

Submission
No 39

**INQUIRY INTO HEALTH AND WELLBEING OF
KANGAROOS AND OTHER MACROPODS IN NEW SOUTH
WALES**

Organisation: NSW Young Lawyers Animal Law Committee

Date Received: 9 May 2021

Submission to the inquiry into the health and wellbeing of kangaroos and other macropods in New South Wales

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Inquiry into the health and wellbeing of kangaroos and other macropods in New South Wales
Parliament House, Macquarie Street, Sydney NSW 2000

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The NSW Young Lawyers Animal Law Committee (**Committee**) makes the following submission in response to the Terms of Reference for the Parliamentary inquiry to look at the health and wellbeing of kangaroos and other macropods in New South Wales (**Inquiry**).

NSW Young Lawyers

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 16 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Committee comprises a group of over 400 members interested in animal protection laws regulating the treatment of animals. The Committee aims to raise awareness and provide education to the legal profession and wider community, while increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst Committee members is a passion and desire to use their legal skills and the law to improve protections for animals.

The Committee welcomes the opportunity to contribute to the Inquiry and confines the scope of this submission to **Terms of Reference (1)(e) and (f)**.

Summary of Recommendations

The Committee submits that kangaroos should not be allowed to be shot in either commercial or non-commercial kangaroo shooting, on the basis of significant animal welfare concerns and the risk that kangaroo population numbers have been overstated.

However, in the event that kangaroo shooting is permitted to continue, the Committee recommends that:

1. female kangaroos should not be allowed to be shot due to the adverse animal welfare outcomes it can produce;
2. licensing requirements for non-commercial shooters, of a kind similar to those imposed on commercial shooters, ought to be introduced;
3. a greater level of enforcement of applicable Codes and animal welfare regulation and legislation is necessary in the kangaroo shooting space; and
4. non-lethal methods of population control ought to be preferred to existing lethal measures.
5. the exemption to the offence of serious animal cruelty for “the extermination of pest animals” under section 530(2) of the *Crimes Act 1900* (NSW) ought to be repealed.
6. a similar management plan to the ACT Kangaroo Management Plan 2010 should be introduced in NSW, with one of the primary principles of the plan to be kangaroo welfare and that there be an emphasis that all kangaroos are to be treated humanely.

(1)(e) current government policies and programs in regards to 'in pouch' and 'at foot joeys' given the high infant mortality rate of joeys and the unrecorded deaths of orphaned young where females are killed

The Committee submits that shooting female kangaroos should be prohibited. This is a direction in which kangaroo shooters are already moving, in part for the reasons set out below, and the Kangaroo Industries Association of Australia already has a policy encouraging it, resulting in a decline in female kangaroo 'take'.¹

Currently, the applicable Code of Practice provides only as a matter of *guidance* that female kangaroos who clearly have dependent young ought not be shot.² The Committee submits that this ought to be compulsory.

Joeys are unable to survive without their mothers. Should a mother kangaroo be either wounded significantly or killed, a dependent joey will likely die from starvation, exposure or predation.³ While shooters are ordinarily required to then euthanise the joey, this is, in the Committee's view, an undesirable course because:

- A. it produces an additional, unnecessary and potentially unintended kill;
- B. it is dependent upon further investigation of a shot kangaroo that may not be conducted consistently;
and
- C. in cases of kangaroos that are wounded but proceed to flee before dying as a result of their wound, results in a painful death for an infant kangaroo anyway.

Serious issues then arise when joeys in these situations are not euthanised – a frequent occurrence in practice, despite shooters generally indicating an intention to euthanise where required beforehand.⁴

¹ Kangaroo Industries Association of Australia, *Factsheet: Kangaroo Industry Animal Welfare* (Online fact sheet, 2013) <<https://www.kangarooindustry.com/wp-content/uploads/2018/KIAA-Factsheet-Welfare.pdf>>

² Australian Government, 'National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non-Commercial Purposes' (2008) s 2.4.

³ Voiceless: The Animal Protection Institute, *Kangaroos* (Web page) <<https://voiceless.org.au/hot-topics/kangaroos/>>

⁴ Rural Industries Research & Development Corporation, *Improving the humaneness of commercial kangaroo harvesting* (June 2014) p xvi <<https://www.agrifutures.com.au/wp-content/uploads/publications/13-116.pdf>>

The Committee therefore supports a blanket ban on shooting female kangaroos – a position touched on by the RSPCA Australia; “(i)t may be that the only solution to completely avoid the potential cruelty to pouch young is not to shoot females at all”.⁵

(1)(f) regulatory and compliance mechanisms to ensure that commercial and non-commercial killing of kangaroos and other macropods is undertaken according to the Biodiversity Conservation Act 2016 and other relevant regulations and codes

The Committee considers that regulation and compliance in this space can be improved in, *inter alia*, three broad ways; stronger enforcement, improved licensing and training, and a more sophisticated approach to population control and ‘pest’ management.

