horse control' which was first ratified in July 2013 then updated and re-ratified in July 2023.¹⁴ Further, the most 'recent' reference cited in the SOP is an NPWS document from 2008 (being the then KNP horse management plan), and over half the references used by the SOP are from the 1990s or earlier.¹⁵

Impact on the environment

The draft Plan states that:

Consistent with the requirements of Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), and section 6 of the adopted Kosciuszko National Park Wild Horse Heritage Management Plan, all matters affecting or likely to affect the environment by reason of undertaking activities associated with the Kosciuszko National Park Wild Horse Heritage Management Plan if it is amended as proposed, will be taken into account before implementation of the relevant wild horse control actions in the park or parts of the park. (p v)

¹² Australian Veterinary Association (**AVA**), *Control of feral horses and other Equidae*, ratified 20 July 2023, <https://www.ava.com.au/policy-advocacy/policies/wild-animals/control-of-feral-horses-and-other-equidae/>.

¹³ The SOP is referenced in the draft Plan as 'Sharp 2011d' (pp 2, 5).

¹⁴ AVA, *Control of feral horses and other Equidae*.

¹⁵ Aerial shooting of feral horses (HOR002) SOP p 7.

It is likely that aerial shooting would be an activity that would affect the environment, yet it is not clear whether an assessment has been undertaken of how factors associated with aerial shooting such as noise interference, debris and litter from the shooting, air turbulence/disturbance, and the shooting itself would affect the environment and other flora and fauna species living in it.

The ADO submits that the potential impacts of aerial shooting on the environment must be assessed in line with the current Plan before aerial shooting is contemplated as a wild horse control method in the KNP.

Inconsistency between SOP and the draft Plan

The uncertainty regarding the environmental impact of aerial shooting is also of concern given that the draft Plan advocates the use of aerial shooting 'in any area of the park' (p 1), meaning that any associated environmental impact would apply to the whole KNP. This proposed policy setting in the draft Plan is itself a concern because it appears to be inconsistent with the aerial shooting SOP which specifically limits the areas in which the control method should be used. The SOP advocates that aerial shooting be used (only) 'in remote, inaccessible or rugged terrain', and not in other places such as in 'areas of heavy cover' as 'effectiveness is limited since horses might be concealed and difficult to locate from the air' (p 1).

The ADO submits that this inconsistency between the draft Plan and the aerial shooting SOP should be clarified before any proposed use of the method is considered.

Wild horse population numbers

The draft Plan proposes to update the population size information for wild horses in the KNP.¹⁶ The draft Plan specifies that the number of wild horses in the park has increased from an estimated 14,380 to an estimated 18,814.

The ADO is aware, however, of significant community concern about the methodology and statistical modelling of the population estimates of wild horses in the KNP.¹⁷ One recent study of the population survey used by the draft Plan (**the study**) found that:¹⁸

1. The survey methodology contains significant flaws that put in question the counting of wild horses.
2. Insufficient numbers of wild horses were seen to apply statistical modelling techniques to estimate populations.¹⁹

The study recommends that there should be an 'immediate moratorium on the killing of all wild horses in the Kosciuszko National Park and an independent investigation into all population trends and subsequent control needs to be urgently undertaken.'²⁰

The ADO shares the community's concerns about the methodology applied to producing the population estimates for wild horses in the KNP. The ADO supports the study's overarching recommendation that '[i]ndependent statistical investigations into wild horse populations and

¹⁶ Amendment 3, section 5.

¹⁷ This is a topic about which the ADO has received numerous inquiries from the public.

¹⁸ Galea, Claire, *Independent biostatistical report on the Brumby population in the Kosciuszko National Park*, 2023.

¹⁹ *Ibid* p 4.

²⁰ *Ibid*.

management plans should be urgently undertaken'.²¹ The ADO suggests that consideration be given to using contemporary methods such as drone and infrared technologies, as successfully deployed in recent efforts to count koala numbers in NSW.²²

Financial cost of aerial shooting

Even from a financial point of view, aerial shooting does not appear to be a viable option. The SOP states that '[a]erial shooting is a cost-effective method where horse density is high. **Costs increase greatly** as horse numbers decrease.' (p 1; emphasis added). Other factors would increase costs even further, such as when a 'fly-back' procedure is required. This is when 'the shooter is flown back over the shot animals so that follow-up shots to the vital areas can be applied' (p 2). The SOP recommends that the 'cost of ammunition and extra flying time must not deter operators from applying this flyback procedure' (p 2).

The SOP does not indicate how likely it is that aerial shooting would be used as horse numbers decrease, or by how much the required 'fly-back' procedure would increase costs.

The ADO submits that the uncertainty about the 'true cost' of aerial shooting is a further reason for rejecting the draft Plan and its proposed adoption of aerial shooting as a control method for killing wild horses in the KNP.

Consultation

The ADO notes that parts of the consultation section of the draft Plan have not been drafted and therefore it is impossible to comment on them.²³ It is not clear why the original text about consultation in the current Plan needs to be replaced.

The ADO submits that the public should be given an opportunity to comment on the proposed wording in the 'Communication' section of any updated Plan, given the importance of community consultation on this controversial issue and to ensure the Plan accurately reflects the consultation processes that have occurred.

The ADO also submits that a wide range of stakeholders needs to be identified and their views sought, including all First Nations peoples and organisations with a cultural interest in the area, as well as animal protection organisations and brumby advocacy groups.

Final observation

The draft Plan proposes to delete the text in the current Plan which refers to the:

...significant risk that the implementation of an aerial shooting program will result in a loss of the social licence to remove wild horses from the national park. In addition, government policy since 2000 has been not to undertake aerial shooting of horses in national parks. Taking these factors into account, this plan does not provide for aerial shooting.' (p 3)

²¹ Ibid p18.

²² Raper, Ashleigh, 'Minns government criticises Coalition's koala count as new colony found in north west NSW', *ABC News*, 5 June 2023, <https://www.abc.net.au/news/2023-06-05/thermal-drones-find-new-koala-colony-in-north-west-nsw/102436102>.

²³ Draft Plan, 'Amendment 1. Executive summary', and 'Amendment 2. Matters considered', p 1.

In light of the submissions in this paper, the ADO does not support removing this text from the current Plan. The ADO submits that this paragraph is still valid and should be retained. There is no evidence demonstrating that aerial shooting has regained a social licence which, if such a licence ever existed, was certainly lost after aerial shooting programs resulted in unjustifiable animal cruelty being inflicted on the target animals. The ADO submits that any consideration of this method should wait until the Plan is reviewed after 30 June 2027 in accordance with the current Plan's concept of adaptive management (p 21).

Thank you for taking the ADO's submissions into consideration. The submissions were prepared with the assistance of Jack Li, Legal Intern, ADO.

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