Enforcement

The Committee is concerned that a lack of enforcement of applicable codes may result in widespread non-compliance in kangaroo hunting and leads to adverse kangaroo welfare outcomes.⁶

The RSPCA reports “[m]any instances of inhumane shooting practices resulting in significant suffering of kangaroos” amongst non-commercial shooters.⁷ In addition, instances of (sometimes extreme) animal cruelty have gone entirely unpunished.⁸ Both outcomes are attributable to, in part, an insufficient level of monitoring and compliance.⁹ There is a clear need for an increased allocation of resources to remedy these breaches.

Also, the Committee notes the risk of monitoring, enforcement, quotas and surveying becoming reliant on outdated or non-applicable baselines in the context of recent environmental developments. Such

⁵ RSPCA, ‘What happens to joeys when female kangaroos are shot?’, *Knowledgebase* (November 26 2020) <<https://kb.rspca.org.au/knowledge-base/what-happens-to-joeys-when-female-kangaroos-are-shot/>>

⁶ Voiceless: The Animal Protection Institute, *Kangaroos* (Web page) <<https://voiceless.org.au/hot-topics/kangaroos/>>

⁷ RSPCA, ‘What is the difference between non-commercial and commercial kangaroo shooting?’, *Knowledgebase* (November 26, 2020) <<https://kb.rspca.org.au/knowledge-base/what-is-the-difference-between-non-commercial-and-commercial-kangaroo-shooting/>>

⁸ RSPCA, ‘What is the difference between non-commercial and commercial kangaroo shooting?’, *Knowledgebase* (November 26, 2020) <<https://kb.rspca.org.au/knowledge-base/what-is-the-difference-between-non-commercial-and-commercial-kangaroo-shooting/>>

⁹ *Ibid.*

developments include an increased rate of land clearing in NSW over the past ten years (a trend not remedied by the enactment of the *Biodiversity Conservation Act 2016*),¹⁰ a core species pressure in the State as consistently identified in *State of the Environment* reports.¹¹ The Committee highlights this as a central consideration in designing a suitable monitoring and enforcement framework.

Licensing and training

While the Committee acknowledges the licensing and training mechanisms in place for commercial kangaroo shooters, it submits that a similar system ought to be in place for non-commercial shooting. From animal welfare, regulation and environmental management perspectives, there seems to be no strong rationale for the absence of one.

A lesser level of training and testing (and monitoring) amongst non-commercial shooters when compared to commercial shooters appears somewhat arbitrary, and runs the risk of undermining the intention of a suite of commercial shooting regulations. It is concerning that the reported consequence of this is a higher level of inhumane shooting by non-commercial shooters, the full extent of which is difficult to ascertain due to comparatively low levels of monitoring.¹²

The Committee submits that in order to remedy the lack of code compliance and unacceptable animal welfare outcomes currently reported, non-commercial shooters should be required to:

- 1) pass a competency test(s) before they can engage in kangaroo shooting;
- 2) undergo training to improve their familiarity with and understanding of applicable shooting codes and regulations;
- 3) undergo a licensing process akin to that of commercial shooters; and

¹⁰ NSW Department of Planning, Industry and Environment, *Woody vegetation change, Statewide Landcover and Tree Study (SLATS) for 2018* (2018) <<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Native-vegetation/summary-woody-vegetation-change-statewide-slats-2018.pdf?la=en&hash=681360442F8DBAA7C4EF74BD58D4FE0ADF2DEE0E>>

¹¹ Metcalfe D, Bui E (2016) 'Land: Regional and landscape-scale pressures: Land clearing' in *Australia state of the environment 2016* Australian Government Department of the Environment and Energy, Canberra, <<https://soe.environment.gov.au/theme/land/topic/2016/regional-and-landscape-scale-p pressures-land-clearing, DOI 10.4226/94/58b6585f94911>>

¹² RSPCA, 'What is the difference between non-commercial and commercial kangaroo shooting?', *Knowledgebase* (November 26, 2020) <<https://kb.rspca.org.au/knowledge-base/what-is-the-difference-between-non-commercial-and-commercial-kangaroo-shooting/>>

- 4) maintain reasonably consistent 'head-only' shooting. Failure to do so should result in a suspension or loss of license.

These are similar suggestions to those that have already been made by the RSPCA.¹³

Population control and 'pest' management

Population control and pest management are often cited as reasons for the importance of a sizeable kangaroo shooting presence in NSW. However, non-lethal means of population control that are available have gone largely under-utilised, despite the potential improvement to animal welfare outcomes and requisite labour input.¹⁴

Fertility control (usually dart-delivered) is an example of such non-lethal measures. While perhaps not the solution to every population concern across the state, it is a method that can be used either in conjunction with reduced shooting practices, or by itself when population levels are not out of control and the issue is one of ongoing management. This can serve as a more long-term, sustainable measure.¹⁵

The Committee submits, however, that the extent to which kangaroos can be considered pests or their population out of control is often exaggerated or misplaced. For example, the oft-cited tension between livestock and kangaroos for food is largely infrequent and drought-driven, and not consistent or statewide.¹⁶ UTS-based THINKK makes the following observation:

“Although kangaroos are largely perceived as pests in the rangelands, current research does not indicate that they are overabundant in the landscape. The estimated annual cost incurred by farmers due to kangaroos is placed at (AUS throughout) \$44 Million (M) or \$1.67 per kangaroo/year. This is markedly lower than the over \$200 M previously estimated, as long-term

¹³ Ibid.

¹⁴ Wimpenny C and Hinds LA (March 2018) *Fertility control of Eastern Grey Kangaroos in the ACT - Assessing efficacy of a dart-delivered immunocontraceptive vaccine* (Environment, Planning and Sustainable Development Directorate, ACT Government, Canberra) p 2 <https://www.environment.act.gov.au/data/assets/pdf_file/0003/1195077/Technical-Report-Fertility-Control-of-Eastern-Grey-Kangaroos-in-the-ACT-Assessing-Efficacy-of-a-Dart-Delivered-Immunocontraceptive-Vaccine-March-2018.pdf>

¹⁵ Ibid.

¹⁶ Ben-Ami, D., Boom, K., Boronyak, L., Croft, D., Ramp, D., Townend, C. (2011) 'The ends and means of the commercial kangaroo industry: an ecological, legal and comparative analysis' *THINKK, the Think Tank for Kangaroos, University of Technology, Sydney* (Revised December 2011) p 4.

research has shown there is minimal loss in pastoral property productivity from competition between livestock and kangaroos for resources.”¹⁷

The Committee also emphasises the importance of preventing animal cruelty even in instances where kangaroos are labelled ‘pests’. In particular, the avoidance of unnecessary harm or mistreatment (as identified in section 4 of the *Prevention of Cruelty to Animals Act 1979*) ought not go unenforced – a matter of enforcement and licensing touched upon above.

On the matter of pests, the Committee submits that the exemption to the offence of serious animal cruelty for “the extermination of pest animals” under section 530(2) of the *Crimes Act 1900* (NSW) ought to be repealed. In the Committee’s view, it is an arbitrary exemption that permits animal cruelty and is inconsistent with the broader animal welfare regime in NSW. Considering this issue in the context of kangaroos (who may be classified as pests in certain circumstances) highlights this.

Considering a case study – ACT

The Committee agrees with the stance taken by the ACT in declaring that its territory be a non-commercial zone.

The ACT Kangaroo Management Plan 2010 (ACT KMP) sets out to maintain wild populations of eastern grey kangaroos in the ACT while managing their environmental, economic and social impacts and ensuring their welfare.¹⁸ Although the plan specifies eastern grey kangaroos, there is scope to apply the principles widely to all other macropod species living in the ACT.¹⁹

The purpose of the KMP is to “maintain populations of kangaroos as a significant part of the fauna” and in doing so, determined that ACT be considered a non-commercial zone. This means that under the ACT KMP, there is no commercial harvesting of kangaroos unless the question of culling is raised (as it was in 2017, when the ACT changed the status of eastern grey kangaroos to a Controlled Native Species).

¹⁷ Ibid at p 2.

¹⁸ Australian Capital Territory (2010), “ACT Kangaroo Management Plan”, *Territory and Municipal Services* Vol 10, Issue 22, ix, 2.

¹⁹ Ibid at ix, 1.

The use of shooting as a management tool for the reduction of kangaroo population is described in the ACT KMP and it is a requirement that all kangaroo shooting programs are conducted in accordance with the *National code of practice for the humane shooting of kangaroos and wallabies for non-commercial purposes*.²⁰ That Code sets a minimum standard of humane conduct for persons undertaking the non-commercial culling of kangaroos.

The Committee submits that a similar management plan to the ACT KMP should be introduced in NSW. The Committee also submits that one of the primary principles of the plan be kangaroo welfare and that there be an emphasis that all kangaroos are to be treated humanely.

Concluding Comments

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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²⁰ Ibid at 23.1(a).